ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.41 Nº 76
Enero
Marzo
2023

ppi 201502ZU4645
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Vol.41 *Nº 76*
Enero
Marzo
2023

Cuestiones Políticas

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

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

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RevicyhLUZ, International Political Science Abstracts, Revista Interamericana de Bikbliografía, Centro Latinoamericano para el Desarrollo (CLAD), Bibliografía Socio Económica de Venezuela de REDINSE, International Bibliography of Political Science, Revencyt, Hispanic American Periodicals (Index/HAPI), UIrich's Periodicals DIrectory, EBSCO; y se encuentra acreditada en el Registro de Publicaciones Científicas y Tecnológicas Venezolanas del FONACIT y Latindex.

Revista Cuestiones Políticas. Av. Guajira. Universidad del Zulia. Núcleo Humanístico. Facultad de Ciencias Jurídicas y Políticas. Instituto de Estudios Políticos y Derecho Público
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IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Subjects of the Crime in the light of international treaties in wartime (comparative analysis)

DOI: https://doi.org/10.46398/cuestpol.4176.00

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Abstract

The issue of optimizing the mechanism of prosecution of the subjects of the crime in connection with Russia's war against Ukraine launched in February 2022, as a result of which impunity of war criminals is gaining momentum and leads to violation of legislation, both in Ukraine and in the world, in particular in such countries as: Poland, Germany, Bulgaria, Romania, Moldova, etc. In this regard, the purpose of this editorial is twofold: on the one hand, it seeks to present volume 41, number 76 of "Cuestiones Políticas" and, on the other hand, is to highlight the issue of the subject of the crime, its signs and main features, enshrined in international legal acts. It was concluded that the analysis of international treaties gives grounds to affirm that the subject of the subject of the crime is quite widely disclosed and attention is paid to the separation of the concepts of subjects of international crimes and subjects of crimes of international character; the difference between these concepts is fundamental and very important. Taking into account the attitude of the international community to the concept of the subject of crime, possible areas for improvement of the current legislation are outlined.

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Recibido el 15/10/22 Aceptado el 22/12/22

Keywords: subject of the crime; legal person; crime of an international character; juvenile person; combating crime.

Sujetos del Delito a la luz de los tratados internacionales en tiempo de guerra (análisis comparativo)

Resumen

La cuestión de optimizar el mecanismo de enjuiciamiento de los sujetos del delito en relación con la guerra de Rusia contra Ucrania iniciada en febrero de 2022, como resultado de lo cual la impunidad de los criminales de guerra está ganando impulso y conduce a la violación de la legislación, tanto en Ucrania como en el mundo, en particular en países como: Polonia, Alemania, Bulgaria, Rumanía, Moldavia, etc. En este sentido, el propósito de este editorial es doble: por un lado, busca presentar el volumen 41, el número 76 de "Cuestiones Políticas" y, por el otro, consiste en resaltar el tema del sujeto del delito, sus signos y principales características, consagrado en los actos jurídicos internacionales. Se concluyó que el análisis de los tratados internacionales da fundamento para afirmar que el tema del sujeto del delito se divulga con bastante amplitud y se presta atención a la separación de los conceptos de sujetos de los delitos internacionales y sujetos de los delitos de carácter internacional; la diferencia entre estos conceptos es fundamental y muy importante. Teniendo en cuenta la actitud de la comunidad internacional ante el concepto de sujeto delictivo, se esbozan posibles áreas de mejora de la legislación vigente.

Palabras clave: sujeto del delito; persona jurídica; delito de carácter internacional; persona juvenil; lucha contra el delito.

Exordium

International criminal law is defined as a set of principles and norms that regulate public relations in the protection of international law against international crimes and crimes of international nature. Analysis and comparison of international normative-legal acts gives answers to a number of questions: (a) which states of the international community take into account international criminal norms in national legislation; (b) how effective in prevention and combating crimes in a particular state implementation of international legislation is; (c) the main trends in development and improvement of the national law of different states on the basis of international criminal law.

It is clear that such terms as "crime", "subject" and "punishment" have an intrastate origin. They define legal categories in the sphere of criminal law which are the most important for the society. In view of the current trends in international criminal law, the concept of "crime" and therefore the concept of the "subject of crime" are gaining some other international legal dimension. But, in our opinion, absence of a single international determination of these concepts gives an opportunity for a unique interpretation of international legal documents.

Therefore, the purpose of the presentation is to separate provisions of international normative-legal acts, which regulate the issue of the subject of crime and its main features in order to further outline the main directions for improvement of this concept in Ukrainian legislation.

International standards regarding characteristics of the subject of crime

Like any socially dangerous act provided for by the criminal law, a crime in the international law has its constituent parts; among these parts, as noted above, we are most interested in the subject of crime. Actually, the wording "the subject of crime" is extremely rare in international treaties.

For example, the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Slovenia on Cooperation in the struggle against crimes (came into force on 24 November, 2012) does not use the term "subject of crime"; the wording "persons who have committed a crime or involved in its commission" is used instead.

Directly in the text of Art. 4 "Exchange of information" it is stated that the Parties shall exchange personal data and information with respect to persons who have committed a crime or are involved in an offense, namely, information on: surname, former surname, first name, other names (fictitious names, nicknames) , gender, date and place of birth, place of residence, citizenship or previous citizenship, etc.; information on the data of an identity document, that is, a passport or other travel document (number, date of issue, issuing authority, place of issue, validity period, territory of validity); information on data related to fingerprints or palm prints of a person involved in the commission of a crime, a DNA profile or sample, person's description, a photo card; information on other personal data collected and sent by competent state authorities, etc. (Law of Ukraine, 2012).

Agreement between the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of Georgia on cooperation in the struggle against crime, came into force on 20 October, 2011, does not mention the wording

"subject of crime" directly, but indirectly article 4 of the abovementioned Agreement establishes the provision that states, in accordance with the national legislation, shall take all necessary measures to reveal, detain, arrest or provide information about persons who are sought, that is, a subject of crime is a physical convicted person (Law of Ukraine, 2012).

In accordance with the Memorandum of understanding between the Ministry of Internal Affairs, the Prosecutor General's Office, the Security Service, the State Customs Service, the State Tax Administration of Ukraine and the Association of Police Chiefs, the Royal Prosecutor's Office of England and Wales, the Customs and Her Majesty's Customs and Excise, the National Criminal Intelligence Service on cooperation in combating serious crimes, subject of crime is defined as "a person who violates the law" or "identification of the location and identity of such person" (Law of Ukraine, 2018). The term "suspect" is found below in the text of the document. Also, provision concerning the appearance of persons to competent authorities is defined clearly: "a person who fails to come after receiving an invitation or refuses to come shall not be subject to punishment and shall not be subject to any preventive measures in the territory of the Party requested."

The memorandum between the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of Montenegro on cooperation in the sphere of combating crime (Law of Ukraine, 2018), which came into force on 13 June, 2013, defines the range of crimes (by generic object), which are related to cooperation, respectively, the notion of the subject of crime can be seen from the list of crimes. Also, in the Memorandum mentions the following concepts: persons involved in organized crime; typical behavior of criminals and criminal groups; persons suspected of committing crimes; persons who evade criminal responsibility or punishment.

We support the opinion that the state is the subject of international crimes. Criminal responsibility for commission of such crimes is borne by the so-called agents of the state (otherwise such persons are called representatives of the state) - persons acting on behalf of the state, or actual agents without legal authority. In its turn, the subject of crimes of international nature is presented as physical convicted persons who at the moment of the committed crime have reached a specific age.

Position of the international community regarding responsibility of legal entities is clearly defined. To illustrate an example, it is worth referring to the judgment of the Nuremberg Military Tribunal, which recognized the SS, SD, and the leadership of Nazi Germany as criminal organizations. However, the lawmaker in the Criminal Code (hereinafter referred to as the CC) of Ukraine does not recognize a legal entity as the subject of crime, and submits in Art. 18 a comprehensive list of features of this element of body of a crime. In our opinion this position requires optimization and improvement.

As with general criminal offenses, when crimes of an international nature are committed, the question of a special subject of crime may arise, which is presented as persons separately identified in certain international legal acts: hired officers, officials, etc.

The issue of criminal sanity as one of the features of the subject of crime is also quite controversial. There is no single international instrument that would regulate all the complexities of the above-mentioned feature. If there are doubts about mental integrity of a person or recognition of a person as partially sane, necessary is opinion of specialist physicians about the mental state of persons who have committed a crime of international nature. The issue of a person's sanity or its legal insanity is decided by the court, taking into account the respective opinion of experts.

The subject of crime as a juvenile person in international legal standards

The greatest attention in the international legal space is paid to minors as subjects of crime. It is quite clear because children are the future not only of nations, but also of the whole world. There are a large number of legal acts in the sphere of protection of children's rights (in our case, persons who have reached the age of criminal responsibility but have not reached the age of majority).

Minor persons have some additional privileges along with a wide range of rights and freedoms, which are granted to any adult person - the subject of crime. Such privileges are specifically provided for in the Declaration of the Rights of the Child. The program provisions of this Declaration recognized that minors, due to their physiological and psychological immaturity, need additional social care. However, the specified Declaration had an exclusively advisory nature.

Over time, the described situation worsened (including a decrease in the standard of living of the population, an increase in "child" crime, lack of proper preventive measures) and required an immediate solution. That is why the Convention on the Rights of the Child was adopted on 20 November 1989, which is also called the "World constitution of the Rights of the Child". Ukraine joined the mentioned Convention adopted by the UN General Assembly on 27 September 1997. Along with other rights, the Convention provides a number of provisions that apply to minors as the subject of crime:

1. immediate access to legal and other necessary assistance for the child;
2. the right to challenge the legality of the child's deprivation of liberty before the competent institutions;

3. the right to maintain communication with his/her family through correspondence, telephone calls, dates, etc.;
4. arrest, detention or imprisonment shall be applied to the child only in exceptional cases, if other ways for preventive and curative measures have been exhausted and have not yielded the expected positive result;
5. minor subjects of crimes shall not be punished in the form of death penalty (from which our state and most countries in the international arena refused) and life imprisonment without the possibility of such dismissal;
6. on par with adults (majors), a child cannot be subjected to torture and other cruel, inhuman or degrading treatment or punishment (Convention on the rights of the child, 1989).

According to the provisions of the Convention, the participating states (192 countries) including Ukraine is obliged to assist in creation of laws, bodies and institutions directly related to children who are considered to have violated criminal legislation, are accused or found guilty of committing a crime: establishing the minimum age of criminal responsibility, providing for the application of educational measures to such children without the involvement of court proceedings, strict observance of the rights of the child and provision of legal guarantees.

Moreover, along with other international legal treaties, the Convention has the highest legal force, because by ratifying it, the participating states have committed themselves to bring their national legislation regarding the child as the subject of crime (criminal offense) into compliance with the provisions of this document. As for the international documents listed above, they define the general provisions on minors as subjects of crime and emphasize the need to strictly observe their rights, in connection with the fact that the latter have not reached the age of majority, taking into account the unstable psychological and psychophysiological processes (Leheza *et al*., 2022).

The UN Standard Minimum Rules (also known as the Beijing Rules) establish mainly the principles of justice in relation to minors, and measures to ensure that they serve a fair punishment. The purpose of the UN Standard Minimum Rules is to ensure the consistency of any measures of influence on minors with the peculiarities of the offense and peculiarities of the offender. The document also contains a list of guarantees for observance of the rights of minors, including the right to a fair and impartial court, the right to a fair court decision, the right to use alternative measures of influence on minors, etc. In fact, these guarantees are reflected in the national legislation of Ukraine (CC of Ukraine, CPC of Ukraine) and national legislations of other countries, but in the Beijing Rules the international community re-

emphasizes the necessity of their observance and obligatory provision (Khavroniuk, 2006).

The provisions of the Council of Europe Recommendation on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice (2003) had a significant impact on the criminal legislation of many European states (CM/REC recommendation, 2008). According to the mentioned provisions the principle of guilt should better take into account the age and maturity of the offender and correspond to his/her level of development. Subsequently, in the recommendation of the Committee of Ministers of the Council of Europe a number of significant and important provisions for the development of the concept of the subject of crime were defined for member states regarding European rules regarding juvenile offenders who are subject to sanctions or restrictions (2008) (CM/REC recommendation, 2008). In particular, regarding public sanctions and restrictions applied to minors:

- a wide range of public sanctions and restrictions selected for different stages of a minor's development must be applied at all stages of the process;
- priority is given to sanctions and restrictions that can have an educational impact and provide a restorative response to offenses committed by minors;
- cases in which imposing a sanction or a restriction requires the minor's consent;
- which bodies are responsible for appointment, modification and implementation of the respective sanction and restriction, as well as their respective duties and obligations;
- conditions and procedures used to modify the respective imposed sanction and restriction;
- procedures for regular external supervision of the work of bodies such sanctions or restrictions are imposed by;
- the decision to impose or cancel a public sanction or restriction shall be taken by a judicial body, and in the case when the decision is taken by an administrative body appointed by the law, it shall be subject to judicial review;
- depending on the progress made by the respective minor, the competent authorities shall (if provided for by national law) have the right to reduce the duration of the sanction or restriction, to mitigate the imposed conditions or obligations provided for by this sanction or restriction, or to terminate them;

- the rights of minors to personal benefits, such as education, professional training, protection of physical and mental health, personal safety and social protection, should not be limited by imposition and application of sanctions and restriction;
- if minors do not comply with the conditions and obligations of public sanctions and restrictions applied to them, this should not automatically lead to deprivation of their liberty. Where possible, previous restrictions or public sanctions should be replaced by new or modified ones (CM/REC recommendation, 2008).

Conclusions

Summing up the above on the subject of crime, we can make the following *conclusions: the* legal responsibility of legal entities is not new for most countries of the world. Such norms are found in international normative legal acts signed by Ukraine. Therefore, it is worth taking these facts into account and improving the norms of Ukrainian legislation regarding the responsibility of legal entities.

The analysis of international treaties gives grounds for asserting that the issue of the subject of crime is disclosed quite widely, special attention is paid to the separation of the concepts of subjects of international crimes and subjects of crimes of an international nature; the difference between these concepts is fundamental and extremely important.

In view of the increase in the number of crimes committed by minors, the international community provides a wide range of measures, in addition to criminal punishment, which shall be applied to them, as well as lowering the age of criminal responsibility for some types of crimes.

It has been established that as early as 1954, according to the decision of the UN General Assembly, the Commission on International Law developed a draft code of international crimes. In 1991 at the regular session, the commission approved the draft Code of Crimes against the Peace and Security of the Mankind (in the first reading). Here it was only about a certain type of offenses that make up only a part of socially dangerous phenomena, which are the subject of regulation of international criminal law.

Therefore, the need to create a document that would solve one of the biggest problems of international law enforcement, namely unification of criminal legislation, appears quite urgent. It is obvious that the norms established in the Code will not be binding for a sovereign state, but the signing of an international document will be a kind of expression of each country's attitude to those crimes that go beyond the state borders.

Thus, international legal principles and norms establish the special status of a minor who has violated the criminal law and, as a result, require special attitude to such persons in all states, without exception, that have ratified the relevant documents. According to the criminal norms enshrined in the Rome Statute of the International Criminal Court (1998) (Rome Statute of the International Criminal Court, 1998), a person is not subject to criminal liability if at the time of committing an act or inaction he/she was deprived of an opportunity to realize the illegality of his/her behavior or its nature in general, or to coordinate his/her actions with the requirements the law due to: a) mental illness or disorder; b) being in a state of intoxication, with the exception of cases when a person was exposed to intoxication voluntarily under such circumstances in which he/she knew that as a result of intoxication he/she could commit an act that constitutes a crime, or when he/she ignored the danger of committing such an act.

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Derecho Público

Cuestiones Políticas Vol. 41, Nº 76 (2023), 28-45
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Retos políticos de la radiodifusión en el escenario de la revolución digital

DOI: https://doi.org/10.46398/cuestpol.4176.01

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Resumen

Los medios de comunicación tradicionales se encuentran actualmente inmersos en un acelerado cambio estructural, impulsado por la irrupción de las Tecnologías de la Información y las Comunicaciones (TIC), que ocasionan la emigración de sus audiencias hacia otras formas o modalidades de recepción y consumo. La aparición y popularización de las llamadas redes sociales en el marco (TIC) trae consigo un conjunto de retos y desafíos para las radios tradicionales. En consecuencia, el objetivo de la investigación consistió en describir algunos retos políticos de la radio en el escenario de la revolución digital, como condición de posibilidad para frenar su extensión como *mass medios*. Para el logro del objetivo planteado se hizo uso de la metodología fenomenológica y hermenéutica con predominio de fuentes documentales en formato digital, las cuales se analizaron y discutieron para elaborar las conclusiones del estudio. Los resultados obtenidos permiten concluir que por parte del estado ecuatoriano no se establecen los lineamientos políticos necesarios para llevar a cabo una transición sistematizada y ordenada de la radiodifusión analógica a la digital, lo que implica un atraso tecnológico en materia de las TIC en el país.

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Recibido el 14/10/22 Aceptado el 23/12/22

Palabras clave: radios tradicionales en el siglo XXI; revolución digital; tecnologías de la información y las comunicaciones; redes sociales; cambios comunicacionales estructurales.

Political challenges of radio broadcasting in the scenario of the digital revolution

Abstract

The traditional media are currently immersed in an accelerated structural change, driven by the irruption of Information and Communication Technologies (ICT), which cause the emigration of their audiences towards other forms or modalities of reception and consumption. The appearance and popularization of the so-called social networks in the framework (ICT) brings with it a set of challenges for traditional radios. Consequently, the objective of the research consisted of describing some political challenges of the radio in the scenario of the digital revolution, as a condition of possibility to stop its extension as mass media. To achieve the proposed objective, the phenomenological and hermeneutical methodology was used with a predominance of documentary sources in digital format, which were analyzed and discussed to draw up the conclusions of the study. The results obtained allow us to conclude that the Ecuadorian state does not establish the necessary political guidelines to carry out a systematized and orderly transition from analog to digital broadcasting, which implies a technological backwardness in terms of ICT in the country.

Keywords: traditional radios in the 21st century; digital revolution; Information technology and communications; social media; structural communication changes.

Introducción

El ser humano es un animal político y una de las herramientas básicas para el ejercicio de la política es la comunicación. Esto lleva a la consideración del hombre como ser social que necesita de los procesos comunicativos para adaptarse al entorno, construir su identidad y, en líneas generales, sobrevivir y convivir. Es precisamente la complejidad del proceso de comunicación lo que diferencia este proceso en el hombre ante el resto de los seres vivos, ya que, si bien estos últimos también se comunican, el ser humano ha sido la única especie que ha desarrollado herramientas tecnológicas como soporte y vehículo para la comunicación masiva (Govea, 2010).

De esta manera, desde la invención de la escritura, el hombre ha ido desarrollando soportes comunicativos que le permitan transmitir la

información a otros. Es con la aparición de la radio cuando se hace evidente el poder de la comunicación masiva y la fuerte capacidad seductora que la misma tiene para influenciar la opinión pública de forma determinante.

La historia de los medios de comunicación se ha caracterizado por el establecimiento de un tipo de relación muy particular con las masas. La teoría de la comunicación ha sabido definir los patrones de intercambio entre emisor y receptor, definiendo a este último como un sujeto pasivo que recibe los mensajes de los medios de forma directa, sin cuestionamientos y sin la posibilidad de alterar el proceso de construcción de los mensajes, esta es una teoría de la comunicación denominada "aguja hipodérmica", la cual se ha presentado en todo proceso comunicacional en los que la radio forma parte de ellos (Giordanengo, 2013).

Tradicionalmente, los medios de comunicación habían sido espacios en los que ciertos emisores, dotados de capacidades específicas tenían la posibilidad de construir y difundir mensajes a las audiencias que solo se limitaban a recibir y reproducir las informaciones. En el caso de la radio, por tratarse de un medio ciego, que carecía de la imagen para ser vista y leída, poseía solo el canal auditivo para la transmisión de mensajes y era nula la posibilidad de que el oyente, en el otro extremo del proceso comunicacional, pudiese interferir en la producción y difusión de los contenidos (Giordanengo, 2013).

Toda esta situación descrita estuvo presente hasta la llegada de la internet, medio que revolucionó la forma en la que los sujetos percibían al mundo y las formas de comunicación. Lo que significo la transformación de la radiodifusión y los medios de distribución que pasaron a tener una estructura completamente diferente en las ultimas décadas, su digitalización.

En las siguientes líneas se discutirá como la radio, ha mantenido una capacidad camaleónica para adaptarse a los distintos cambios tecnológicos hasta revolucionar todo el concepto comunicacional con la ayuda del internet. De este modo, la red de redes se ha convertido en el principal trampolín para que los medios se transformen dentro de una macro-transformación de la sociedad postmoderna.

La radio ha sido el medio de comunicación y difusión que más ha evolucionado y se ha adaptado a las necesidades de su audiencia, caso de esto es el radio previo a la intervención de las tecnologías como el internet o la televisión que permitió una elevación de la proyección de la radiodifusión sumamente significativa, siendo el medio de masas por excelencia durante la primera mitad del siglo XX. La evolución de la radio con las nuevas tecnologías es un hecho que ha ido transformando las formas de radiodifusión en el mundo, situación la cual Ecuador no es ajeno; sin embargo, en el país aún se mantienen los sistemas de radiodifusión

analógicos, lo que imposibilita su actualización a estándares modernos que son compatibles con frecuencias y tecnologías de radiodifusión digital, para comprender esto en el presente artículo se procede a describir los retos políticos que la radiodifusión demanda para iniciar su accionar legal en la era digital del siglo XXI.

Igualmente, en su contenido dividido en seis subtítulos, se profundizará la relación que existe entre la internet y la radio; como la aparición de esta nueva tecnología modifico he hizo mejorar diversos aspectos de la radio, así como también funciono de base para una mayor difusión del mensaje lineal. Se definirá cuáles son los elementos primordiales dentro de la nueva radio digital y como está abarca a las nuevas generaciones dentro de la radiodifusión. Para posteriormente señalar algunas nociones elementales de las tecnologías de la información y las comunicaciones (TIC), las redes sociales y la radio digital vs. radio analógica y así realizar una discusión de los resultados obtenidos tras la revisión hermenéutica de los textos consultados, que permitieron emitir las conclusiones del estudio.

1. Aspectos teóricos de la investigación

1.1. La radio y radiodifusión

A juicio de Muñoz y Gil (2000), la radio es un medio de comunicación que utiliza la voz como recurso expresivo de gran valor y todas las potencialidades del sonido en este canal como, por ejemplo, la dicción, el tono, el ritmo. Su versatilidad le permite la difusión de contenidos que pueden ser tanto de naturaleza informativa como de entretenimiento y que, en líneas generales, se trata de información lineal.

La voz es, por tanto, el principal recurso expresivo; el corazón de la radio. Los autores mencionados exponen que, en este caso, su portador, el locutor, es el principal motor de la expresión, ya que solo la voz humana es capaz de emocionar, puesto que es ese uno de los fines: impactar. Al igual que la fotografía en la prensa impacta a través del canal visual, la radio hace lo mismo a partir de la voz con la que se seduce el canal auditivo.

Si se comprende a la radio como un medio en el que los textos emitidos cumplen unas funciones comunicativas, entre dichas funciones se destacaría la función poética, que apela a las sensaciones estéticas y a la emotividad, como elemento de enganche o de impacto con el público. Esta función se hace palpable no solo con la voz, principal recurso radiofónico, sino también con las estrategias retóricas del locutor para la presentación de contenidos informativos o de entretenimiento (Muñoz y Gil, 2000).

En el caso de la radiodifusión esta es entendida en la legislación ecuatoriana como: "La comunicación sonora unilateral a través de la difusión de ondas electromagnéticas que se destinan a ser escuchadas por el público en general" (Ley de radiodifusión y televisión, 2009, art. 1). Esta puede ser abierta, pública o de interés privado, que debe cumplir una reglamentación legal para poder operar en el espacio radioeléctrico del país. De manera que es la encargada de regular este ámbito a fin de estandarizarlo y actualizarlo a beneficio de la superación tecnológica, económica y cultural.

1.2. Tecnologías de la información y las comunicaciones

Las tecnologías de la información y comunicación (TIC), se desarrollan a partir de las premisas de sociedad de la información, en la cual la información adquiere una gran importancia por su inmediatez y relevancia en el desarrollo del individuo; en este contexto se aprecia como las telecomunicaciones, en especial el internet juegan un papel fundamental para su desarrollo y la transformación de los modelos sociales en los últimos años, como lo es la moda, vivienda, relaciones humanas entre otras. Por tanto, la sociedad de la información es un objetivo que posibilita el desarrollo por medio del conocimiento, mediante el aprendizaje por medios electrónicos conocidos como e-learning (Ayala y Gonzalez, 2015).

Por tanto, las Tecnologías de la Información y la Comunicación (TIC): "Se desarrollan a partir de los avances científicos en ámbitos de la informática y las telecomunicaciones. Es el conjunto de tecnologías que permiten el acceso, producción, tratamiento y comunicación de información presentada en diferentes códigos (texto, imagen, sonido, video) (Ayala y Gonzales, 2015: 27)"

Siendo los elementos más representativos de estas, el empleo de ordenadores, dispositivos electrónicos como tablets y smartphones, entre otros; conectados a internet y que transforman las formas de relacionarse y aprender, por tanto, se encuentran presentes en todos los niveles de la sociedad y conforme avanzan los años se van volviendo imprescindibles para muchas labores.

La aplicación de las TIC genera una serie de términos que implican la combinación de oficios y áreas específicas con lo electrónico, como por ejemplo los e-business que es el comercio y empresas electrónicas, el e-government, que es el gobierno por medios digitales y el e-learning que es un término asociado a la educación a distancia a través de la internet (Ayala y Gonzales, 2015).

1.3. Redes sociales

El antropólogo John A. Barnes las describe a una red social como una red de puntos, algunos de los cuales están unidos por líneas. Los puntos

representan a personas y grupos que se interconectan de forma continua o esporádica, lo que estas líneas indicarían es quiénes interactúan entre sí y quienes no lo hacen. Se considera que Barnes, junto con sus colegas J. Clyde Mitchell y Elizabeth Bott Spillius fueron los primeros investigadores en usar el término "red social" en un contexto científico, a partir de los estudios que realizaron en comunidades del sur de África, India y el Reino Unido entre los años 50 y 60 (Scott, 1991).

Sin embargo, actualmente la mayoría de las personas entienden por "red social" una serie de servicios en línea en los que las personas pueden crear un perfil público o privado, y establecer contacto con personas tanto vecinas como lejanas, un fenómeno íntimamente relacionado con el acelerado avance de las tecnologías de la comunicación en las últimas décadas.

Al respecto, Boyd y Ellison (2007), consideran que una red social se define como un servicio que permite a los individuos: construir un perfil público o semipúblico dentro de un sistema delimitado; articular una lista de otros usuarios con los que comparten una conexión; ver y recorrer su lista de las conexiones y de las realizadas por otros dentro del sistema.

En definitiva, las redes sociales son una estructura social que se pueden representar en forma de uno o varios grafos, en los cuales los nodos representan a individuos (a veces denominados actores) y las aristas relaciones entre ellos. Las relaciones pueden ser de distinto tipo, como intercambios financieros, amistad, relaciones sexuales, o rutas aéreas. También es el medio de interacción de distintas personas como por ejemplo juegos en línea, chats, foros, spaces, etc. Estos sitios permiten a los usuarios realizar seguimiento de sus relaciones interpersonales y crear otras nuevas a través de los entornos virtuales de la internet (Deitel y Deitel, 2008).

1.4. Radio digital vs. Radio analógica

La radio basada en sistemas analógicos emplea usando bandas de frecuencias moduladas (conocidas popularmente como FM), las cuales poseen una serie de mecanismos electrónicos sencillos basados en diodos y tubos sellados al vacío que procesan los sonidos y los convierten en señales eléctricas que son recibidas por otros aparatos de igual naturaleza que procesan estas señales y las convierten en ondas que se asemejan a los sonidos (Comision Federal de Comunicaciones, 2017).

El comienzo del concepto de una radio digital se generó a mediado de los años 90 y se extendió de una manera muy rápida, a tal punto en esa misma década que ya existían emisores radiofónicos *on line* por gran cantidad de lugares alrededor del planeta. Si bien la creación de esta modalidad de radiodifusión se ha formado a causa de diversas estrategias es necesario recalcar que: "Internet no constituyó una competencia directa para la radio, sino que más bien se ha transformado en un nuevo soporte para facilitar

la integración digital de la radio y la oferta de nuevos servicios que no se podían ofrecer" (Garcia, 2019: 03)

Por lo consecuente las nuevas tecnologías que se incorporan dentro de la radio modifican los formatos y las practicas necesarias para que se puedan ejecutar de una manera más fluida sin ningún tipo de problema, para ello la radio al igual que la televisión se enfocó en llegar al público de una manera rápida, por ende, la radio se adapta al concepto de un medio de difusión masivo, puesto a que divulga el mensaje a mayor velocidad y a mayor audiencia que muchos otros medios.

Otro aspecto señalado por este autor son los estándares técnicos de emisión digital terrestre, este es variable según la localización geografía en donde te encuentres, en el caso de EEUU se utiliza HD-Radio, en Japón es ISDB-Tn, mientras que en toda Europa se utiliza las familias Digital Audio Broadcasting (DAB) y Digital Radio Mundiale (DRM). Cada una de estas presentas diversas fortalezas y debilidades, en el caso de las DAB por su método de trabajo puede tener ciertas zonas sin cobertura, por lo cual perjudica a ciertos sectores; el estándar DRM por su lado presenta fallas similares, por lo que en Europa el uso de ambas es necesario y es por ello que se entiende como radios híbridas (Garcia, 2019).

La radio analógica y digital presentan una serie de ventajas y desventajas, siendo las principales:

Cuadro No. 01: Radio digital vs Radio Analógico.

Radio Digital		**Radio analógica**	
Ventajas	**Desventajas**	**Ventajas**	**Desventajas**
Permite la difusión de contenidos por todo el mundo.	Opera con equipos costosos y complejos.	Sus componentes son económicos y fáciles de reparar.	Su señal se limita a unas decenas de kilómetros.
Su señal puede filtrar ruidos de fondo que no son del remitente.	Depende de la intensidad de la señal de la internet en la zona.	Su empleo y funcionamiento es sencillo.	Su tecnología a agotado todas sus capacidades de adelanto.
La potencia de la señal se mantiene sin importar la distancia geográfica.	Es susceptible a interferencia electromagnética por fuentes naturales o artificiales.	Puede ser operada por personal con poco conocimiento técnico en materia de electrónica.	La señal no puede filtrar otros ruidos de fondo que no sea del remitente.

Fuente: elaboración propia.

2. Metodología

Los aspectos metodológicos de acuerdo a Sampierí, Fernández y Baptista (2015), tienen como objeto proporcionar un modo de verificación que permita contrastar la teoría con lo que se presenta en el hecho real, en su conjunto, se constituyen como una estrategia o plan general que determina las operaciones necesarias para hacerlo; en el caso específico del presente trabajo, la metodología consiste en la descripción del procedimiento empleado por los investigadores para responder a la problemática planteada en el estudio.

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

Dado que el objeto de estudio es describir los retos políticos que la radiodifusión demanda para iniciar su accionar legal en la era digital del siglo XXI, se recurrió a un estudio bibliográfico, el cual es realizado mediante un estudio de fuentes documentales como bibliografía, hemerográficas, libros, ensayos, monografías, revistas digitales, artículos de revistas académicas, entre otros, con la finalidad de recopilar información oportuna, relevante y actualizada a través de la búsqueda, análisis y sistematización concienzuda que aportan los diferentes enfoques de autores y estudios realizados para escribir esta investigación bibliográfica.

Los aportes de información de las fuentes consultadas, fueron analizados bajo la técnica herméutica-fenomenológica, la cual consiste en el análisis e interpretación de los textos, lo que amerita una comparación y exposición de los diferentes autores citados en el artículo en torno a la radiodifusión en el escenario de la revolución digital. Asimismo, es un estudio de tipo fenomenológico por que se desarrolla a partir de las experiencias de los autores y la interpretación que estos asumen de su realidad, por lo que se pretendió hacer un análisis a partir de la experiencia subjetiva de un grupo de investigadores, por lo que a través de sus historias de vida pretenden realizar una descripción de la problemática presentada en el presente artículo.

Para llevar a cabo la investigación del presente artículo se realizaron además una serie de pasos, con la finalidad de suministrar una estructura organizativa y metodológica tomando en cuenta los siguientes aspectos: recursos humanos, recursos materiales disponibles, así como el tiempo previsto para la ejecución del mismo. Por ello, el procedimiento tomo en cuenta los siguientes aspectos:

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

3. Los retos políticos que la radiodifusión demanda para iniciar su accionar legal en la era digital del siglo XXI

El espacio radioeléctrico ecuatoriano se divide en comunitario, público y privado, para tener un permiso, es necesario cumplir una serie de pautas y recomendaciones de la Agencia de Regulación y Control de las Telecomunicaciones (ARCOTEL), entre los cuales se exige la documentación personal del interesado y permisos de operaciones necesarios para llevar a cabo actividades en materia de radiodifusión en el país (Ley de radiodifusión y televisión, 2009).

Actualmente, cerca del 91% de las emisoras de audio son de carácter privado, siendo el 5% de propiedad pública a cargo de la Empresa Pública Medios Públicos de Comunicación del Ecuador (Medios Públicos EP), los cuales tienen una presencia minoritaria en el país y sus contenidos están sujetos a precarias fuentes de financiamiento; por último, se encuentran las emisoras comunitarias que son organizaciones sin fines de lucro, englobadas en la Coordinadora de Medios Comunitarios Populares y Educativos del Ecuador (CORAPE), la cual desarrolla diversos planes y campañas educativas en regiones rurales y apoya a las comunidades con proyectos culturales o de entretenimiento basados en costumbres y tradiciones locales (Gonzalez, 2016) .

La actual situación de desbalance y falta inversión publica en el espacio radioeléctrico público y comunitario se debe al estado de las

infraestructuras en materia de radiodifusión en el país, las cuales se encuentran desactualizadas en comparación con otros países de la región como Argentina, Brasil, Bolivia y Chile; países que han habilitado un sistema de radiodifusión mixto compatible con radio analógica y digital.

Asimismo, la ley de telecomunicaciones establece en su sección II, articulo 33 los derechos a la creación de medios de comunicación social de forma que todos los ciudadanos en igualdad de condiciones puedan formar los medios de comunicación según sus intereses y limitaciones siempre y cuando cumplan con la legislación vigente (Ley Orgánica de Comunicación, 2019).

Sin embargo, en la ley orgánica vigente y las atribuciones de ARCOTEL, no se encuentran establecidas las pautas para el establecimiento de la radiodifusión digital en el país, esto debido a la falta de iniciativas políticas que pretendan desarrollarse en el marco jurídico de la materia y otorgarle las permisologias necesarias para su desarrollo en el país. Parte de la problemática hasta acá planteada obedece a factores políticos y no legales, pues las autoridades legislativas son las encargadas de llevar a cabo la transformación de las bases legales de regulan y habilitan el espacio radioeléctrico nacional.

Asimismo, Sagbay y Sánchez (2013) señalan que las comunicaciones digitales son la vanguardia de la radiodifusión por que ofrecen un conjunto de ventajas con respecto a los sistemas analógicos como lo son la facilidad de procesamiento, empleo simultaneo de múltiples canales e inmunidad al ruido de fondo lo que las hace atractivas para su empleo en un país con varias regiones aisladas geográficamente como los andes y el amazonas ecuatoriano. Por lo que entre los retos políticos también debe agregársele el hecho que si no se presenta un plan adecuado de migración de plataformas de emisión el país al largo plazo puede quedar aislado en materia de radiodifusión a nivel regional y global, lo que niega de cientos de posibilidades como el acceso a las TCI`s, programas de educación en línea por radio online entre otras ventajas a la casi totalidad del país.

Igualmente, la evolución de las nuevas TIC`s lleven a los sectores de las telecomunicaciones a presionar por nuevas reformas, tal y como señala lo siguiente:

> La difusión de la telefonía celular y de las redes de datos inalámbricas comienza a saturar los espectros electromagnéticos que les fueron asignados en los años ochenta, y los operadores y las empresas de tecnología empiezan a presionar a los gobiernos para liberar frecuencias ocupadas por tecnologías antiguas (Valencia, 2008: 6).

En lo antes citado, se aprecia como el espectro radioeléctrico necesita ser saneado para dar paso a mejores frecuencias que eviten saturar las telecomunicaciones, a largo plazo es probable que en Ecuador se

experimente un fenómeno similar. Ahora bien, es una decisión de las autoridades estatales y de ARCOTEL llevar a cabo este proceso de manera ordenada o improvisada si a partir del presente se lleva a cabo un proceso organizado que permita la transición de los estándares analógicos a los digitales de los sistemas y frecuencias de radiodifusión en el país.

Se observa entonces que la problemática planteada acerca de la voluntad política y la puesta en marcha de una clara fecha definitiva del cese de operaciones de frecuencias analógicas en el país se deba a la falta de articulación entre los actores involucrados que impide un consenso general y la debida presión a las autoridades por darle a este sistema el saneamiento y reformas estructurales que su modernización requiere.

En caso de llevarse a cabo la transición tecnológica y uso de frecuencias, los organismos responsables deben hacer pruebas de estándares de radiodifusión terrestres basados en la banda FM bajo cualesquiera de las modalidades de radio digital actualmente en funcionamiento en otros países del mundo, las cuales pueden ser: DAB+, IBOC-FM, DRM+ y ISDB-Tsb; esto amerita un análisis técnico que determine la mejor frecuencia que se adapta a las modalidades de los servicios de radiodifusión presentes en Ecuador y que a largo plazo permitan la adopción de un nuevo estándar digital (Cañar, 2015).

Como soluciones a esta problemática la investigación llevada a cabo por Cañar (2015), concluye que, la mejor tecnología digital para la radiodifusión sonora que se adapta a las necesidades del país es la DRM+, la cual utiliza un ancho de banda menor a los 100 kHz y que se adapta a los parámetros técnicos de las actuales modalidades de las bandas de canalización FM de Ecuador, por lo que según su proyección, pueden disponerse en un periodo de 5 años un máximo de 796 estaciones digitales de emisión FM.

Lo descrito en párrafos anteriores permite señalar entonces que entre los principales retos políticos que permitan modernizar la infraestructura de radiodifusión del país a estándares del siglo XXI son el diseñar y formular una política de transición de la banda analógica a digital, y estandarizar las operaciones de este tipo de modalidades en el Ecuador a un nuevo estándar; acordar el cese definitivo de operaciones de las frecuencias de radiodifusión analógicas y la adopción de un cronograma de operaciones en el cual coexistan ambas modalidades en un sistema hibrido hasta el cambio definitivo.

Con esto se aprecia que la voluntad política de las autoridades para el cambio de legislación debe contar con la adecuada asesoría por parte de los expertos de esta materia, junto a la necesidad de llevar a cabo un programa de cambios que modernice una infraestructura tecnológica debilitada y anticuada. De manera que a la falta de voluntad política se debe sumar la intensión de llevar a cabo una inversión que de momento no es una situación

de urgencia para el Estado dado la actual coyuntura económica y social del país en la que parecen ser otras prioridades las que marcan la pauta en la elaboración de las políticas públicas.

Sin embargo, en parámetros de la función gobierno y las atribuciones que el Estado posee en materia de radiodifusión y telecomunicaciones, este es el principal rector y responsable del sistema de transmisión radioeléctrica del Ecuador; si bien esto no implica que se encuentren en el país estaciones de radio digital, entre las cuales podemos mencionar a: Radio Huancavilca (Guayaquil) 830 AM; La Suprema Estación (Cuenca) 96.1 FM; Alfa Radio (Guayaquil) 104.1 FM; La Voz del Tomebamba (Cuenca) 1070 AM; Diblu FM. 88.9 FM; FM Mundo (Quito) 98.1 FM; Tropicálida Super Stereo (Guayaquil) 91.3 FM. Radio Quito. 760 AM, entre otras (Audio, 2023).

A futuro se requiere tanto en la práctica como en la regulación legal una legislación que establezca normas claras para el uso del espectro radioeléctrico y los estándares de frecuencia, ya que, si bien no se agotan las bandas de uso, estas se saturan y hacen que las infraestructuras de radiodifusión del país colapsen o imposibiliten su normal funcionamiento. Por lo que es preciso que las autoridades estatales tomen parte de su responsabilidad y fomentar los cambios que se requieren para modernizar este sistema.

Hay que tomar en cuenta que el cambio de frecuencia de radiodifusión analógica a digital tiene fecha de caducidad, ya que las normas internacionales de gestión del espacio radioeléctrico establecidas desde los años 60`s por el plan de Estocolmo, que establece los planes internacionales de regulación de frecuencias, indica que se debe desarrollar un sistema de radiodifusión compatible a nivel internacional y que este sea unificado, la revisión de este acuerdo en los últimos años establece un cronograma de transición digital total que estaría contemplado entre los años 2028 al 2038 (Unión Internacional de Telecomunicaciones, 2011).

4. Análisis y discusión de resultados

La inacción por parte de las autoridades del Estado representa una desatención de la constitución nacional y de la ley de telecomunicaciones ya que en su artículo tres expresa explícitamente que entre sus objetivos busca fomentar el desarrollo y fortalecimiento del sector, así como incentivar la inversión nacional, para estimular su crecimiento y desarrollo (Ley Orgánica de Telecomunicaciones, 2015).

Por tanto, la falta de voluntad política puede constituir una falta de interés real por el problema, ya que invertir en este ámbito no representa una actividad lucrativa a nivel político como también a los intereses de las

distintas facciones políticas en la asamblea nacional del país. Por lo que la falta de acceso a sistema de radiodifusión digital debidamente establecidos debe ser impulsado por los mismos ciudadanos y los grupos involucrados en su modernización.

Este limbo jurídico también permite que las autoridades legislativas no se vean presionadas en la necesidad de modernizar el espectro radioeléctrico, por lo que esta situación acarrea una deuda social con el desarrollo y modernización de la radiodifusión, encontrándose en un nivel de atraso con respecto al resto de los avances digitales que actualmente se desarrollan en el resto del mundo en la era digital. Entre las causas principales del atraso Valencia (2008), sostiene que se debe a intereses particulares que restringen este tipo de medidas para proteger sus propios intereses.

En cambio, otros estudios como el de Cortes (2005), expone que la falta de voluntad política en poner un plazo se debe a la falta de interés publico y una adecuada supervisión debidamente especializada en el tema. En cuanto a la contextualización de la realidad ecuatoriana, puede señalarse que la actual coyuntura económica y social del país no establece dentro de sus prioridades la modernización de los espectros de radiodifusión debido en parte a las problemáticas económicas y la respuesta a las demandas sociales de índole financiera por parte de las autoridades las cuales le han restado prioridad al inicio de las frecuencias de radiodifusión digital, por estar enfocados en otros debates que consideran más urgente, como el desempleo y el manejo de la economía tras la pandemia de COVID-19.

Un aspecto a considerar es el financiero al corto plazo, que dada la actual coyuntura económica del país, Cortes señala que para una migración adecuada entre los estándares analógicos a los digitales es que los formatos actuales al momento de ser actualizados requieren de un inversión fuerte para el estado pues la radiodifusión digital posee ondulaciones y frecuencias diferentes que requieren de equipos específicos, ya que estos usan códecs (codificadores-decodificadores) de diversa naturaleza.

Asimismo, la voluntad política de tomar esta decisión conlleva a una serie de procedimientos a seguir como la elaboración de una política de conversión en la señal de radiodifusión, que establezca varios puntos clave para una transición ordenada, como por ejemplo: el lapso de tiempo que se habilitará para el cambio total, el desarrollo de normas separadas para emisoras de radio AM y FM, estándares de calidad y normas de calidad de audio, normas de propiedad intelectual y el tipo y codificación de la onda que se empleará para aquellas emisoras de interés público, privado o comunitario (Cortes, 2005).

Los aspectos antes mencionados pueden representar un reto para aquellas autoridades que no están debidamente preparadas para llevar a cabo una debida transición. El trabajo de Sagbay y Sánchez (2013), señala

que una de las causas sociales es la nula o poca demanda del mercado de modernizar el espacio de radiodifusión, ya que su mayoría se encuentra en manos de particulares, por lo que se mantiene una especie de *status quo*, que tanto empresas como usuarios no ven la necesidad de alterar o transformar sus patrones de consumo y utilidad del mercado radiofónico actual del Ecuador, por lo que las mismas demandas de este mercado harán que se vea el Estado obligado a actualizarlo con el pasar del tiempo.

Dentro de los razonamientos que se enmarcan en la crítica a la actualización de la radiodifusión a este nuevo estándar y del que la mayoría de la gente se hace eco, es el del prejuicio que existe en la radio como algo del pasado o sin oportunidades, ya que es un medio de comunicación limitado (en el caso especifico de la radio analógica), que ha sido superada por las plataformas digitales, paginas web, redes sociales, entre otros.

La renovación de la radio implica el uso de nuevas tecnologías para un medio de comunicación que dentro de la sociedad actual se presenta como un elemento desfasado, entre estas pueden mencionarse el empleo de la modernización del almacenamiento de audio en formato digital, el uso de transmisiones remotas, uso de cadenas de retrasmisión, modulación de frecuencia automática, digitalización de audio a largas distancias y emisiones programables vía online; estas ventajas también se ven fortalecidas por la masificación de la radio en internet, la cual permite la reducción de los tiempos de producción de programas radiales y la transformación de las dinámicas sociales en comunidades aisladas producto de la radio (Valencia, 2008).

Por lo que lo expuesto por el autor antes mencionado neutraliza los razonamientos enmarcados en afirmar que este es un medio de comunicación obsoleto y que, por el contrario, puede fortalecer su uso a través de nuevas modalidades amparadas en las TCI´s tal y como señalan Garcia (2019) y Giordanengo (2013), en sus investigaciones; ambas promueven el empleo de la radiodifusión digital como un elemento que complementa de forma simultanea nuevos formatos en las redes sociales y los entornos virtuales, que explotan el potencial educativo y de recreación de los usuarios.

Otro aspecto de interés es la capacidad de interacción que puede crecer tras la puesta en marcha de un programa de modernización del espacio de radiodifusión, ya que puede enviarse contenido multimedia en las plataformas digitales como mensajes de texto, audios y video, lo que puede resultar atractivo para nuevos mercados. Esta utilidad económica puede llevar a cabo a los integrantes y representantes de las cámaras y sindicatos de la radiodifusión a una reforma y actualización, que según Morales y Vallejo (2012), debe ser llevado a cabo por medio de una etapa de transición en el que confluyan ambos sistemas en un modelo mixto o hibrido como se vio en proceso similares en los EE.UU a mediados de los años 90`s o en Europas en la década de los 2000´s hasta que se decrete el sexo de actividades de estaciones y emisoras de tipo analógico.

Conclusiones

Hoy en día, a pesar del avance de complejos sistemas tecnológicos informativos que han conectado a los seres humanos en tiempo y espacio, por encima de las distancias geográficas, la radio continúa presente como una opción en muchos dispositivos móviles e incluso, ofreciendo nuevas posibilidades de acceso a partir de aplicaciones móviles para teléfonos Android. Se trata, por tanto, de un medio que, gracias a la inmediatez y sus potencialidades expresivas se mantiene vigente entre las audiencias.

Por lo que la actualización de los sistemas de radiodifusión del Ecuador al estándar digital permitiría su evolución e integración a la revolución digital y posibilita a esta plataforma retomar su conectividad con el resto del mundo. Lo que implica ventajas en múltiples ámbitos como la inversión en sistemas de tecnologías de comunicación e información, actos para un sistema educativo por medio de la radio digital o la mejora de los contenidos y alcances de las emisoras comunitarias en el país.

Por los aspectos antes mencionados la evolución y adaptación de la radiodifusión digital a nuevas fronteras se ha convertido en una constante lucha para lograr que este medio se mantenga como uno de los más significativos dentro de las redes sociales, debido a la introducción del internet y de estas nuevas tecnologías que se generaron por medio del mismo, fue necesario la creación de una radio que se adaptará a todos estos factores tecnológicos y que permitiera de esta manera ser usada por una cantidad mayor de usuarios.

Debido a esto se dio lugar a la radio digital como plataforma que les permitiera a la radio introducirse en el mundo cibernético de una manera cómoda, en contacto continuo con la audiencia y apoyados en otros medios tecnológicos y actuales como por ejemplo las redes sociales proyectar más fuertemente las programaciones radiales.

Por su parte, al momento de describir los retos políticos de la radiodifusión, en los trabajos de Morales y Vallejo (2012), Sagbay y Sánchez (2013) y Cortes (2005), señalan que la falta de iniciativa política, un asesoramiento adecuado por parte de las autoridades y la falta de incentivos políticos como electorales, económicos o de prioridad nacional pueden señalarse como los motivos por los cuales el Estado no ha llevado a cabo tales medidas; por lo que es preciso tomar en consideración la prioridad de llevar a cabo programas de modernización del espectro radioeléctrico nacional para servicios de radiodifusión de calidad y que el país se mantenga a la altura de los avances del resto del mundo, identificando que son más las ventajas que desventajas en la adopción de este tipo de radiodifusión.

Por último, a modo de recomendación, entre los planes a seguir para la adopción de una legislación que habilite las frecuencias de radiodifusión

digital es llevar a cabo un plan que tome en cuenta el empleo de un que promueva la migración de una radiodifusión analógica a una digital mediante el empleo de un sistema hibrido por el lapso de 5 años otorgando el tiempo suficiente el abaratamiento de este tipo de tecnologías con los avances de telecomunicaciones recientes a fin de incentivar el cambio que las telecomunicaciones del país necesitan (Cortes, 2005).

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 46-63
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State housing policy of Ukraine: status and development perspectives

DOI: https://doi.org/10.46398/cuestpol.4176.02

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Abstract

The purpose of the article was to determine the state housing policy taking into account the state of war in Ukraine as a result of the conflict with the Russian Federation. The authors of the article have used general scientific (dialectical, axiological, etc.) and special (formal and logical, statistical, predictive, etc.) methods and scientific cognition. The lack of a state housing policy and a general strategy for the development of the housing stock has been established. The importance of the modern stage of the state housing policy of Ukraine, which is to restore the housing stock destroyed or damaged as a result of the war, ensuring the housing needs of internally displaced persons and people who have lost their homes, is emphasized. It has been concluded that the modern state housing policy of Ukraine needs to define its strategic directions taking into account the needs that arose as a result of the war. The authors have suggested the following areas of the latest state housing policy: construction of new housing stock, major repairs of housing-related infrastructure facilities, determination of mechanisms for accounting of rental housing stock and resumption of social housing construction, etc.

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Recibido el 15/11/22 Aceptado el 21/12/22

Keywords: social housing; housing stock; housing policy; right to housing; collective needs.

Política estatal de vivienda de Ucrania: estado y perspectivas de desarrollo

Resumen

El propósito del artículo fue determinar la política estatal de vivienda teniendo en cuenta el estado de guerra en Ucrania como resultado del conflicto con la Federación Rusa. Los autores del artículo han utilizado métodos científicos generales, especiales y de cognición científica. Se ha establecido la falta de una política estatal de vivienda y de una estrategia general para el desarrollo del parque de viviendas. Se enfatiza la importancia de la etapa moderna de la política estatal de vivienda de Ucrania, que consiste en restaurar el parque de viviendas destruidas o dañadas como resultado de la guerra, asegurando las necesidades de vivienda de las personas desplazadas internamente y las personas que han perdido sus hogares. Se ha llegado a la conclusión de que la política de vivienda estatal moderna de Ucrania necesita definir sus direcciones estratégicas teniendo en cuenta las necesidades que surgieron como resultado de la guerra. Los autores han sugerido las siguientes áreas de la última política estatal de vivienda: construcción de nuevo parque de viviendas, reparaciones mayores de instalaciones de infraestructura relacionadas con la vivienda, determinación de mecanismos para la contabilización del parque de viviendas de alquiler y reanudación de la construcción de viviendas sociales, etc.

Palabras clave: vivienda de interés social; parque de viviendas; política de vivienda; derecho a la vivienda; necesidades colectivas.

Introduction

The CEDOS analytical center conducted a comprehensive study of housing policy in Ukraine in 2019. One of its recommendations was a proposal to develop a holistic state housing policy that would replace individual sectoral housing programs (Fedoriv, 2019). Objectively, one of the problematic areas of the state policy of Ukraine is the state housing policy. Currently, it is possible to state the lack of a systematic approach to the development of state housing policy, consideration of international

standards regarding the provision of housing needs and reforming Ukrainian housing legislation.

The analytical report of the National Institute of Strategic Studies focused on the state housing policy of 2012 indicated that approximately every fifth Ukrainian family (which in absolute terms is about 3,400 thousands of families) according to sociological surveys conducted in Ukraine in recent years is not satisfied with their housing conditions (Bilovsky, 2012), It is confirmed by the lack of state standards of adequate housing, which are defined by international and legal documents.

It was suggested to adopt the draft Law of Ukraine "On Basic Principles of State Housing Policy" as a basis in 2013. It was assumed that its adoption would settle the gaps that existed because of the lack of a single systematic approach to solving housing problems. It was supposed to become the legislative act that would comprehensively define the basic principles of the development and implementation of modern state housing policy (Notice of the Apparatus of the Verkhovna Rada of Ukraine, 2013). However, despite the need to adopt a single regulatory legal act to determine the main areas of state housing policy, that draft law has not been adopted yet.

The latest Concept of the state housing policy was approved by the Resolution of the Verkhovna Rada of Ukraine dated from June 30, 1995 No. 254/95-VR (The concept of state housing policy, 1995). The methods of ensuring housing needs, the socio-economic conditions of society's life have been qualitatively changed since its approval, and the Ukrainian legislation has been amended. Therefore, this Concept has lost its relevance. At the same time, proposals regarding the establishment of standards and areas of the state housing policy of Ukraine have never been developed or approved at the level of state administration authorities.

The problems related to the state housing policy have been just intensified as a result of the martial law in Ukraine since February 24, 2022. The total amount of direct losses to the country's economy from the damage and destruction of residential and non-residential buildings and infrastructure as of June 8, 2022 is $ 103.9 billion or 3 trillion hryvnias. In total, at least 44.8 million square meters of housing stock, 256 enterprises, 6.3 thousand railway tracks, 656 medical institutions, 1177 educational institutions, 668 kindergartens, 198 warehouses, 20 shopping centers, 28 oil depots have been damaged, destroyed or captured since the beginning of Russia's war against Ukraine (KSE, 2022). The above emphasizes the relevance and timeliness of the research in the field of the state housing policy of Ukraine, its status and perspectives for the development under martial law.

The purpose of the article is to determine the state housing policy of Ukraine, its status and perspectives for the development taking into account the needs that arose as a result of the introduction of the martial law and

the damage and destruction of the housing facilities stock. To reveal the purpose is possible by solving the following tasks: to provide general characteristics of the state housing policy of Ukraine, to analyze the genesis of its reform, to identify and reveal the content of the state regional housing policy, in particular during the martial law, to determine the areas for the development of the state housing policy of Ukraine.

1. Methodology of the study

The article is based on statistical materials that characterize the current status of: ensuring housing needs of Ukrainians, forming the associations of multi-apartment buildings, providing internally displaced persons with housing, housing facilities stock of Ukraine under the martial law. When analyzing the situation of housing needs, identifying the consequences of damages, destruction of housing as a result of military operations we used open sources from various mass media. The solution of the set tasks was made possible due to the processing of materials published in the legal literature by national and foreign researchers. The research principles were regulatory legal acts of Ukraine, national and regional housing programs.

The solution of the set tasks is possible by using the system of general scientific and special methods of scientific cognition by the authors of the article. Thus, the application of the dialectical method made it possible to reveal the basic principles of the state housing policy. The methods of analysis and synthesis contributed to reveal the current situation of the state housing policy of Ukraine, to identify its gaps and to formulate suggestions to overcome them.

The axiological method assisted to reveal the importance of housing for human development, in particular in terms of the martial law. The formal and logical method made it possible to identify the system for creating the areas of improving the state housing policy. The statistical method assisted in revealing the reality of housing provision and the housing needs of the population. The forecasting method was used to determine the areas of the state housing policy.

2. Analysis of recent research

The state housing policy has being studied by researchers of various scientific fields: law, public administration, economics, and sociology.

Particular attention among the modern scientific works on the specified issues should be paid to the article by Barvinenko (2014) “Model of forming the state housing policy”, where the author analyzed the national and

regional housing policy. The scientific achievements of the scholar were used by the authors of this research while characterizing the state housing policy under the martial law.

Tiulenieva (2020) in her scientific article came to the conclusion that:

> The status of the housing facilities stock and the level of housing provision of the population in Ukraine are at a low stage and require revision of the existing mechanisms for providing the population with housing and the mechanism for implementing the housing policy in the whole (2020: 32).

This conclusion is an eloquent confirmation of the relevance of the issue and the need to conduct separate research of the state housing policy in Ukraine.

Issues of the state housing policy on the African continent were considered in the article made by Gbadegesin and Marais (2020: 15): "The state of housing policy research in Africa". Specific features of the state housing policy regarding the development of the housing facilities stock on the example of the USA are revealed in the article by Fink *et al.,* (2021) "Policy Diffusion in a Redistributive Policy: Affordable Housing and State Housing Trust Funds".

There are studies focused on determining the state housing policy taking into account the martial law in Ukraine as a result of the war with the Russian Federation. Thus, Teremetskyi *et al* (2021). based on the analysis of the dynamics of emergencies in residential buildings or constructions in Ukraine for the period of 2015-2020, the authors have made a conclusion on the need to implement measures on preventing emergencies.

The analysis of scientific studies of the state housing policy emphasizes the interest of scholars from different countries in this topic. This provision is due to the fact that housing for a person is a mean of ensuring his / her livelihood. Therefore, the development of the housing policy has a direct relationship with human rights, the socio-economic situation of the state and its political regime. That is, the state housing policy is a complex scientific category.

Thus, it is quite logical to study it on the examples of different countries taking into account the differences in the political regime and the socio-economic situation of countries. Ukraine, which is actually at war with the Russian Federation, is no exception and is trying to develop the state housing policy with elements of the need to restore the destroyed housing facilities stock.

3. Results and discussion

3.1. National housing policy of Ukraine

State housing policy is the system of unified measures of legislative and controlling nature, carried out by legal state institutions (Bukiashvili, 2009). It is part of the unified socio-economic policy of the state. Housing policy is designed to guarantee a person sufficient living conditions, it provides quality and comfortable living within a decent living environment (Komnatnyi, 2021).

Despite the importance of this policy for exercising the right to housing, Ukraine does not have a single state housing policy program approved by public authorities. At the same time, some national programs for affordable housing, youth target-oriented lending, individual housing construction in the countryside are being developed and implemented at the level of the Ukrainian government. These programs do not solve the general problem in the housing sector, but provide an opportunity to meet the housing need with the help of state mechanisms of partial financing of certain population groups.

The lack of the concept of housing policy is not an obstacle for the development of its certain areas in scientific papers. Thus, scholars prove that the main principles of domestic economic policy are the reform of housing and municipal services, ensuring the availability of municipal services and improving their quality, involving residents into the management of housing and municipal facilities (Omelchuk, 2017).

It should be noted that these areas will be implemented over time. For example, the Law of Ukraine "On Specific Features of Exercising Ownership Rights in Apartment Buildings" was adopted in 2015 (Law of Ukraine No. 417-VIII, 2015). Partial reform of the management of the housing facilities stock took place on its basis, in particular, the management of apartment buildings was transferred to the association of co-owners of apartment buildings. It was a new approach to reforming housing facilities stock's management.

However, such changes were somewhat late, since the beginning of the denationalization of the Soviet housing facilities stock took place in 1992 on the basis of the Law of Ukraine "On the Privatization of the State Housing Facilities Stock" (Law of Ukraine No. 2482-XII, 1992), which was aimed at the privatization of the state housing facilities stock in creating conditions for exercising the civil right to free choice of satisfying housing needs, involving citizens to participate in the maintenance and preservation of existing housing and the formation of market relations. Despite the efforts to involve citizens in housing facilities stock's management, the state

housing policy on housing management from 1992 to 2015 has been never implemented.

Unresolved problems have been accumulated over time in the field of housing facilities stock's management, including the lack of repairs to apartment buildings, energy saving systems, the separation of common and individual property in an apartment building, etc. Deterioration of the technical condition of the housing facilities stock was also caused by an imperfect organizational mechanism for maintaining housing in proper conditions, almost 40% of housing in Ukraine is not equipped with cold and hot water supply systems, heating, sewage, gas, etc. (Suhonos, 2014).

The accumulation of problems in the field of housing facilities stock's management led to the need to introduce the modern mechanism for managing apartment buildings in the form of creating associations of co-owners of apartment buildings. Such associations have been actively created since 2016 by residents of apartment buildings. The Ministry of Development of Communities and Territories of Ukraine together with experts from the Reform Support Office conducted a quantitative assessment of the functioning of associations of co-owners of apartment buildings in Ukraine.

Specialists of the Ministry of Regional Development, Construction and Housing and Municipal Services of Ukraine emphasize that effective management of common property is a prerequisite for the formation and successful implementation of the state housing policy, as well as the implementation of energy-efficient measures. There were 32,982 associations of co-owners of apartment buildings in Ukraine as of January 20, 2020 (Research of the minregion of Ukraine, 2020). However, the activities of these associations have significantly slowed down as a result of the hostilities that have been taking place on the territory of Ukraine since February 24, 2022, and the creation of new ones has been suspended.

Besides, problems in the activities of associations of co-owners of apartment buildings in terms of the martial law are related to the elimination of consequences of the destructed housing. Since most of the destroyed or damaged apartment buildings were not insured, their restoration is possible only due to the assistance from the country. At least one million houses have been damaged as of August 2022. Their restoration requires 4.8 trillion hryvnias or 165 billion dollars (Public media portal Bakhmut, 2022).

Gaps in the system of the state national housing policy began to appear in terms of the military aggression of the Russian Federation against Ukraine. The absence of a sustainable policy regarding the development of social housing facilities stock was manifested. In particular, it is about meeting the housing needs of internally displaced persons. Since the acquisition of

the right to social housing by them is an indispensable component for the protection of housing rights (Teremetskyi *et al*, 2021).

The issue of providing housing for this category of persons arose in 2014 after the occupation of part of the Ukrainian territory by the Russian Federation. Thus, during the six months of the Russian Federation's full-scale invasion into Ukraine, the number of internally displaced persons increased significantly and was 6.9 million people as of August 23, 2022 (Interfax-Ukraine, 2022). However, due to the creation and implementation of a number of state programs from 2014 till the beginning of 2022, which were aimed at solving the housing issue of internally displaced persons, it was possible to provide housing for only 1,424 families (Komnatnyi, 2022).

We believe that the problem of realizing the housing rights by this category of persons is due to the fact that there has been no increase in the construction of social housing since 2014. There is also no regulatory basis for recognizing the inclusion of private housing into the social housing facilities stock.

Other factors that limited the availability of housing for IDPs during the martial law were the following: lack of registers of free housing that can be provided to citizens, as well as a register of housing available for purchase in order to accommodate the evacuated population there; increase in rental housing prices due to the lack of a state policy on regulating housing rental price during the war; a small amount of adequate housing for forced migrants; facts of forced eviction by the owners of internally displaced persons due to the absence of the state moratorium on the eviction of such persons (Bobrova *et al.,* 2022).

The Ukrainian government dared to partially solve the listed problems by adopting the Resolution "On the approval of the Procedure for compensation of costs for the temporary accommodation of internally displaced persons who moved during the martial law period" on March 19, 2022. This Resolution stated the mechanism of compensation for persons who accommodated IDPs in their dwellings free of charge (Resolution No. 333, 2022). The indicated mechanism can be considered as an element of the national housing policy under the martial law. Thus, it was the beginning for the formation of the system of affordable housing in Ukraine. However, the state housing program has never been developed.

The State Register of Property, which was damaged and destroyed as a result of hostilities, acts of terrorism and sabotage caused by the military aggression of the Russian Federation has been created in Ukraine since April 2022. In particular, this register includes information on destroyed real estate – real estate objects that have become unusable for its intended purpose as a result of hostilities, acts of terrorism, sabotage caused by the military aggression of the Russian Federation, and whose restoration

by means of repairs or reconstruction is not possible or is economically impractical (Resolution No. 380, 2022: 1, Part 3). The existence of this Register makes it possible to identify the situation in the housing facilities stock, the population's housing need for new dwellings, to develop budget financing for housing restoration and to protect the housing rights of citizens.

In addition, the Decree of the President of Ukraine in April 2022 has established the National Council for the Recovery of Ukraine from the Consequences of the War. The main task of this agency is to develop the Action Plan for the post-war recovery and development of Ukraine, namely: recovery and development of transport, medical, social, municipal, industrial infrastructure and housing, energy infrastructure, etc. (Decree No 266/2022, 2022). We believe that the formation of a state agency that will contribute to the recovery of the country from the consequences of the war is an integral part of the state housing policy that is currently being formed in Ukraine.

Unfortunately, Ukraine does not support the construction of housing that could be rented out on commercial terms. Such housing could be built both by private individuals (organizations) and local authorities in order to replenish their budgets. Ukraine does not also have a transparent rental housing market, the owner of which could be the state, local self-government agencies or private entities (individuals or legal entities) (Tiulenieva, 2020). We believe that the construction of housing with the purpose of renting it out on market terms would lead to an improvement of the quality characteristics of the housing facilities stock under construction in general. At the same time, the competition during the construction of such "income houses" would lead to meeting the needs of different population groups according to their incomes.

It should be noted that there was an attempt to regulate residential legal relations of rent in 2019 by developing the draft law "On rental houses" (Draft Law of Ukraine, 1995). However, the legislator's attempt to reform a certain area of housing relations, namely to regulate housing relations in the rental sphere, was not successful. Therefore, there is still no systematic legal regulation of existing lease relations. That led to abuse in the housing market under the martial law, the absence of a register of housing that can be offered to internally displaced persons, the impossibility of identifying and accounting the country's rental housing facilities stock for its further analysis, in particular for the improvement of legislation and the formation of the state policy in this area.

Nowadays, the problem of housing construction remains unsolved. Thus, housing construction in 2020 decreased by 18.5% compared to 2019 (Solovchuk, 2021). Besides, the state actually ceased to be the subject of housing construction. We believe that it is necessary to pay special attention

to residential construction in terms of the military conflict, when millions of square meters of residential real estate have been destroyed. It is necessary to decide on the possible financing mechanisms for such construction, in particular, the possibility of receiving state financial assistance for construction companies. Therefore, it is worth developing state programs for mortgage lending for the restoration of damaged or destroyed housing, as well as for the construction of new housing facilities stock. This indicates the need for further reform of the Ukrainian state housing policy.

Analyzing housing programs that have been partially implemented, as well as those that continue to operate in Ukraine (we are talking about the State program for providing housing for youth for 2013-2023, the Program for providing housing for veterans of the ATO/OOS, the "Affordable Housing" Program, the "Affordable 7% Mortgage" Program) one can claim that there is a certain discrimination of certain categories of citizens.

For example, there is no support to people who have reached retirement age, people who are raising a child on their own, LGBT people, single women, migrants, etc. There is such a situation because Ukrainian legislation does not enshrine the category of "vulnerable persons" who need additional state protection in the housing sector. Ukraine has not also implemented the provisions of p. 10 of General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, which states that: women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless (E/1998/22, 1997: 10).

At the same time, the problem of protecting housing rights of vulnerable persons is relevant for different countries. For example, Chinese researchers have concluded that governments should pay more attention to addressing housing issues of vulnerable groups, including the elderly and low-income households (Chen *et al*., 2022). The issue of housing assistance for low-income families remains unsolved at the level of the American administration (requiring a major expansion of the Housing Choice Voucher program as well as other programs) (Immergluck, 2021).

Unfortunately, Ukraine does not pay appropriate attention to cases of discrimination against the housing rights of vulnerable persons at the state level, "in particular, the disabled, persons of non-traditional sexual orientation, war veterans, victims of domestic violence, large families and internally displaced persons. At the same time, theese categoryies of persons are represented by a significant segment of Ukrainian society" (Teremetskyi *et al*, 2021: 1). Therefore, the need to ensure the housing rights of certain vulnerable population groups is an integral part of the national housing policy.

The presence of a vulnerable subjective factor in housing relations requires its recognition at the state level in order it would be taken into account when developing the national housing policy. Besides, the establishment of a list of vulnerable persons fully complies with existing international standards for ensuring stable living in housing, in particular those recommended in General comment No. 7: The right to adequate housing.

When identifying the vulnerability of the parties in housing legal relations, it is necessary to emphasize that the term of "discrimination in the housing sector" is not used in Ukrainian legislation. The problems of discrimination are also bypassed at the scientific level and in practical jurisprudence. However, it is the vulnerable individuals who experience discrimination, particularly in the housing sector. It is confirmed by the publication of Teremetskyi (2017), focused on solving issues related to the restoration of housing rights of children who partially or completely lost housing in the hostilities area on the territory of Ukraine.

We would like to give the following example that confirms the fact of housing discrimination in Ukraine. Thus, a separate opinion of the judge of the Constitutional Court of Ukraine H.V. Yurovska was published on June 22, 2022. It was related to the Decision of the Constitutional Court of Ukraine (Second Senate) in the case within the constitutional complaint of Oleksii Volodymyrovych Abramovych regarding the compliance of paragraph 2, Part 2 of the Art. 40 of the Housing Code of Ukraine (regarding discrimination in exercising the right to housing) dated from June 22, 2022 No. 5-r(II)/2022 with the Constitution of Ukraine (constitutionality).

The judge in the indicated document mentioned discrimination based on the place of residence when applying the appealed provision of the Art. 40 of the Housing Code (Separate opinion of the judge of the Constitutional Court of Ukraine Yurovska H.V., 2022). Thus, the judge in this case independently substantiated her position regarding the existing discrimination and presented the facts in its support.

Summarizing the above, we emphasize that the national housing policy of Ukraine is non-systematic, its directions are formed fragmentarily and depending on urgent needs. It is confirmed by the following facts:

1. general strategy for the development of the housing facilities stock has not been developed, in particular regarding its construction, major repairs of infrastructure facilities related to housing;
2. mechanisms for the formation and accounting of rental housing stock have not been established.
3. there is almost no public housing construction of the social housing facilities stock;

4. system for supporting the right to housing of vulnerable persons has not been defined and mechanisms for overcoming discrimination of housing rights have not been established.

We suggest to divide the state housing policy of Ukraine into the following stages:

1. from 1992 to 2014 – the stage of formation and sustainable development of the private housing facilities stock on the basis of conducting privatization of the state housing facilities stock;
2. from 2014 to 2022 – the stage of starting the reform of the housing facilities stock's management by creating associations of co-owners of apartment buildings;
3. from 2022 until present day – initiated the stage of restoration of the housing facilities stock destroyed or damaged as a result of the war, ensuring housing needs of internally displaced persons and persons who have lost their homes. The specific feature of this stage is that the martial law introduced in Ukraine on February 24, 2022 revealed the vulnerability of Ukraine's national policy in the housing sector. It is believed that the reason for this is the lack of a strategy for the development of state housing policy.

3.2. Areas for improving the housing policy in Ukraine

Summarizing the above, we consider it expedient to offer and consider possible directions for improving the housing policy of Ukraine. The national policy in the housing sector has a protective nature. It defines regulatory and legal principles and legislative framework for the functioning of the residential sector, as well as its implementation at the state and regional levels. Besides, the implementation of this policy involves the development and implementation of specific programs (program activities) aimed at solving the housing problem.

The modern state housing policy of Ukraine needs to be updated due to two basic factors: 1) it's not readiness at the legislative level; 2) the need to restore the housing facilities stock as a result of the war. The national housing policy should be defined in a separate regulatory legal act. In particular, it can be the law on the state housing policy or updated codified act in the housing sector. We offer to include the following areas into the strategy of future general state housing policy:

- modernization of housing legislation by systematization of the scattered regulatory and legal material;
- establishing the principles of housing construction taking into account the situation of the destroyed and damaged housing

facilities stock as a result of military operations and mechanisms of state financial support;

- legal regulation of the rental housing fund, its monitoring and identification of the actual condition;
- development of construction projects and management of the social housing facilities stock;
- introduction of state registers of housing intended for rent, social guaranteeing, vacant housing;
- formation of the concept of vulnerability within housing legal relations, in particular, the definition of vulnerable persons groups;
- overcoming discrimination in the housing sector while exercising the right to housing;
- overcoming cases of forced eviction;
- settlement of eviction moratorium cases and procedures.

In addition, regional housing programs need to be updated. However, it is important to take into account the state of war in Ukraine since February 2022.

Conclusions

The housing policy is an integral part of the state policy of Ukraine. It can be both nationwide (national) and regional (local). The concept of the state housing policy of Ukraine at the level of public authorities was developed and approved in 1995. Not a single regulatory act was adopted to establish the principles of the housing policy in the state from that moment. At the same time, proposals were put forward for the adoption of a new fundamental legislative act in this area at the level of draft laws. Normative and legal regulation of current housing relations has a dispersed character because of its absence. There is also no unified system for ensuring housing needs of various categories of citizens, in particular vulnerable persons. Construction and management of the housing facilities stock require additional reform.

The general state housing policy of Ukraine according to its development can be divided into three stages. The main one is the current stage of the state housing policy of Ukraine (from 2022 to the present day), which stipulates the restoration of the housing facilities stock destroyed or damaged as a result of the war, ensuring the housing needs of internally displaced persons and persons who have lost their homes. The authors of the article have proved that the state housing policy of Ukraine needs to

define its strategic areas taking into account the needs that arose as a result of the war.

Conceptually updated approaches are needed for further housing construction in relation to the destroyed or damaged housing as a result of the military conflict, in particular, establishing the expediency of restoration and reconstruction of both certain territorial units and certain districts, microdistricts in cities. At the level of state regional policy, it is necessary to update existing programs or adopt new ones, which should be aimed at: restoring destroyed or damaged housing facilities stock, providing housing for internally displaced persons, overcoming the phenomena of discrimination regarding the realization of the right to housing, updating housing and municipal infrastructure taking into account the needs of energy saving. The above emphasizes the urgency for reforming the existing principles of Ukraine's housing policy.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 64-75
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Globalization of White-Collar Crime: Far and Beyond National Jurisdictions

DOI: https://doi.org/10.46398/cuestpol.4176.03

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Abstract

The goal of the paper is to research the modern phenomenon of global white-collar crime, its socially harmful forms and to discuss methods of fighting such criminality internationally. In the course of the research, several general and special scientific methods were used. Special focus was laid on comparing models of enforcing economic crimes in different jurisdictions. A general overview of today's interconnected economic systems is provided. A link between economic security and national (including information) security is explained. With reference to numerous publications on the issues of white-collar crime it is suggested that this topic is of significant practical meaning to national governments. Based on the example of several white-collar crimes, including tax evasion, money laundering and insider trading, a conclusion was made on the complexity of prosecuting economic offenses, when criminal activity goes beyond any national jurisdiction. Challenges of procedural nature, which relate to investigation and prosecution of such crimes, are discussed as well. As a general conclusion, it is argued that modern phenomenon of economic globalization significantly underlines

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Recibido el 22/12/22 Aceptado el 26/01/23

the importance of the implementation of comparative, multi-jurisdictional research into the field of white-collar crime enforcement.

Keywords: white-collar crime; globalization of crime; national security; money laundering; comparative legal research; jurisdiction and prosecution.

Globalización de la delincuencia de cuello blanco: Más allá de las jurisdicciones nacionales

Resumen

El objetivo del trabajo fue investigar el fenómeno moderno de la delincuencia mundial de cuello blanco, sus formas socialmente nocivas y, además, debatir los métodos de lucha contra esta criminalidad a escala internacional. En el curso de la investigación se utilizaron y combinaron varios métodos científicos generales y especiales. Se prestó especial atención a la comparación de los modelos de represión de los delitos económicos en diferentes jurisdicciones. Se explica la relación entre la seguridad económica y la seguridad nacional (incluida la seguridad de la información). Con referencia a numerosas publicaciones sobre la delincuencia de cuello blanco, se sugiere que este tema tiene un significado práctico para los gobiernos nacionales. Basándose en el ejemplo de varios delitos de cuello blanco, como: la evasión fiscal, el blanqueo de capitales y el uso de información privilegiada, se llega a una conclusión sobre la complejidad de perseguir los delitos económicos, cuando la actividad delictiva va más allá de cualquier jurisdicción nacional. También se discuten los retos de naturaleza procesal relacionados con la investigación y el enjuiciamiento de tales delitos. Como conclusión general, se argumenta que el fenómeno moderno de la globalización económica subraya significativamente la importancia de la aplicación de la investigación comparativa.

Palabras clave: delincuencia de cuello blanco; globalización del crimen; seguridad nacional; blanqueo de dinero; investigación jurídica comparada; jurisdicción y enjuiciamiento.

Introduction

White-collar crime is hardly a new phenomenon. A lot has been written on the subject internationally, many economic crime cases have been adjudicated by courts and governments are always on the look for new

methods of fighting such criminality, which costs billions of dollars to local economies. This is even more so for the XXI century with its digital innovations, online banking, block chain technology and cryptocurrency wires, to name a few. Currently, we all also witness a globally growing phenomenon of "white collar overcriminalization" – a new trend by the national government to be "tough" on economic crime, to punish offenders with respectable social status with all the severances of criminal laws and all the law enforcement resources available.

Yet another important observation: economic crime seriously undermines economic security of any given state and thus its national security. The ongoing war aggression against Ukraine reveals how important it is to maintain economic stability in any country, to crack down any types of white-collar crime in the face of a bigger national security threat. Economic activity is yet another important area of maintaining strong cooperation between military actors and civil society (Lutsenko *et al.,* 2021). This also includes a pressing issue of information security or cyber security. Since a lot of business transactions are conducted online nowadays, and now with the wide use of cryptocurrency transactions and doing online trading on stock exchanges, reliable protection of digital relations in any given state has to remain a top priority (Dziundziuk *et al.,* 2021).

By focusing on the "economic" block of the nation criminal law provisions, special attention should be paid to the study of globalization trends in the modern world and, accordingly, in interstate economic relations. Today, we all witness global operations of research and development, preserving environmental assets, communication, erasure of language barriers, labor and capital migration, joint discovery of outer space, implementation of international scientific projects in almost all areas, trans-border business transactions etc.

Apart from obviously positive trends, globalization also leads, at least in some cases, to the emergence of new types of economic crimes, the expansion of economic crime in general and its adaptation to various socio-economic changes. Thus, a relatively new phenomenon of white-collar crime globalization was born a couple of decades ago and has since expanded.

H. Stessens puts it down this way – modern societies are increasingly dealing with types of economic crime that were largely unknown back in the XIX century, when most European criminal justice systems had been formed. Nowadays, prosecutors and courts face economic crime challenges that did not exist before. A significant role in such illegal trends belongs to corporations, since the lion's share of business activity in the modern market world is conducted by large international corporations (Stessens, 1994).

These and some other issues related to new 'globalized' patterns of economic crime will further examined in detail.

1. Methodology

The methodology behind this research includes general and specific scientific methods. The former includes methods of analysis and synthesis, while the latter includes system-functional, formal-logical, comparative and several other methods.

In particular:

1. comparative method has been used within the framework of a consistent critical comparison of the provisions of the criminal law of Ukraine, United States of America (USA) and several other countries, which relate to the grounds of liability for economic crimes and measures of criminal law influence on the persons, who have committed them;
2. historical method has been used in the context of a fragmentary retrospective analysis of the content of criminal law norms within the field of research;
3. systemic (or method of system-structural analysis) – by determining the place of group of provisions on economic crimes in the system of state-sanctioned measures of legal regulation of economic relations, as well as by establishing the order of correlation of the group of norms established in General and Special Parts of the national Criminal Codes;
4. formal-logical (dogmatic) – provided scientific interpretation of the legislation of Ukraine and the USA on liability for economic crimes, as well as substantiation of directions for improvement of the studied provisions;
5. sociological – used for the analysis of problematic issues related to the criminalization and decriminalization of economic offenses, as well as when summarizing case law materials; statistical – allowed to analyze and summarize information on the quantitative indicators of the application of measures of criminal law influence on persons, who committed economic crimes;
6. method of modeling – was used to formulate and propose new legislative novelties of the Criminal Code in the area of liability for economic crimes, as well as proposals aimed at improving the relevant practice.

The methodology employed during study of global white-collar crime is directly connected with the relevant empirical law enforcement data. The study relies on processing white-collar crime verdicts in Ukraine, USA and several European jurisdictions. Also, open data and legal documents, issued

by Interpol, Financial Action Task Force (FATF), national prosecutorial agencies and police departments, as well as financial crime task forces have been carefully studied and then incorporated into this paper.

Since white-collar crime globalization is a rather new phenomenon, new academic bibliography, recent court decisions and law enforcement materials have been widely used in this research project.

2. Recent research and findings

One's immersion into the research field of combatting economic crime reveals steady interest to such issues from both criminal law professors and practitioners. In particular, A. Savchenko has conducted effective comparison of provisions on economic crimes under criminal law of Ukraine and the USA in the monograph "Criminal legislation of Ukraine and federal criminal legislation of the United States of America: a comprehensive comparative legal study". At the same time, in view of a wider scope of issues covered in his research, both the system and specific groups of crimes in the economic sphere have been discussed only partially by the author (Savchenko, 2007).

Another Ukrainian scholar and an established authority on the issues of white-collar crime, O. Dudorov, has written extensively on the subject for the previous ten plus years. His highly cited publications address economic criminality in detail, they are both theoretically sound and have a significant effect on law enforcement practice. Apart from his widely recognized treatise on economic crime in Ukraine (Dudorov, 2003), O. Dudorov has also written a series of joint articles with R. Movchan on a wide range of white-collar crime issues (Dudorov and Movchan, 2020).

As for American academics, who have widely covered the topic of white-collar crime, E. Podgor, professor of law at Stetson University College of Law, is one of the leaders on both quality and quantity. During the past two decades, she has covered a wide range of white-collar crime issues, starting with fraudulent bankruptcy and tax evasion and ending with extremely complicated schemes of insider trading and the alarming trend of white-collar overcriminalization in America (Podgor, 2015; Podgor, 2021).

In addition, authors of this research paper have also extensively covered current legislative models of fighting economic criminality both in Ukraine and in other countries in previously published articles, conference materials and academic treatises (Minchenko *et al.,* 2021; Pidgorodynskyi *et al.,* 2021; Movchan *et al.,* 2021).

The wide spectrum of the discussed topic, as well as particular issues related to white-collar crime, which have previously been addressed in

academic literature, reveal the fact that the issue of economic crime and especially its global patterns remain among the priority areas for legal research and writing. After all, governments and societies rotate around the basic concepts of economic activity (or material welfare). Thus, protecting any given economy from illegal practices is a big deal; it should remain in the focus of the national government. For Ukraine, protection of its market economy by means of criminal law is an even more challenging goal, since national security and state sovereignty are currently at stake there.

3. Results of the study

The essence of globalization as a process, which characterizes modern stage of human development is the formation of a common global economic, political and cultural space, which functions on the basis of universally recognized legal values and principles and is manifested by common organizational forms.

We will start with explaining some key terms, used within the text of this paper.

Economic globalization is interpreted as the process of structural changes and the gradual formation of an organically integrated world economy as a necessary element of the formation and development of the integrity of world community. Creation of a national market economy means, among other things, its transformation into an integral part of the world market economy, and therefore creates dependence on modern trends in its development, dependence on institutions, mechanisms and tools with which it operates the world market. Against this background, there is an urgent need to determine main forms of cooperation of any state with international financial, credit and trade organizations, regional associations of countries, participation in joint economic projects and programs with other countries, etc.

An interesting position is expressed by the authors of one Ukrainian work on the issues of modern economic theories, who comment on the cumulative position of representatives of globalization theory regarding the development of global economic processes in such manner. Relations between subjects of economic activity are greatly influenced not only by the processes of development of formalized market relations, but also by many informal, non-economic factors, socio-cultural environment, moral and ethical climate in society, etc. Such factors are even more important under the conditions of a transitional economy, which is reflected in the modern processes of the formation of the Ukrainian economy. Here, market appears not as a self-sufficient factor capable of solving social problems, but only as one of the mechanisms of society functioning, which permeates the entire

set of social relations and directly depends on the socio-political sphere, historical and cultural heritage.

Legal globalization, in turn, means creation of a system of norms and regulations as well as the interstate, international legal system, which organizes, ensures, coordinates global interaction in various spheres of society through the interaction of international and national law. Legal globalization involves such elements as corporate law, transnational subjects of the world economy, supranational economic and financial norms and rules of state activity, interstate unions, generally recognized legal standards and values. As one might see from the proposed definition, economic relations in the interstate context remain among the key components of the conditional 'foundation' of this phenomenon.

Finally, to this date there is no clear, all-inclusive definition of *white-collar crime*, and such description is not likely to appear anytime soon due to a variety of reasons. These include: (1) traditionally broad nature of nonviolent and predominantly for-profit offenses; (2) changes in both legislation and its interpretation, more so during the last three decades; (3) shifts in research focus from looking into white collar criminals themselves to the specific nature of crimes committed by the latter; and (4) absence of any attempts to categorize different groups of offenses by either legislators or courts (Kamensky, 2016).

The term 'white-collar crime' is notoriously ambiguous. At least some agreement among scholars exists on what types of criminal behavior this phrase should include. Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counterfeiting, public corruption, money laundering, embezzlement, economic espionage and trade secret theft (White Collar Crime, 2021). As one might see, the list of such criminal activity forms is both expansive and impressive.

As for corruption-related offenses, bribery remains among the major threats to many countries, including Ukraine. While penetrating deep into all spheres of public life, corruption damages the most important social values of both the state as a whole and its individual citizens (Vozniuk *et al.,* 2021). In particular, it effects market economy relations, including transportation, construction, retail sector, stock market functioning and investing in both negative and direct manner.

In comparison, the term *'international white-collar crime'* becomes even more confusing, since no such term is defined by international law. Thus, the term can be best interpreted by referring to non-violent, financially motivated

crimes, which have a transnational element. Such multi-jurisdictional element can arise from the conduct of the perpetrators, the locations of the victims and witnesses, the nature of the crime, or the scope of governmental or corporate investigation. Under such broad definition, any white-collar crime can actually be put into the international context (Kamensky, 2021).

Moving forward, we observe that today there are numerous 'points of conflict' between domestic criminal law and globalization trends. Shifts in the 'criminal picture' of the world, caused by globalization, need to be studied within the framework of criminal law doctrine, and should also be taken into account in law-making activities, in particular, when solving issues of criminalization and decriminalization, penalization, improvement of criminal law tools and when solving other problems of criminal law.

English author D. Nelken makes a good point, while referring to the systemic, immanent manifestations of crime, which are increasingly under the influence of globalization. The effect of globalization manifests itself primarily in the fact that the concepts of "their" (foreign) and "our" (domestic) regarding crime are gradually becoming similar and interconnected (Nelken, 2000). There is a typical pattern related to the situation of the evolution of economic crime in the era of globalization: the globalization of the world economy and the ever-increasing efficiency of capital markets allow individuals and legal entities to move huge sums of money both on domestic financial markets and from one country to another. As one can see, the economy and crime can create together an extremely strong, dangerous combination for society within the framework of globalization.

After setting a theoretical foundation for our research, we will proceed with a set of practical issues, which reflect on the globalized nature of modern white-collar criminal activities. Today, money laundering is a major problem for the international community at large. It is a crime of relatively recent vintage, having its growth in the years following digitalization, introduction of cryptocurrency and further expansion of information technologies. Money laundering, as put down by one American commentator, is a crime of many variations, many approaches, and a host of different laws, since countries do not always have consistent approaches.

Combating money laundering, therefore, requires consideration of issues of national, transnational, and international jurisdiction as well as joint law enforcement initiatives. Today the overarching concern relates to how to combat this criminal conduct in a global society. Money laundering laws provide a case study to demonstrate the jurisdictional challenges faced by nations working to eradicate this particularly dangerous form of economic criminality (Podgor, 2006).

Stock market fraud, including market manipulation and insider trading, is yet another, though hardly the only one, example of global economic crime

today. Indeed, since shares of large multinational corporations (Coca-Cola, Tesla, Apple, Ford, Intel – to name just a few) are traded worldwide, crimes related to such assets can also be committed virtually anywhere.

Development of any national stock market is always connected to a number of factors, including the state of legislative protection against market offenses and enforcement of relevant criminal statutes. Stock market offenses (practices of manipulative and insider nature, placement of "junk" securities, fictitious issues, etc.) create grounds for mistrust on the part of investors, increase investment risks and, as a result, worsen the investment climate, complicate the formation of a modern market economy in Ukraine, encroach on the interests of securities owners and other stock market participants, contribute to money laundering etc.

American experience of regulation and criminal protection of the stock market is becoming relevant and largely instructive for many world jurisdictions (Ukraine among them), especially in the context of identifying key routes for the development of both national economies and foreign economic relations. This is not surprising, since United States remain the key industrial center of the world (together with China, the United States provide more than 1/3 of the world's industrial output), the world center of scientific and technological progress and at the same time the world financial center (American dollar provides more than 40% of all financial transactions value in the world).

Therefore, it is not surprising that the largest stock market in the world in terms of capitalization is located in this country. Hence, American model of enforcing lawfulness and integrity in its stock market can serve as both an example and a source of valuable experience for the countries with emerging markets. Additionally, American legal and economic scholars have elaborated an impressive body of scholarship on the issues of stock market functioning as well as market fraud (Fox *et al.,* 2018).

Finally, from the merely procedural viewpoint, white collar crime poses a multi-jurisdictional challenge in terms on its proper investigation and prosecution. L. Dervan explains that while numerous countries offer advantages to those, who disclose investigatory findings and cooperate with governmental inquiries, the globalization of white-collar crime and the international nature of modern investigations also present significant challenges to successful resolution and settlement of such matters, and even more so, if we are talking about large corporate wrongdoers. The commentator adds a valuable observation: as the globalization of white-collar crime continues to bring internal investigations into various international jurisdictions, the necessity of striving for such truly global settlement will only continue to become of greater importance (Dervan, 2011).

Conclusions

The modern phenomenon of economic globalization significantly underlines the importance of the implementation of comparative research into the academic field of criminal law, even more so in the field of white-collar crime. Such connection between a legal discipline and a specific phenomenon is grounded on pragmatic considerations: on the map of the modern world, important changes are taking place in the economic, social, political, cultural and other relations between nations, which naturally encourages the search for new forms of response to such trends by means of criminal law; international relations, which are becoming increasingly stronger, require an appropriate level of awareness of foreign law and its correct correlation with the national law.

At the same time, gradual disappearance of economic restrictions between various countries, creation of interstate zones of free trade and free competition leads to the emergence of new transnational threats: study of criminal law and criminal procedure of another country becomes a guarantee of effective criminal prosecution of persons, who have conducted coordinated criminal activity on the territory of several states.

Globalization of crime requires specialists from different countries to strengthen international cooperation and exchange of both ideas and resources in the context of solving practical issues of countering criminal manifestations at the international level.

Finally, among other known types of criminality, today white-collar crime is more than anything else affected by the developing phenomenon of economic globalization. As we explained in this research paper, money laundering, tax evasion, financial fraud, antitrust violations, corporate corruption and stock market manipulations have long since evolved beyond the national borders and currently create a direct threat to the interconnected world economic environment, global financial system and global markets. Thus, further research and responses to such 'external' forms of economic crime activity are required.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 76-99
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Notarial practice of will declaration in civil transactions in the countries of the European Union

DOI: https://doi.org/10.46398/cuestpol.4176.04

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Abstract

The aim of the article was to consider the peculiarities of the notarial practice of declaring will in civil transactions in the countries of the European Union EU, in view of the further adaptation of positive practices in Ukraine. The main methodological tools used in the research were the methods of observation and comparison. The conducted research showed that the European Regulation regulating the matter established the legal basis for the use of electronic trust services in notarial practice. The use of qualified electronic signatures and seals, electronic time stamps and authentication in this area gives confidence in a higher level of document security. The use of electronic ID and electronic trust services also simplifies time-consuming formalities in notarial practice. It was found that integrated video conferencing systems, business process workflows and electronic legal signature systems are becoming mandatory components of the digitization of notarial practice. Gaya, a European program for electronic identification, can be an example for the implementation of conditions for the current notarial practice of declaration of will in civil transactions in Ukraine.

Keywords: qualified signature; digital administration; cryptographic key; digital power of attorney; civil transactions in the EU.

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Recibido el 31/11/22 Aceptado el 15/01/23

Práctica notarial de declaración de testamento en transacciones civiles de los países de la Unión Europea

Resumen

El objetivo del artículo fue considerar las peculiaridades de la práctica notarial de declarar voluntad en las transacciones civiles de los países de la Unión Europea UE, en vista de la mayor adaptación de las prácticas positivas en Ucrania. Las principales herramientas metodológicas empleadas en la investigación fueron los métodos de observación y comparación. La investigación realizada mostró que el Reglamento europeo que regula la materia estableció la base legal para el uso de servicios electrónicos de confianza en la práctica notarial. El uso de firmas y sellos electrónicos calificados, sellos de tiempo electrónicos y autenticación en esta área da confianza en un mayor nivel de seguridad de los documentos. El uso de la identificación electrónica ID y los servicios electrónicos de confianza también simplifican los largos trámites formales en la práctica notarial. Se descubrió que los sistemas de videoconferencia integrados, los flujos de trabajo de procesos comerciales y los sistemas de firma electrónica legal se están convirtiendo en componentes obligatorios de la digitalización de la práctica notarial. Gaya, programa europeo para la identificación electrónica, puede ser un ejemplo para la implementación de las condiciones para la práctica notarial actual de declaración de voluntad en transacciones civiles en Ucrania.

Palabras clave: firma calificada; administración digital; clave criptográfica; poder notarial digital; transacciones civiles en la UE.

Introduction

The expression of will of every person is recognized as one of the important rights. The protection of self-expression is essential both from an international and a national perspective (Kudeikina and Palkova, 2020). The world community is increasingly engaging into numerous investment projects, and experiences migration processes. Family ties and other circumstances affect the definition of a notary as a necessary tool for documenting acts in the legal international circulation (Samsin *et al*., 2021).

Any legal agreement is a form of expression of the free initiative of the parties to enter into civil law relations. It reflects the freedom of the parties to determine the type of legal agreement they will enter into and the content of such a transaction (Živkovska and Prželska, 2018). A legal agreement in the European civil law tradition is an important tool. It helps the subjects of

law to intentionally change their legal position or that of other persons. An authentic legal agreement is supposed to mean written evidence, form and drafting procedure. Their sanctioning is regulated by law through a special official empowered to draft them (Widyantoro *et al*., 2022).

Civil law notarial services include signature certification and execution of documents, inheritance and testamentary procedures. They can also include residential and commercial agreements, business and marriage contracts, divorce, conclusion of other contracts, powers of attorney, etc. Notaries public present the agreement impartially, taking responsibility for its content, proving its authenticity and giving it civil law evidentiary value. The agreement must be provided with legal certainty by concluding it with a civil-law notary. The notary works with civil law agreements, where the use of traditional signatures and seals on paper is mandatory for most countries. A written certificate in the form of a genuine deed executed by a notary has undeniable evidentiary value both in form and substance (Junyu, 2020).

Global crises caused by COVID-19 and military conflicts, among other things, have affected almost all industries in European countries, including the notarial practice. The procedure for notarial acts had to be adapted to the latest socio-political conditions. The requirement of physical presence at the notary created a direct barrier to the expression of will in view of the travel restrictions (Biemans, 2021). The European countries had to urgently search for a reliable solution for secure remote carrying out of transactions. As a result, the COVID-19 pandemic has pushed countries to expand the use of electronic identification (Pöhn *et al*., 2021).

The introduction of ICTs, such as the remote certification of agreements, the use of programming languages into the notarial practice became a logical innovation that meets the current needs of society (Lila-Barska, 2021). The electronic signature has begun to expand the potential available to notaries when executing notarial documents, making it possible to sign them virtually (Tabone, 2021). The use of a qualified electronic signature as the most reliable method of electronic signature of documents was the response to the current challenges in the EU countries (Schwalm and Alamillo-Domingo, 2021).

In some countries, such as Ukraine, notarial acts required transformation because of the introduction of martial law (Karmaza, 2022). This situation made it necessary to simplify the documentary procedure for performing notarial acts. It is a forced measure and must be accompanied by the temporary introduction of certain changes to legislative acts.

In view of the foregoing, the aim of the article is to review and identify a successful adaptive notarial practice of declaring will in civil transactions of the EU countries. The aim involved the following research objectives: 1) summarize the main features of modern legislative regulation of the notarial

practice of declaring will in civil transactions of the EU countries; 2) reveal the state of application of digital technologies in the notarial procedure of declaring will in civil transactions in a number of EU countries with the aim of possible implementation of relevant innovations to the legal regulation of notarial practice of declaring will in civil transactions in Ukraine.

1. Literature review

The choice of the research topic correlates with the modern vectors of the research conducted by the scholars in different states. The work of Tabone (2021) was the main tool and background for this study. The study was focused on the analysis of the implementation of electronic identification and trust services for electronic transactions in the notarial practice of a number of European countries. The work emphasized the fact that there are advantages and obstacles to the introduction of electronic signatures when performing notarial acts in the analysed countries.

The result of the work was also the analysis of notarial documents that can be signed electronically. The work of Jia and Li (2022) had an influence on the author's position on the topic under research as well. The authors conducted a comprehensive analysis of electronic signature technology. Attention was paid to problematic issues that arise during the intensified use of electronic seals and the achievement of the goal of copyright protection on digital media. Attention was also focused on the fact that improved electronic signature technology can increase the security of signing electronic contracts.

The findings of Determann (2021) as a result of comparing the advantages and disadvantages of electronic signatures and documents were taken into account during the study. The main approaches to legislation and their potential impact on public and individual interests were the main focus in the work. Attention was paid to the description and comparison of the current legislation on electronic signatures in key jurisdictions of different countries, to the study of the consequences of international differences. Special attention should be paid to the findings of Biemans (2021) on the possibility of remote authentication.

The issues of the justification and proportionality of the requirement of physical presence when drawing up wills at notaries and the impact of this necessity on the restriction of freedom of services were raised. The article by Pöhn *et al.* (2021) on the introduction of self-sovereign identity (SSI), which can strengthen the privacy of citizens and provide the necessary identification, is worthy of note. In turn, Schwalm and Alamillo-Domingo (2021) examine the revised eIDAS Regulation in their article. It is concluded that the further success of eIDAS depends on the development of common solutions, standardization will be key to ensure consistency at the EU level.

The studies by Apalkova (2021) and Lila-Barska (2021) used in the article emphasize the role of the introduction of digital technologies in the notary system of Ukraine. The authors focused on the need for the gradual introduction of new forms and technologies into notarial activity in order to guarantee comprehensive assistance to participants in civil law relations. Certain problematic aspects of the procedure for the introduction and functioning of electronic notarial services in Ukraine were outlined.

The study by Humaira and Latumeten (2022) was used in shaping the author's position. It emphasizes the legal expediency of the adopted legislative acts in the Netherlands and Belgium regarding the performance of notarial acts during the COVID-19 pandemic. The authors made a detailed analysis of the possibility of making a notarial act without physical presence or doing it virtually. The introduction of notarial digital power of attorney was also analysed.

The research of Karmaza (2022) analysed the features of the protection of the rights and freedoms of citizens in the civil process (notarial process) during the martial law. The author outlined such relevant vectors as objectivity, subjectivity, implementation in practice. The need to improve legislative norms, in particular, to expand the procedural capabilities of notaries with the help of legal norms during the martial law, was noted.

An active study of the issues selected in the article confirms the need to pay special attention to the notarial practice of declaring will in civil transactions. The diversity of studies in this field is also stated. Therefore, it is urgent to conduct research according to new research criteria, taking into account the latest comparative law studies.

2. Methods

The research results were obtained through the use of a set of practical and methodological tools applied at each stage of the research. The research design is shown in Figure 1.

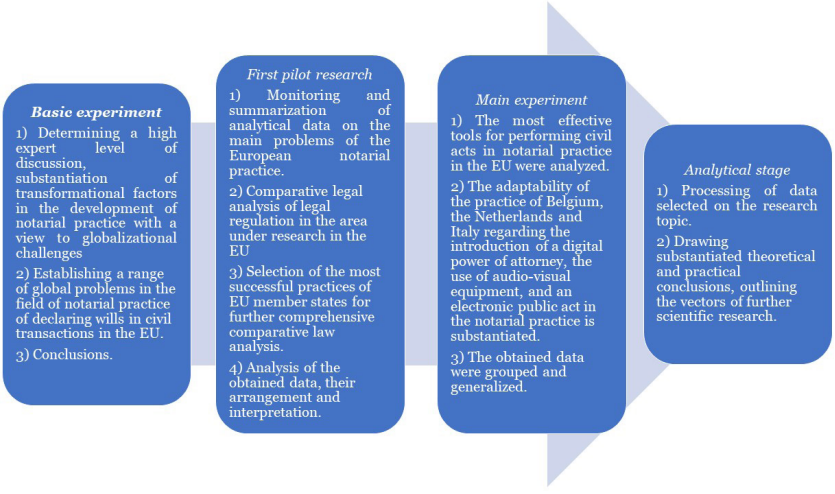

Figure 1. Research design. Source: own elaboration.

The research objectives were fulfilled through the use of well-chosen methodological tools. Observation and comparison were the main practical methods. The observation method was applied to determine the state, directions and prospects of further research, as well as legislative developments in the field of legal regulation of digitalization of notarial practice in the European Union. The comparative method also occupied a special place, which was used in the course of the comparative analysis of current national legal norms in the field of notarial practice of declaring will in civil transactions in the EU member states.

The indicated practical methodological tools enabled to qualitatively compare practical realities with the legislation systems and scientific developments of the EU member states, as well as to identify positive legislative practices, which are appropriate for adoption in Ukraine.

The method of theoretical generalization was used to identify the features of the theoretical foundations of the strategic implementation of electronic declaration of will in the notarial practice, and even for a comprehensive description of the transformational processes of the notarial system and its digitalization in the European countries; abstract logical — to substantiate the foundations of the system of legal regulation of notarial services, as well as to analyse conceptual and methodological approaches of strategic management of the development of such services; statistical, graphic analysis, grouping — to assess the state and results of the introduction of innovative information technologies in the field of notarial services,

to assess the characteristics of the innovative development of certifying transactions.

Analysis, synthesis, deduction, induction — to substantiate conceptual provisions and improve the mechanism of implementation of notarial electronic services; economic and statistical methods — for statistical analysis of the development of notarial electronic services, the stages of the introduction of innovations and their effectiveness; methods of expert evaluation — to assess the degree of achievement of balanced development of notarial electronic digital services in the context of modern transformations; structural logical analysis — to justify methodological approaches regarding transformation models in the era of digitization of notarial services and social realities.

The historical method was applied when studying the genesis of the development of legislation, which regulates the foundations of effective implementation of notarial electronic services. The doctrinal approach enabled identifying gaps in the current national legislation in the area under research in the EU countries. The dogmatic method was applied for drawing conclusions in accordance with the aim of the study.

The method of analogy made it possible to draw a conclusion about the need to reform the Ukrainian legal field and to emphasize promising novelties of EU legislation with due regard to the experience of the EU member states. Normative semantic technique, logical methods and the method of legal modelling were used when formulating proposals of a legislative nature.

3. Results

The European Regulation — eIDAS — (European Parliament, 2014) considers variable tools for conducting electronic transactions (Figure 2).

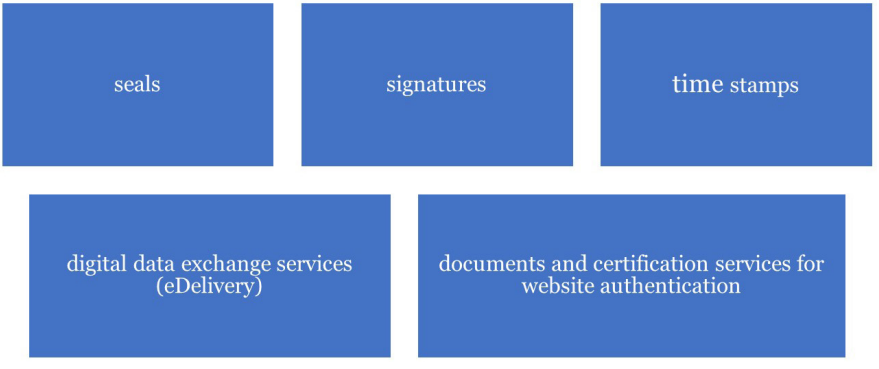

Figure 2. The main grounds for electronic identification according to Regulation (EU) No. 910/2014.

At the same time, the relevant requirements increasingly included a qualified component. The eIDAS Regulation is directly applicable in all EU member states without the need for implementation at the national level. For example, the panorama of electronic signatures is extremely diverse. The eIDAS Regulation identifies three main types of electronic signature (Figure 3).

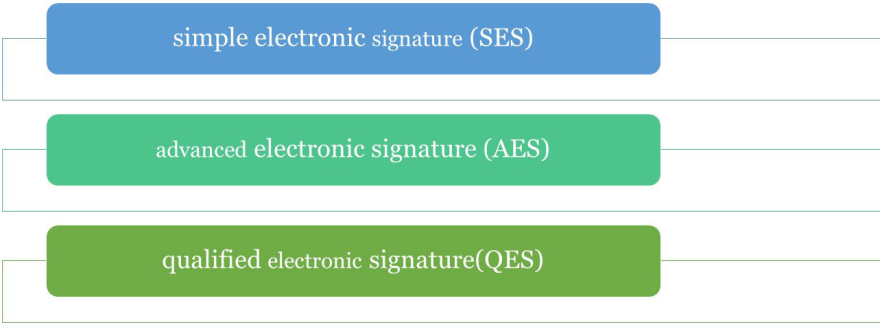

Figure 3. Types of electronic signature according to Regulation (EU) No. 910/2014

A simple electronic signature is considered the weakest type of signature in the IT sphere, as it does not require the use of means capable of guaranteeing the authenticity and integrity of the signed document. The evidentiary value of a document with a simple electronic signature can only be determined by a judge. Examples of SES can be an ATM PIN, scanned signature from paper in an e-mail, a mailbox username/password combination, etc.

Advanced electronic signature (AES) can be defined as a process, a private agreement between the parties. The person who signed can be clearly identified after signing. It guarantees the invariability of the document, the legal force and the possibility of remote signing. Unlike QES, AES does not guarantee the transfer of the burden of proof. Besides, the identification of the signer must be confirmed by AES supplier or delegate to make AES valid.

Qualified electronic signature (QES) is the most reliable type of signature from a legal perspective. It is the result of IT procedure that guarantees the authenticity and integrity, as well as the transfer of the burden of proof (by the applicant). Qualified electronic signature is based on a certificate issued by a qualified trust services provider (QTSP). It is created with a safe device such as token, smart card, and has double authentication.

The eIDAS Regulation guarantees that people and businesses can use their own national electronic identification schemes (EID) to access public services available online in other EU countries. The Regulations (European Parliament, 2014) also contributes to the creation of a European domestic market for trust services. This guarantees that they will work across borders and have the same legal status as their traditional paper equivalents. On June 3, 2021, the European Commission adopted a proposal for amendments to the eIDAS Regulation (European Parliament, 2021).

It proposes a digital identification framework with European digital identification wallets. This provides safe and easy access to different services, both public and private. The wallet maintains privacy by its design, enabling users to fully control personal data, including attributes of persons that can be disclosed through a wallet. Besides, the wallet should be certified with high security. The National Court or the EU Court of Justice cannot reject the signature (or document) on the grounds that it is electronic. However, the court should still check the formalities of execution in accordance with the EU legislation or national legislation regarding a specific document. The formalities of execution may mean that certain documents (wills) are not subject to electronic execution in some EU legal systems.

Electronic seal means electronic data that is bound with other electronic data to ensure their origin and integrity. Advanced electronic seal is uniquely related to the seal creator capable of identifying the seal creator. It is bound to the data to which it relates, so that any change of data can be detected. A qualified electronic seal (QES) means an improved electronic seal created using a device to create a qualified electronic seal. It is based on a qualified certificate for electronic seal. Electronic time stamp (eTimestamp) bounds an electronic document to a certain time, providing evidence that the document existed at that time.

Website authentication certificates (WAC) are electronic certificates that prove that the website is trustful and reliable. They guarantee that the website is related to the person to whom the certificate is issued. They also help to avoid data phishing. Delivery digital data exchange service enables the user to send the data electronically. It provides confirmation of the departure and delivery of the document and protects against the risk of loss, theft, damage or unauthorized change.

Identification of subjects is necessary for real estate contracts, easement agreements or lease agreements with a duration of more than nine years, etc. It is regulated by qualified services supplier, such as Gaya (Gayadeed, 2022). This is an application that helps companies and professionals to safely sign agreements from anywhere in the world. This is provided through the built-in video conferencing system, work processes and legally enshrined electronic signature systems. Gaya was selected in the first open eSSIF-LAB project, which is funded by the EU. It is aimed at

widespread implementation of self-sovereign identity (SSI) as a next-generation solution of digital identification. This leads to faster and more secure electronic transactions on the Internet and in real life. The use of this programme can help reduce the time and cost of an environmentally friendly way using only a personal computer and a mobile phone.

Built-in video conferencing system contributes to a full privacy and prevents personal data leakage. An important legal aspect is Gaya compatibility with electronic identification, authentication and signature governed by eIDAS. The result is the legal force of agreements signed with this platform.

Notaries play an important role in the Member States of the European Union because of their tasks and responsibilities, where the legal order is based on Latin civil law. Ireland is the only jurisdiction of EU common law. The notaries are to draw up private agreements and counsel the parties. When drawing up official documents, the notary is responsible for the legality of these documents and for appropriate advice. The task includes informing the parties about the meaning and consequences of the obligations they take on to ensure compliance with the notary acts. The Council of the Notariats of the European Union (CNUE) is the main European organization, which represents 22 national notarial chambers and more than 45,000 notaries (CNUE, 2021).

CNUE and its member notaries already have considerable experience in the field of electronic communications. This applies to the national level, where electronic communications are common, as well as to the cross-border context through different CNUE IT projects. The EU Member States are actively introducing communication systems between notaries, public administration departments and clients through electronic channels.

CNUE studies the potential impact of citizens' and enterprises' digital wallets that bound their national digital identification on the work of notaries. CNUE also considers it necessary to be extremely vigilant in terms of application and exceptions. The Council of the Notariats of the European Union ensures that the eIDAS regulation does not touch the formal national requirements for legal acts.

One of the first advantages of introducing a remote digital signature at a notary for certain documents is the possibility of doing business with clients in difficult situations. Another important advantage is speeding up the signing process when the parties are far from each other. In general, the improved remote digital signature provides a better customer experience by simplifying restrictive administrative procedures. The digital signature also makes the daily life of notaries much easier, enabling them to focus more on their core activity. For example, France has enshrined the permission to sign certified documents electronically in law since 2000. Certain notarial

documents can be signed digitally and remotely, provided that the digital signature is certified in accordance with eIDAS.

In addition to eIDAS, the Civil Code of France is the main legal instrument governing electronic signatures in France. This also applies to the assessment and certification of IT products, devices and systems used to create electronic signatures. According to French law, only QES has the presumption of reliability. This means that an electronic signature shall be considered reliable unless the party contesting the signature proves that the signature is not reliable. Unqualified electronic signatures (SES and AES) remain admissible in court if the party which tries to enter the signature can prove that the signature is reliable.

A signature is considered reliable if it clearly identifies the person who created it. It is also necessary to store it appropriately to ensure integrity. A reliable signer identification process meets the said conditions. The Civil Code of France provides that an electronic document has the same evidentiary value as a paper document, given that the reliability conditions are met. The use of electronic signatures in electronic contracts in France is growing, especially in the field of electronic commerce. The National Cybersecurity Agency of France (ANSSI) issues qualified certificates for electronic signatures in France.

Certificate-based digital signatures, such as Qualified Electronic Signatures (QES), are mainly reserved for certain regulated activities, such as notarial services, where the evidentiary value of the signature is of great importance. Remote digital signing at a notary applies to fee agreements, powers of attorney, preliminary sales contracts, private affairs and financial accounts. French law does not single out any documents or agreements that cannot be signed or executed electronically. It may, however, be necessary to sign a number of documents by a wet signature.

These include documents that create or transfer rights to immovable property related to family and inheritance law (for example, marriage certificates, wills, deeds, etc.). They can also include documents related to personal and real guarantees. The cases where documents are provided by persons acting for trade, business or professional purposes are exceptions.

France uses the central portal — service-public.fr — to access more than 900 services for electronic identification purposes. The single sign-on (SSO) solution is called FranceConnect and is used by OpenID Connect. Documentation, as well as several repositories are available online. FranceConnect enables users to connect from existing verified accounts, such as LaPoste or Mobile Connect, to these services. The digitization of notarial services does not have universal support in France: 72% of surveyed notaries believe that these innovations pose a certain threat to their activity (PriceHubble, 2021). They concern, among other things,

about the lack of familiarity, popularization of skills, standardization, fear of loss of monopoly, simplification of the notary's role, and replacement of notarial skills by other professions.

The eIDAS Regulation was implemented in Italy as Legislative Decree no. 82/2005, also known as the Digital Administration Code (DAC) (Consuleze Intermediazioni & Partecipazioni, 2005). Italy has officially announced two eID schemes: Carta d'Identità Elettronica (CIE) and Sistema Pubblico di Identità Digitale (SPID). Both options are available in the public sector. Authentication is possible through a username and password, as well as multiple options for one-time passwords, smart cards, or hardware security modules.

An electronic document (including a contract) signed by means of SES, AES and QES complies with the written form requirement, and acquires full evidential force. SES can be used for any other documents. The SES ability to meet the written form requirement and its evidentiary value may be assessed by a judge during the trial in terms of its security, integrity and inviolability. DAC (Consuleze Intermediazioni & Partecipazioni, 2005) also provides a definition of digital signature (DS). This is a special type of qualified electronic signature, which is based on a system of two cryptographic keys (public and private).

DS enables the signer with the private key and the recipient with the public key to confirm and verify the origin and integrity of the electronic document. The electronic signature authentication involves certifying by a notary that the signature was made in front of a notary. A necessary condition is a preliminary assessment of the signer identity, the validity of the used electronic certificate (if available) and the fact that the signed document does not contradict the law.

A number of acts in Italy must be performed by a notary in the presence of all parties otherwise they would be null and void. Law no. 110/2010 was an attempt to partially solve the problem of physical presence by creating an electronic public act (atto pubblico informatico) (Normattiva the Portal of Current Law, 2010). An electronic public act enables creating a document that can be signed with a digital signature (DS).

Completed electronic public documents have the same legal force as documents signed on paper. For example, documents related to extraordinary corporate agreements (mergers and acquisitions, transfers of existing enterprises) can be issued as an electronic public act. Notarial law requires the notary to physically see and appear in front of the party using the DS. In this case, the notarial authentication services can be provided in different places (with different notaries) to limit the need for movement and crowding of people. From a practical perspective, this means that an electronic public act can be signed using DS in front of a notary public at Location 1.

It must then be sent (by email) to Location 2, where the other party can further sign it using DS. In this case, the second notary public completes the case. Some notarial documents are still signed with wet ink. They are sent to state administration departments electronically after certification by a notary public. In Italy, there were 280,532 notarial contracts, for example, on the purchase and sale of real estate and any other exchange of property and equipment for a fee in Q4 of 2021 (+0.5% compared to the previous quarter and +14.4% annualized) (Istat, 2022). Such a number of contracts indicates the need for further development of the procedure for electronic recording of notarized agreements.

The current European trend is the widespread use of authentic digital power of attorney. The electronic signature is used to sign not the notarial act itself (for example, the purchase agreement or the founders' agreement), but the authentic power of attorney. This document is used by the involved party to issue a notary power of attorney, for example, to a notary public, to sign the actual act on their behalf.

The use of an authentic power of attorney remotely is a new and great leap in the digitization of the notarial services. For example, a relevant initiative was enshrined in the legislation of Belgium, which contained various provisions on justice in the context of combating the spread of the COVID-19. The draft law amends the current Law on Notary of 16 March 1803 (JUSTEL, 1803) and provides for the possibility of issuing electronic powers of attorney. Additional conditions shall apply when issuing such a power of attorney remotely.

All parties involved must appear before the notary via video conference, the parties must identify themselves and sign the power of attorney electronically. Besides, issuing a digital power of attorney via video conference is free of charge for the parties involved. In this case, the notary signs the act with his/her electronic identity card. By the way, Belgium was one of the first countries to implement electronic identification (eID). At first, eID was originally based on an ID card, and later evolved into a federal authentication service. A relevant private mobile solution is supported in addition to the state eCard. It is bound with smartphones and SIM cards using security features. The programme is available for iOS, Android and Huawei. Belgium provides more than 800 services through its central portal belgium.be.

Drafting a will by a notary requires personal contact between the notary (and/or witnesses), on the one hand, and the testator, on the other. This means that the will cannot be executed by proxy. In the Netherlands, the physical presence requirement has been temporarily replaced with remote notarization and/or remote testimony using audio-video technologies (Overheid.nl, 2020). The notary must be able to establish the testator's identity and communicate with the testator using audio-video technical

means. He/she must add to the notarial act that it is impossible for the testator to sign the deed, and indicate the way the testator appeared before him/her.

The notary must verify the testator's legal capacity and must establish that the will constitutes the testator's final wishes. The testator may lack of mental capacity to declare the will, or the undue influence of third parties makes the notarized will objectionable or even invalid. This also means that the testator must not be influenced (coerced) by a third person in the same room. This notarial act should be used only if any other options are absolutely impossible. The Dutch law prescribes that a notary public certifying notarial acts can only be a notary public appointed in the Netherlands in accordance with the law of the Netherlands.

On October 01, 2021, the Portuguese Chamber of Notaries held a seminar on future challenges of digital identification in notarial practice and experiences of the Member States (CNUE, 2021). The notaries in 22 Member States learned about different experiences of digital identification in Europe at this event. The European Notarial Network (ENN) held a meeting in Paris on May 3, 2022. The ENN meeting was aimed at discussing and finding solutions to the problems the European notaries face when solving cross-border issues.

An important task of the meeting was to identify and implement actions to support Ukrainian notaries and Ukrainians in need of legal support, such as war refugees. CNUE and ENN are working to create a network of notaries for Ukraine that can be mobilized to respond to specific requests. A number of practical tools are also being developed. This includes bilingual forms to help minors, the addition of "Ukraine" pages to CNUE information sites, and frequently asked questions guide for notaries.

The current legislation of Ukraine provides that a legal transaction is an act of a person with a purpose of acquiring, changing or terminating civil rights and obligations. The Civil Code of Ukraine stipulates that a legal transaction executed in writing shall be notarized only in cases established by law or by agreement of the parties (Verkhovna Rada of Ukraine, 2003). The legal transaction shall be notarized by a notary public or another official who is entitled to perform the notarial act by law. Notarization involves certification on a document containing the text of the legal transaction (Verkhovna Rada of Ukraine, 1993).

Only the agreement that meets the general requirements established by the legislation of Ukraine shall be notarized. The content of the agreement shall not contradict the Civil Code (Verkhovna Rada of Ukraine, 2003), other civil law acts and moral principles of society. The person who commits the legal transaction must have the necessary civil capacity, and the agreement itself must be executed in the form prescribed by law. The

procedure established by law regulates the performance of notarial acts using a qualified electronic signature, seal or other means of electronic identification (Verkhovna Rada of Ukraine, 2017). Despite the mentioned opportunities, the wide use of digital signatures in notarial services is procedurally limited, because it is not allowed to perform a notarial act in the absence of persons (Verkhovna Rada of Ukraine, 1993).

The introduction of the Diia signature (remote digital signature) makes the use of an electronic signature much easier and more convenient in Ukraine. The traditional process of obtaining an electronic signature involves collecting the necessary documents. It is followed by the registration in one of the certification centres, visiting the certification centre and, finally, creating an electronic signature with the help of the centre's employees.

This takes less than ten minutes on the user's smartphone in Diia application. Besides, Diia provides an e-signature generation service and a convenient way to use it through a facial recognition instead of conventional passwords when signing electronic documents. Validation and authentication are mandatory. As of November 2021, the ease of use of this service has resulted in 6 million generated signatures and 327,000 transactions with a 97% success rate (E-Governance Academy, 2021).

The Diia signature is used for public and private services, e-commerce, banking and financial services. The Diia signature can be used for government services, online banking, and electronic document management services. One part of the key is stored on the user's phone, and the other — in a special secure cloud storage.

In 2022, notaries who are on the official list approved by the Ministry of Justice of Ukraine can perform registration acts in view of a full-scale Russian invasion. The Notary Chamber of Ukraine (NCU) has created a register of notaries of Ukraine who continue to work and provide services in the wartime. The NPU was also involved in the creation of a chatbot to search for notaries in Telegram.

During martial law and within one month from the date of its termination or cancellation, notarial acts in Ukraine shall be performed with due regard to the relevant features (Cabinet of ministers of Ukraine, 2022). For example, during martial law, the term for accepting an inheritance or refusing to accept is suspended. The range of authorized officials who can certify wills and powers of attorney, which are equivalent to notarized documents, has also been expanded. Uncompleted notarial acts at the request of a person related to the aggressor state are terminated. This does not apply to particular cases regarding, for example, certification of a testament of a prisoner of war.

As of June 23, 2022, 34 (5%) state notary offices and 103 (2%) private notary offices were damaged (National Council for the Recovery of Ukraine from the Consequences of War, 2022). A total of 80 (12%) public notary offices and 316 (6%) private notary offices are located in the temporarily occupied territory. Accordingly, communication with them has been lost. Notaries provide their services in Ukraine offline under these conditions, archive files are stored on paper. A comparison of the number of certified transactions (real estate contracts) for QII 2021 (Ministry of Justice of Ukraine, 2021) and 2022 (Ministry of Justice of Ukraine, 2022) in Ukraine shows that the number of certified transactions (real estate contracts) decreased 6.5 times in the corresponding periods (Table 1).

Table 1. Analysis of indicators of notarized transactions in Ukraine for QII 2021 and QII 2022.

Item No.	Indicator	Total transactions (real estate contracts) certified by public and private notaries for Q II 2021	Total transactions (real estate contracts) certified by public and private notaries for Q II 2022
1	**Real estate alienation agreements (except for land plots, as well as land shares**	**125,206**	**18,152**
1.1	Sales contracts	85,388	10,681
1.2	Contracts of barter	744	61
1.3	Deeds of gift	31,865	5,997
1.4	Life care contract	485	174
1.5	Donation agreement	27	4
1.6	Rental contracts	8	0
1.7	Other real estate alienation agreements	6,689	1,235
2	**Land plot alienation agreements (including agricultural land plots), as well as land shares**	**87,544**	**14,296**
2.1	Sales contracts	70,388	11,060
2.2	Contracts of barter	1,419	37
2.3	Deeds of gift	15,574	3,155

2.4	Other land plot alienation agreements (including land shares)	163	44
3	**Total notarised transactions (real estate contracts)**	**212,750**	**32,448**

Source: own creation.

Despite current difficult situation, Ukraine directs its efforts to the implementation of innovative solutions, in particular in the field of notarial services. This will help the country move to a digital economy, which correlates with the choice of most EU countries. Ukraine has started the introduction of the electronic notary — Nota. The first stage of the project is the creation of notarial documents with a QR code, which can be verified through the QR scanner in Diia application. Notaries can use the QR code to create the following documents: a power of attorney, a car rental agreement, a signature authenticity statement. Only those notaries who have access to the Unified State E-Notary System can create a document with a QR code.

The draft Ukraine's Recovery Plan (National Council for the Recovery of Ukraine from the Consequences of War, 2022) provides a special place to the development of the notarial services, which is a body of undisputed civil jurisdiction and preventive justice. Digitization of the notarial services involves the creation of the Unified State E-Notary System, the implementation of an electronic notarial document that is equally valid as a paper one.

It is very important to digitize the notary's paper archive and create an electronic notary archive. The Ukraine's Recovery Plan also provides for the registration of wills registered in Ukraine in foreign states (the EU Member States).

It is proposed to perform notarial acts without the use of special forms for notarial documents. A promising direction is the development of the technology for performing notarial actions remotely through communication means. Modernization of the notarial services involves optimization of the procedure for termination of notarial activity and its subsequent registration, creation and management of electronic registration/personal files of notaries (National Council for the Recovery of Ukraine from the Consequences of War, 2022). The introduction of an electronic certificate of the right to engage in notarial activity takes a special place in the modernization. Another innovation is planned: granting the right to private notaries to create notary offices/bureaus operating as a bar association.

4. Discussion

It can be stated that the digitization of information was triggered by the evolution of technological developments. As a result, legal systems are also subject to such changes and must be studied in the light of digital law. Notarial practice requires the adaptation of traditional functions to current conditions in order to ensure adequate decisions without compromising legal certainty and fairness (Carrera, 2022).

But the researcher emphasizes that the resources provided at the current level of technological development are limited in terms of potential. Technology should associate with the professions used to provide innovative solutions to emerging challenges. In practical terms, the law-related professions need updating. Notaries must learn and research digital law (Carrera, 2022).

It turned out that many old laws do not provide for modern technologies. Therefore, they do not provide clear answers as to whether the form requirements can be met electronically. But the need for written evidence in the form of real acts is growing in connection with the increasing demands for legal certainty in various economic and social relations (Widyantoro *et al.,* 2022). Electronic records and signatures offer notaries many advantages over conventional paper document management. This includes speed, cost savings, convenience, easier search and analysis, cheaper archiving and retrieval, and automation of storage and disposal (Jia and Li, 2022).

It also includes additional options to protect authenticity, integrity, better evidence and identification, scalability options. According to researchers, electronic signatures can clearly indicate the true identities of both parties in electronic documents, ensuring the security of the document transfer process and non-failure. But many different form requirements apply in many cases and jurisdictions to particular transactions, documents and signatures (Determann, 2021). The researcher believes that the legal and political uncertainty hinders the adoption of electronic signature products and the global harmonization of current legislation.

It can be stated that the introduction of remote identification and remote notarization leaves the existing types of wills of a particular jurisdiction in their current form. At the same time, enshrining these possibilities in legislation preserves legal certainty (Biemans, 2021). According to the researcher, the introduction of audio-video technologies in the preparation of wills in the Netherlands appears to be a logical step forward in the 21st century.

Belgium has also implemented a digital power of attorney for a more simplified use of notarial services (Beuker *et al.*, 2019). The positive side of the COVID-19 pandemic for Belgium was also the acceleration of the main

digitization process in the field of notarial services, which will contribute to the sustainable recovery of this industry (Humaira and Latumeten, 2022).

It can be concluded that it is necessary to ensure the continuity of the protection of rights and freedoms in the civil process during martial law. This is why it is extremely important to improve the legislative norms of Ukraine in these conditions, in particular, regarding the expansion of the procedural capabilities of notaries (Karmaza, 2022).

It can be stated that the procedure for performing notarial acts in relation to transactions with the involvement of a foreign party is an urgent problem. Such acts of the notary are closely related to the protection of individuals and legal entities in Ukraine (Samsin *et al*., 2021). According to researchers, the use of ICT by notaries can simplify the process and help avoid subjective mistakes. This will help to open up new opportunities for simplifying transactions that involve foreign parties in Ukraine.

It can be stated that the notarial services in Ukraine are being in the dynamic development and improvement of both the system itself and the notarial services in general. The introduction of electronic notarial services is a rather urgent issue and needs to be implemented as soon as possible. The main goal of the electronic notarial services is to transform it into the most accessible and convenient institution (Apalkova, 2021). According to the researcher, the development of digital technologies should focus on the introduction of electronic registers to speed up the execution of notarial acts.

Conclusions

In the EU countries, the notarial practice of declaring will in civil transactions is aimed at ensuring a proper balance. It is necessary between the interests of the state in implementing the digitization of the notarial process, on the one hand, and the interest of citizens in receiving quality services, on the other.

The deployment of eIDAS means a higher level of security and greater convenience for online services in the EU notary system. Remote authentication, electronic archiving, long-distance video conferencing, and electronic identification have become more predictable. Appropriate actions improve standardization opportunities and reduce variations and deviations. All of the above also contributes to the sustainability.

Any form of electronic signature may be used to sign transactions unless expressly prohibited by the law of an EU Member State. Some Member States provide that wills, trusts, powers of attorney and any agreements normally signed by a notary cannot be signed with an electronic signature.

A qualified signature provides a higher level of security by providing electronic evidence, which is guaranteed by a digital certificate. The European provider of qualified services — Gaya — is worth mentioning. An important legal aspect is Gaya's compatibility with electronic identification, authentication and signature regulated by eIDAS. The result is the legal force of the agreements signed with this platform.

The notarial practice of declaring wills in civil transactions of the EU countries indicates the gradual digitalization. According to French law, the parties are free to determine the form of their contract, that is the manner of signing it. Documents in the field of family and inheritance law that require a so-called "personal signature" cannot be signed with an electronic signature. Belgium introduced digital power of attorney for more simplified use of notarial services.

In the Netherlands, the requirement of physical presence of a notary and/or witnesses has been replaced by the use of audio-visual equipment for authentication of the testator's last will. The introduction of an electronic public act in Italy during the performance of notarial acts is worth mentioning. But it can also be stated that the notaries of the EU countries have fears that these innovations pose a certain threat to notarial practice.

Despite the war in Ukraine, the notarial practice in the country is being developed and improved. The international experience of European countries can help in the exchange of effective practices and improvement of the national legislation of Ukraine in the notarial field.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 100-115
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Missions of the Russian Orthodox Church as a Tool of Diplomacy: from History to the Present

DOI: https://doi.org/10.46398/cuestpol.4176.05

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Abstract

The aim of the article was to determine the role of the missionary activity of the Russian Orthodox Church in the context of its historical-political development. The methodological basis of the study meant a comprehensive interdisciplinary approach using systemic, civilizational, historical-chronological and structural-functional methods, as well as the method of comparative analysis and institutional approach. The results obtained allow us to conclude that, in the modern world, the Russian Orthodox Church has been noted for its active participation in missionary activity, which has also set itself the goal of spreading the ideas of the 'Slavic' or 'Russian world' among the peoples of Asia and Africa. The spiritual values preached through the missionary work of the Russian Orthodox Church, taking into account its contribution to the Russian state and culture, are gradually becoming the basis for popularizing the Russian national idea, which is dialectically positioning itself as the main civilizational vector of the international policies of the Russian Federation. Thus, the Russian Orthodox Church has a rather strong influence on the formation of the image of the Russian Federation in the eyes of the world community, this is so, in part, due to its spiritual missions.

Keywords: Russian Orthodox Church; Russian Federation; religion and politics; missionary work; Orthodox mission.

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Recibido el 12/11/22 Aceptado el 26/12/22

Misiones de la Iglesia Ortodoxa Rusa como herramienta de la diplomacia: de la historia al presente

Resumen

El objetivo del artículo fue determinar el papel de la actividad misionera de la Iglesia Ortodoxa Rusa en el contexto de su desarrollo histórico-político. La base metodológica del estudio significo un enfoque interdisciplinario integral que utiliza métodos sistémicos, civilizacionales, histórico-cronológicos y estructural-funcionales, así como también el método de análisis comparativo y el enfoque institucional. Los resultados obtenidos permiten concluir que, en el mundo moderno, la Iglesia Ortodoxa Rusa se ha destacado por su participación activa en la actividad misionera, que se ha fijado además el objetivo de difundir las ideas del 'mundo eslavo' o 'ruso' entre los pueblos de Asia y África. Los valores espirituales predicados a través de la obra misional de la Iglesia Ortodoxa Rusa, teniendo en cuenta su contribución al Estado y la cultura rusa, se están convirtiendo gradualmente en la base para popularizar la idea nacional rusa, que se está posicionando dialécticamente en el principal vector civilizatorio de las políticas internacionales de la Federación Rusa. De modo que, la Iglesia Ortodoxa Rusa tiene una influencia bastante fuerte en la formación de la imagen de la Federación Rusa a los ojos de la comunidad mundial, esto es así, en parte, debido a sus misiones espirituales.

Palabras clave: Iglesia Ortodoxa Rusa; Federación Rusa; religión y política; obra misional; misión ortodoxa.

Introduction

Globalization and geopolitics require key players in international politics to expand the use of foreign policy tools. Despite global trends towards the secularization of modern society, the religious factor continues to play an important role in it, increasing its influence. This is because of the increasing importance of cultural factors in shaping world politics due to the emergence of a certain ideological vacuum after the crisis of communism.

If during the Cold War the world was divided into ideological groups, now other values are coming to the fore: the historical past of peoples, religions, languages, belonging to certain cultural groups, nations, and civilizations. Thus, the religious factor in the former 'oasis of communism' – the Russian Federation, acquired a new breath, which was lost after the arrival of the Bolsheviks. The Russian Orthodox Church (ROC), as the religion of the majority, began to play not only an important religious,

cultural and spiritual role in the life of the Russian state, but also a political role.

To achieve its own foreign policy goals, many of which are intertwined with state ones, the ROC uses a variety of tools. Among the latter, Orthodox missions play an important role as a means of promoting the geopolitical projects of the 'Orthodox world' and the 'Russian world'. Thus, missions, to a certain extent, contribute to implementing of the geopolitical plans of the state. For example, the missions of the ROC, despite the specificity of their functions and declared independence, are forced to take on a certain burden in the work of the mechanism of foreign state activity.

In turn, the government of the Russian Federation supports these institutions at the state level. There are indirect forms of state influence on programs carried out by religious organizations abroad, relying on which the Russian Federation implements its pragmatic line outside the country. It should be emphasized that most often this is precisely the indirect impact in the form of tax benefits to missions, protection under the slogan of the right to freedom of conscience of the interests of specific missionaries or projects carried out by them, pressure on the legislative institutions of the country through international human rights and religious organizations in order to change objectionable legal acts, etc. At the same time, the effectiveness of such an impact is determined by the real political and economic potential of the state.

1. Research Objectives

Noting the strengthening of the role of religious missions in modern international politics, the authors are convinced that the Russian Orthodox Church is also actively restoring the religious and political role in the foreign policy of the Russian Federation. Thus, *the purpose of the study* is to determine the role of the missionary activity of the ROC in the context of its development.

Based on the goal, the following tasks need to be solved:

- to determine the features of the genesis and development of the Russian Orthodox Church missionary activity;
- to characterize the main areas of activity of the Russian Orthodox Church missionaries in the Russian Empire era;
- to consider the current state of the Russian Orthodox Church missionary work;
- to identify the political aspects of the Orthodox missionaries' activities.

At the same time, the *object of the study* is the Russian Orthodox Church missionary activity, both in the past and in the present.

2. Methodology of the research

Since the topic is historical and political science in nature, when writing the article, the authors were guided by an interdisciplinary approach, using both general scientific methods (analysis, synthesis, concretization, generalization) and traditional methods of historical analysis (historical-typological, comparative-historical, historical-functional), and the political science tools (comparative analysis, theory of political systems, structural-functional, etc.).

The fundamental principles of the study were historicism, scientific character and objectivity.

Thus, the historical method made it possible to consider the stages of evolution of the Orthodox mission in the Russian Empire, and the chronological approach made it possible to fix the sequence of evolution of Orthodox missions in a time continuum; the structural-functional method made it possible to study the Orthodox Ecclesiastical Mission in the complex of its fundamental principles; system analysis made it possible to approach the subject of research in a complex and multidimensional way, and to establish the relationship and interdependence of the studied phenomena. An important place is occupied by the institutional approach, since the Russian Orthodox Church is seen as a single institution, and the mission is its element.

The use of this methodological tools made it possible to fully and objectively to solve this problem.

3. Results and Discussion

3.1. The historical tradition of using Orthodox missions in the diplomatic activity of the Russian Empire

The history of missionary service gives us a good opportunity to trace the formation of this type of activity, and to compare the characteristics of missions that existed in different periods of social development. Thanks to the missionary activity of the ROC, Orthodoxy has established itself among many tribes and peoples living in its modern canonical territory.

Until 1917, this organization carried out its external mission among the non-Christian peoples of the Russian Empire in Siberia and the Far

East, and outside the empire, in particular, in Japan, China, Korea, North America, and Palestine. Most of the missions originated as diplomatic missions of Russia, which we will try to consider using the example of some ecclesiastical missions.

The creation of the Russian Ecclesiastical Mission in China was caused by the needs of the Russian state in the development of relations with the countries of the Far East. Officially, the Russian Ecclesiastical Mission in China was founded by the Holy Synod of the Russian Orthodox Church in 1713. The first chairman of the Beijing Mission (1713-1717) was a Ukrainian (a native of Chernihiv), a graduate of the Kyiv Theological Academy, Archimandrite Ilarion (Lezhaiskiy) (1657-1717) (Pan, 2000; Medvedev, 2000).

The legal basis for the existence of an Orthodox mission in China (its location, status, composition, content) was recorded in the Kyakhta (1727) and Tientsin treaties (1858).

In 1864 the Mission was divided into ecclesiastical and diplomatic. Until 1858, the Mission was maintained at the expense of the Qing and Russian states. After the conclusion of the Tientsin Treaty, funds were released only from Russia (Shubina, 1998).

The functions of the Russian Ecclesiastical Mission in Beijing were as follows: 1) religious propaganda (the activities of the mission to spread Orthodoxy in China), 2) diplomatic (the mission played the role of an unofficial Russian diplomatic representation in China), 3) research (with the activities of members of the mission great successes in Russian sinology are connected).

From 1744 to 1864, the missionaries carried out instructions from the Collegium of Foreign Affairs (since 1819, the Asian Department of the Ministry of Foreign Affairs). All instructions, appointments, and transfers in the mission were carried out by the Ministry of Foreign Affairs, informing the Synod of its activities. The duties of the Russian resident in China were performed by the head of the mission, archimandrite.

All members of the Mission (persons of the clergy, students, doctor, painter) were to collect political, trade, economic and military information about China. Special hopes were placed on the doctor and the painter:

> Thanks to their work, the Mission can provide various services and favours to Chinese dignitaries and other persons that we need, and mutually expect services from them (Shubina, 2010: 190).

The methods of obtaining information were different and were of a constant and objective nature: through acquaintance with influential people and officials of the Tribunal, through bribery or intelligence under the guise of spreading Orthodoxy.

Of particular note are the activities of such missionaries as Avvakum (Chestnoy), Guriy (Karpov), Palladiy (Kafarov), Polikarp (Tugarinov) and diplomats: K.G. Krymskiy, A.A. Tatarinov. Returning to Russia, the former missionaries served as interpreters for the Asiatic Department of the Ministry of Foreign Affairs.

When in the middle of the XIX century England, France and the United States sent their residents to China, then Russia did the same in 1860. And then the question arose about the division of the spiritual and diplomatic functions of the mission.

From 1864, the Mission was engaged exclusively in ecclesiastical affairs and gradually ceased to play a political role, although Russian ambassadors and diplomats continued to use the Mission's connections in China (Trygub, 2015).

The mission was closed in 1954, five years after the Chinese Revolution. At present, the Russian Federation Embassy in China is located on the territory of the Mission.

In 1794, the Russian Ecclesiastical Mission in America was established. The reasons for its emergence were the active development of merchants and crafts in Alaska. In 1784, Grigoriy Shelekhov, founder of the famous Russian-American Company, landed on Kodiak Island, on the southern coast of Alaska in the Gulf of Alaska. One of Shelekhov's ideas was the spread of Christianity among the natives of the newly discovered lands.

He built a church on Kodiak Island, founded a school and personally baptized many Aleuts. Subsequently, together with his companion I. Golikov, he sent a petition to Empress Catherine II and the Holy Synod to send missionaries to this region. The petition was granted, and a mission of eight monks headed by Archimandrite Ioasaph (Bolotov) arrived on Kodiak Island on September 24, 1794 (Grigoriev, 1988).

During the first two years of their activity, the missionaries baptized 12,000 natives and built several chapels. In 1867 Russia sold Alaska to the United States. An agreement was reached between the two states on the recognition by the United States of the property and rights of the Russian Orthodox Church in the territory of Alaska. In 1870, the Holy Synod created a separate diocese of Alaska and the Aleutian Islands.

As a result, a separate Orthodox church structure was organized and brought to the threshold of the New World, and after the separation of Alaska from the Russian Empire, it took root there. Over the course of its short history, the Russian Ecclesiastical Mission in America managed to expand in Alaska not only the influence of the Russian Orthodox Church, but also the influence of the Russian state.

Ecclesiastical Missions of the Russian Orthodox Church were also opened in Korea and Japan in the second half of the 19th century.

After the signing of the Russo-Japanese Treaty of Shimoda on February 7, 1855, Japan opened its doors to Russia. According to the Shimoda Treaty, a consulate was opened in Hokkaido, and Russian ships received the right to enter the ports of Shimoda and Nagasaki. According to the Edos Treaty 1858, a permanent Russian diplomatic mission began to operate in the Japanese capital.

In 1859, the first Russian consul in Japan, I.A. Goshkevich requested the Holy Synod to appoint a new priest to the church in Hakodate (Hokkaido Island). He could be useful not only for his ecclesiastical activities, but also for his scientific work (in addition to missionary work, the priest had to perform reconnaissance and cognitive work – learn the Japanese language, get acquainted with the history and geography of the Japanese islands, understand the mentality of the Japanese, etc.).

Ivan Dmitrievich Kasatkin (1836-1912) was appointed missionary priest, later – Hieromonk Nikolai. On July 2, 1861, he arrived in Hakodate, where in the first years he independently studied the Japanese language, culture and life of the Japanese and dealt with organizational issues for the opening of the Russian Orthodox Church. To 1870, the Orthodox community numbered more than 4,000 people, and by 1912 – about 33 thousand people and 266 Orthodox communities.

On January 14, 1870, the Russian Orthodox Church decided to form the Russian Ecclesiastical Mission. In 1872, the headquarters of the mission was opened in Tokyo, where the first Episcopal department of the Japanese Orthodox Church was founded eight years later (Yakovlev, 2001).

1890s – early 20th century were the most fruitful years of the Mission's activity. Since 1882, when the seminary's first graduation took place, dozens of well-educated young people have regularly poured into Japanese public life. Many graduates of the seminary later became major translators and laid the foundations of Russian studies in Japan. This was facilitated by the fact that the mission sent the most capable students to continue their education in Russia. Among the most famous are Konishi Masutaro, Nobori Semu and others.

During the Meiji period, the school graduated about a thousand people. Among them were the future professor of St. Petersburg University Yoshibumi Kurono, the writer Goro Amada, the author of the Constitution of 1889 Takusaburo Goro, the mayor of Yokohama Kensuse Ando, the governor of Osaka Nozomu Nakagawa, the Minister of Education Hichisaburo Hirano and many others who influenced all spheres of Japanese culture and, thus, Russian impact on the Japanese government and society increased.

At the beginning of the twentieth century in the seminary at the Ecclesiastical Mission, they began to train military translators, graduating annually from 5 to 10 people.

After the turbulent times of civil confrontation, the political role of the Japanese Ecclesiastical Mission was completely lost, and after 1945 it fell under the control of the Russian Orthodox Church Outside of Russia (ROCOR).

No less important for the development of the Far East was the Ecclesiastical Mission in Korea, which was founded by the decree of the Synod of July 2-4, 1897. This Far Eastern country received formal independence from China under the Treaty of Shimonoseki in 1895, and on October 12, 1897, the Korean king Gojong proclaimed himself emperor. With the development of Russian-Korean relations, the need gradually arose to create a church representation at the Russian diplomatic mission in the country.

The task of the mission would include taking care of the Russian Orthodox living on the Korean Peninsula, and missionary preaching among the local population. Founded on the initiative of the Minister of Finance S.Yu. Witte and financed personally by Emperor Nicholas II, the Korean Mission was supposed to ensure the political influence of Russia in the country through missionary and cultural activities.

In the middle of 1899, the first employee of the Ecclesiastical Mission, Hierodeacon Nikolai (Alekseev), settled in Korea. At the beginning of January 1900, head of the Mission Archimandrite Khrisanf (Shchetkovskiy, 2012) arrived in Seoul, appointed by the decree of the Holy Synod of September 7, 1899. On February 17, he consecrated the house church of the Holy Martyr Nicholas the Wonderworker at the Russian embassy, in the envoy's apartment.

The new Mission did not yet have its own premises, and the Russian envoy to Seoul, Aleksandr Pavlov, placed at its disposal the building of the former Russian-Korean bank (Shchetkovskiy, 2012).

As a result, in the first years of the Mission's existence, it developed quite rapidly and successfully. Chief Procurator of the Synod K. Pobedonostsev in his report for 1900 stated with enthusiasm: "The success of the Orthodox mission in Korea can now be considered quite assured... Orthodoxy here can be established and spread..." (Pobedonostsev, 2003: 264).

The further military-political defeats of Russia in the Far East made a cardinal impact on the development of the mission. After the defeat of Russia in the Russo-Japanese War (1904-1905), Russian political influence in Korea was almost completely lost, since in November 1906 this country was forced to recognize a Japanese protectorate over itself, and on August

22, 1910, Korea was completely annexed. From 1906 to 1917, the Russian colony in Seoul was limited to the consulate, Mission staff and about 10-20 merchants (Shkarovskiy, 2009).

The revolutionary events of 1917 and the further loss of ties with Russia greatly complicated the activities of the Korean Ecclesiastical Mission, which eked out a miserable existence. In those difficult conditions, there is no need to talk about any political and religious influence of the Mission, although it became a refuge for many thousands of Russian emigrants in Korea. The Mission finally ceased to exist during the Korean War (1950-1953) (Russian Ecclesiastical Mission in Korea, 2019).

The Russian Ecclesiastical Mission in Jerusalem, which was founded in 1847 and continues to operate to this day, played a great role in strengthening the position of the Russian Empire in the Middle East. In 1847, Emperor Nicholas I approved the foundation of the Russian Ecclesiastical Mission in Jerusalem, headed by Archimandrite Porfiriy (Uspensky). The Mission worked in close cooperation with the Asian Department of the Ministry of Foreign Affairs of the Russian Empire.

Over time, a number of new Russian institutions were founded in the Holy Land, to which many of the initial functions of the Ecclesiastical Mission were transferred. In 1856, an agency of the 'Russian Society of Shipping and Trade' was established in Jerusalem, which carried out the delivery of pilgrims from Russia. In 1858, the Russian consulate was founded, which took over diplomatic functions. Thus, gradually the interaction between the Russian consulate and the Ecclesiastical Mission was reduced to almost zero. The Mission began to perform an exclusively religious and ecclesiastical function.

In 1914 the First World War interrupted the activities of the Mission. In 1919, after the occupation of Palestine by Great Britain, the Russian monks returned to Jerusalem, but communication with Russia was interrupted and the Mission was deprived of the protection of the State, most of the former sources of material assistance disappeared (Zaitsev and Lukyanov, N.d.; Russian Ecclesiastical Mission in Jerusalem, 2015).

Attempts by the Soviet Government and Moscow Patriarch Aleksey I in the second half of the 1940s to revive the former role of the Mission in Jerusalem in order to "increase influence on the Eastern patriarchates" (Shkarovskiy, 1999: 288) was unsuccessful. The reason for this was a sharp drop in the interest of the USSR leadership in the foreign policy actions of the Russian Orthodox Church in the Middle East.

3.2. The Orthodox mission of the Russian Orthodox Church in international relations at the present stage

The fall of the communist regime gave a 'second wind' to the missionary tradition of the Russian Orthodox Church. At the same time, both internal and external missions began to actively develop. According to the definition of the Council of Bishops in 1994 'On the Orthodox Mission in the Modern World', in February 1995 a working group was formed to plan the revival of the Orthodox mission of the Russian Orthodox Church in its canonical territory.

After the development of the concept in December 1995, by decree of the Patriarch and the determination of the Synod, a missionary department was formed, headed by Archbishop Ioann. The tasks of the department were determined by the provisions of the "Concept of the revival of the missionary activity of the Russian Orthodox Church'; in accordance with the main areas of activity in the department, sectors were created: information-analytical, methodological, rehabilitation, apologetic and publishing" (Shkarovskiy, 2018: 84).

The last three decades have also significantly intensified the missionary activity of the Russian Orthodox Church abroad. In many European countries, the number of parishes of the Russian Orthodox Church has increased several times, and in some places these parishes were created for the first time. For example, the presence of the ROC in Portugal, Germany, Japan, China, South Korea, etc. has increased.

The most important task of the missionary strategy is to identify key regions in the country where it is most expedient to conduct activities. It is believed that the idea of key points and zones that allow controlling large areas of space was introduced into geopolitics by military-strategic theories. At the same time, long before its theoretical formulation by geopoliticians, missionaries for many centuries built their work, basing it on a similar principle.

Roland Allen, in his book 'Missionary Methods: St. Paul's or Ours?', drawing on the experience of his predecessors, singled out this element as one of the most important in missionary practice. In his opinion, even the Apostle Paul founded his churches in places that were centres of world trade.

These settlements were not only the centres of a certain territory, but geographical points within a circle that outlined even wider areas that: "represented something more than themselves, and peered into wider distances than a provincial town, completely immersed in their petty interests" (Allen, 1993: 35). This rule is recommended to be adopted without hesitation, since it is part of the strategic plan 'attack on the whole country'.

On a global scale, entire countries or regions of the Earth are allocated for the implementation of large-scale missionary projects (Trofimchuk and Svishchev, 2000).

For the Russian Orthodox Church, Orthodox missions can introduce into their civilizational territory international institutions that represent Russian spiritual values. Missionaries not only spread religious views, but also prepare the ground for territorial claims, changes in religious and spiritual values and landmarks of the local community.

The religious factor can be actively used to try to join Russia with territories that have little connection with the center. That is why missionary work, as a phenomenon, for quite a long time was a way not only of church preaching, but also of the development of new territories and their voluntary bringing into the borders of Russia and the Russian Empire (Trygub, 2007: 80-81; Trygub, 2014).

At the same time, some researchers note a close relationship between the political goals of a secular ruler and the activities of the Church. Missionary work, which is a natural cultural and historical phenomenon, is becoming one of the instruments of influence on the political direction of social transformations.

Based on the chosen methods of missionary activity (method of presence, political approach, social evangelism, apologetic, ideological, nationalist approaches, methods of counter-mission and false mission), in parallel with the mission, certain foreign and domestic political goals of the state can be carried out, the effectiveness of achieving which is directly related to the effectiveness of activities missions (Isaev and Isaeva, 2013).

In the realities of the modern world, the most significant goal of the Orthodox mission is the preaching of the Gospel, which should lead not only to the growth of adherents in the missionary territory, but also to the possibility of creating a local church or diocesan unit. The implementation of this goal not only expands the spiritual influence of the ROC, but also pursues political goals. As the modern researcher O. Tserpitskaya points out:

> Through the adoption of faith, people increase their desire to know the country where this faith is widespread, to familiarize themselves with its culture and history. Thus, the number of supporters of a particular country (in our case, the Russian Federation) is growing, its Diaspora is being strengthened, and, given modern political traditions, favorable ground is being created for lobbying its interests (Tserpitskaya, 2010: 84).

Achieving the goals and objectives set for the Orthodox mission is achieved by a certain set of methods that are used by missionary institutions.

Methods can be classified as follows (per O. Tserpitskaya):

1. incarnation approach: the use of the local language and the ordination of representatives of the local population;
2. method of presence: arranging one's life among the indigenous (non-Christian) population and influencing it by personal example;
3. political approach: reliance on the support of State Power (it is extremely rare in its pure form);
4. "Social evangelism" ("social evangelization") (Tserpitskaya, 2010: 85).

We are primarily interested in the political approach, which is used both in the domestic and foreign policy of the state. The political approach is usually used in long-term projects of the state and is aimed, as a rule, at strengthening its own influence in a particular territory. In this regard, I would like to give a definition of missionary work from the point of view of the categories of geopolitics of Russian researchers M. Trofimchuk and M. Svishchev: 'Missionary activity is one of the forms of exercising civilizational control over space.

The missionary creates not only a new cult, he changes the mentality of the people' (Trofimchuk and Svishchev, 2000). Thus, missionaries and missions are given an important place in the implementation of the geopolitical plans of states in the direction of spreading their civilizational influence.

If we consider the modern 'geography' of the opening of churches and missions of the Russian Orthodox Church in the world, then, apparently, it is appropriate to talk about the continuation of traditions: in almost every state where the Russian Federation had one or another diplomatic mission or at least foreign policy interest, the Moscow Patriarchate opened its representation, activating the missionary role. It should be noted that almost all foreign institutions of the ROC work according to a single scheme, taking into account the national characteristics of the host countries.

Among the priority regions of Orthodox messianism are Africa, Asian countries, Central and South America, Australia and New Zealand. At the same time, it is necessary to make a reservation that the ROC cooperates in this direction with other Orthodox patriarchates.

Orthodox missionaries achieved the greatest success on the African continent. To date, more than 1,000 churches have been built here and the number of Orthodox is approaching 7 million, of which the vast majority are newly converted indigenous people. For example, in Tanzania alone, over the past six years, 70,000 people have converted to Orthodoxy.

Active actions are being carried out in the vast majority of countries, with the exception of Muslim North Africa, where the preaching of Christianity

is either outright prohibited or severely limited. The strongest communities are in Kenya (where there are already 1 million Orthodox), Tanzania, Uganda, Congo, Cameroon and Madagascar, in some other countries the mission is just beginning. Most of the missionary work is done by local priests.

At the beginning of the XXI century. the territory of the Far East began to return to the sphere of interests of the ROC: Japan, Korea, China, Mongolia. But here, despite the successes of Russian Ecclesiastical Missions at the turn of the 19th and 20th centuries, the Orthodox mission faces many difficulties associated with political obstacles from national governments.

Thus, only 15,000 Orthodox people live in the China, but there is not a single priest, since the leadership of the China prevents this. At the same time, missions in Thailand, Taiwan and a number of other territories are operating unhindered (Maksimov, 2013).

Although the number of converts here is not as huge as in Africa, it is the countries of Asia that are now becoming the region where the Orthodox mission is developing more and more intensively, which is also connected with Russia's geopolitical interests in the Asia-Pacific region.

Orthodoxy is actively strengthening its position in Central America right now. Orthodox churches appeared in Haiti, Cuba, the Bahamas, Belize, the Dominican Republic, Costa Rica and other States. The most striking event took place in Guatemala, where in 2009 a denomination of 200,000 people joined Orthodoxy (Maksimov, 2013). At the same time, there is almost no Orthodox mission in South America.

Some missions of the Russian Orthodox Church (in this case, we are talking about the Ecclesiastical Mission in Jerusalem) also take over some of the diplomatic functions – protecting the interests of citizens of the Russian Federation who come to Israel as pilgrims. The territory of the mission often acts as a shelter, and a consulate, and a spiritual center.

Providing assistance to those citizens of Russia who have difficulties with the official representations of Russia (delay in documents, for example), spiritual representations take on part of the consular functions, without requiring, and importantly, funds from the state budget, since their financing is carried out mainly through donations from believers.

Thus, all of the above shows that the missions and missionaries of the Russian Orthodox Church play a certain role in the external relations of the Russian Federation and can contribute to the conduct of Russia's foreign policy and take care of the stay of a part of Russian citizens abroad.

Conclusions

The foregoing creates a general picture of the development of the Orthodox missionary work of the Russian Orthodox Church in the world and allows us to trace the transformation of the main areas of activity of missions: from caring for pilgrims and performing diplomatic functions (during the heyday of the imperial era) to the struggle for the geopolitical influence of Russian Orthodoxy and the Russian Federation.

Summing up the historical development of the Orthodox missions of the ROC, it can be stated that during their historical development, the Spiritual missions of the ROC performed several tasks of both a religious and political nature, namely: 1) spreading Orthodoxy to other peoples; 2) expansion of the influence of the Russian state; 3) performance of direct diplomatic functions (protection of Russian citizens, representation of Russia's interests, intelligence, etc.). Thus, spiritual missions played a certain, and sometimes very noticeable role in the development of international relations between the Russian Empire and the Russian Orthodox Church.

In the modern world, the ROC has been noted for its active involvement in missionary activity, which has set itself the goal of spreading the ideas of the 'Slavic' or 'Russian World' among the peoples of Asia and Africa. The countries of Western civilization – the European and American continents, where the religious and political role of Russian Orthodoxy has acquired more complex forms and is carried out through foreign diocesan structures and representations – did not stay away from the missionary activities of the Russian Orthodox Church (Trygub *et al.,* 2022).

The spiritual values preached through the missionary work of the Russian Orthodox Church, taking into account its contribution to Russian statehood and culture, are gradually becoming the basis for popularizing the Russian national idea, which is becoming the main civilizational vector of the foreign policy of the Russian Federation.

The Russian Orthodox Church has a fairly strong influence on the formation of the image of the Russian Federation in the eyes of the world community and to a large extent, due to its Ecclesiastical missions.

One of the options for missionary activity is a political approach (relying on state power), but it is not the best, because it makes the church dependent on state policy and hinders the realization of the church's own interests in the international arena. Therefore, today the most successful approach to missionary activity (the use of the local language and the dedication of the local population) seems to us to be the most successful, leaving room for implementing certain state goals – social work (especially in 'hot spots'), the formation of a positive image of Russia abroad, participation in the geopolitical projects of the Pan-Slavic World.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 116-135
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prospects for the development of investment and innovation activity in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4176.06

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Abstract

The article is based on general and special scientific knowledge methods by means of which the main investment trends in Ukraine and in the leading economies of the world are revealed. It highlights the prerequisites for stable economic development of the country and, at the same time, investigates the factors of investment attraction. The main problems of the development of investment activities on the territory of Ukraine are described and strategic guidelines for the formation of a positive investment climate are given. As a result of the research, the short- and long-term policy prospects for improving investment and innovation activities in war and post-war times have been determined. In addition, the priority directions of foreign capital investments are considered, which include defense industry, energy, information technologies, processing industry, financial activity and trade. It was concluded that stimulation of intellectual and investment activities in Ukraine requires the introduction of an effective tax system, promotion of international cooperation, improvement of legislation and provision of adequate protection of intellectual property rights.

Keywords: strategic investments; investment activities; innovations; human capital; intellectual capital.

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Recibido el 29/10/22 Aceptado el 14/12/22

Perspectivas políticas para el desarrollo de la actividad de inversión e innovación en Ucrania

Resumen

El artículo esta basado en métodos de conocimiento científicos generales y especiales mediante los cuales se revelan las principales tendencias de inversión en Ucrania y en las principales economías del mundo. Se destaca los requisitos previos para el desarrollo económico estable del país y, al mismo tiempo, se investiga los factores de atracción de inversiones. Se describen los principales problemas del desarrollo de las actividades de inversión en el territorio de Ucrania y se dan pautas estratégicas para la formación de un clima de inversión positivo. Como resultado de la investigación, se han determinado las perspectivas políticas a corto y largo plazo para mejorar las actividades de inversión e innovación en tiempos de guerra y posguerra. Además, se consideran las direcciones prioritarias de las inversiones de capital extranjero, que incluyen la industria de defensa, la energía, las tecnologías de la información, la industria de procesamiento, la actividad financiera y el comercio. Se concluyó que la estimulación de las actividades intelectuales y de inversión en Ucrania requiere la introducción de un sistema fiscal eficaz, la promoción de la cooperación internacional, la mejora de la legislación y la provisión de una protección adecuada de los derechos de propiedad intelectual.

Palabras clave: inversiones estratégicas; actividades de inversión; innovaciones; capital humano; capital intelectual.

Introduction

The most important source of economic growth of any country is investment, the economic nature of which is determined by the laws of the process of extended reproduction. It consists in using an additional share of the social product, national income, to increase the number and quality of elements of the productive forces of society. Lack of investment slows down economic growth, which leads to crises, a decrease in the production of goods and services, a decrease in employment, inflation, etc. (Lazorenko, 2017).

In modern economic conditions, the efficiency of the investment process is the key basis for the successful functioning of the state economy and individual enterprises. Among the key factors that inhibit the inflow of investments, scientists single out corruption, currency instability and stalling of reforms, an inefficient judicial system (impossibility to protect property rights or fairly resolve a business dispute), the issue of land

allocation and value added tax reimbursement, as well as overcoming technical trade barriers and passing customs procedures (Kushnir, 2020).

This issue is especially relevant for modern Ukraine, which in the last few years has faced a number of problems that have significantly affected its economic system. The war on the territory of Ukraine, the annexation of its separate territories, the instability of the economic and political system caused the process of reducing the inflow of foreign investments into the country and, at the same time, determined the inability to achieve economic development in all spheres of life at the expense of one's own financial resources. Under such circumstances, many questions arise: did investors manage to save their fortunes? How many of them are currently motivated to invest in business in Ukraine? What priority investment areas should be chosen?

Also, one of the main problems in the development of the vast majority of industries is the lack of capital, so improving investment attractiveness and establishing a stable investment process in the country are of great importance. In the conditions of the innovative economy, investments in the human capital of the enterprise are made with the aim of increasing the pace of innovative development and obtaining, on this basis, a positive socio-economic effect in the current and future periods (Slastyanikova, 2020).

Innovations and intellectual capital are key factors in the modernization of the economy and further economic growth, which is indirectly confirmed by the research of Miyamoto and Hulten (Miyamoto, 2008; Hulten, 2013). Based on the analysis of statistical information from many countries, including developing ones, they testify that investment in intellectual capital and innovation is an important source of economic growth and is positively correlated with gross domestic product per head.

Socio-economic transformations taking place in Ukraine require proven technologies of management and capital building. The accumulation and application of innovative knowledge has become crucial as an intellectual factor in the formation of a new type of production. Under such conditions, intellectual capital appears not only as a means of increasing general capital, but also as, in principle, an adequate reflection of reality and determination of priority directions for the transformation of the national economy (Ostropolska *et al.*, 2020).

Taking into account the global difficulties, at the stage of formation of a developed market economy in Ukraine, the solution of problems related to the introduction of innovations in all spheres of social life in the war and post-war period is becoming more and more urgent. After all, due to objective circumstances, the economy of Ukraine lags behind the world level, and the development and implementation of innovations requires the use of a comprehensive approach and taking into account defense costs.

Thus, the relevance of the research topic is determined by the importance and complexity of investing in innovative projects, human and intellectual capital, the specifics of the functioning of the Ukrainian economy in wartime conditions, and the insufficiency of the treatment of certain issues in scientific and special literature.

1. Methodology of the study

The theoretical and methodological basis of the article is the scientific works of domestic and foreign scientists on economic theory, investment theory, human and intellectual capital.

The following methods of research of economic phenomena and processes were used to solve the problems: dialectical and abstract-logical method of cognition - when summarizing theoretical and methodological aspects of investment innovation activity in Ukraine and other leading countries of the world, as well as when forming conclusions; monographic method - when studying the experience of regions and countries in the growth of innovative and intellectual investments to ensure the quality of life; analytical grouping method - when grouping the countries of the world according to the level of investment and innovation activity and the development of human capital; the method of building an econometric model and the method of scenario modeling - when evaluating and developing directions for the development of investment and innovation activities.

The information base of the study consists of official analytical and statistical materials and publications of the World Property Organization WIPO, results of scientific, scientific and technical, innovative activities, technology transfer, as well as data of the State Statistics Service of Ukraine, monographs and periodical literature, analytical materials of national and foreign research institutes institutes and centers.

2. Analysis of recent research

Paying tribute to the scientific development in the direction of researching investment activity at the macro and national levels, it is necessary to state that scientific works have not finally resolved the issue of substantiating the integral direction of the formation of state policy in the sphere of investment in innovation and human capital under conditions when the main efforts of the state are aimed at restraining foreign aggression, which not only significantly complicates the adequate modernization of the national economy, but also calls into question the existence of many state formations.

Under such conditions, there is a real threat of losing not only resources to ensure overall economic development, but also the paradigmatic principles of regeneration of effective social existence and stable functioning of the economic system (Ostropolska *et al.*, 2020).

In view of this, the purpose of the work is to research the world's leading investment-innovative economies and to develop, based on this, prospects for attracting investments to the economy of Ukraine in the war and post-war period.

3. Results and discussion

3.1. General characteristics of investment innovation activity

Investments play a key role in the maintenance and growth of the state's economic potential, acting as a guarantor of its sustainable economic development. Without them, it is impossible to implement the tasks set at the enterprise, to carry out modernization, which will increase the technological level of both the enterprise and the industry as a whole, will provide an opportunity to increase the gross national product, increase the level of competitiveness in the foreign market, as well as the implementation of social programs and high wages for employees.

According to the Law of Ukraine «On Investment Activities»: «investments are all types of property and intellectual values that are invested in objects of entrepreneurial and other types of activity, as a result of which profit (income) is created and/or social and environmental effects are achieved» (On Investment Activity, 1991).

Investments are necessary to ensure the effective functioning and development of the enterprise. They perform a number of functions: ensuring the growth of the market value of the enterprise; a tool for the implementation of innovation policy; source of formation of production and resource potential; asset structure optimization mechanism; formation of long-term capital structure; a mechanism for ensuring simple and extended reproduction of fixed assets and intangible assets.

From the standpoint of reforming the economy, increased investment activity is the basis for obtaining an economic effect. Without an increase in the rate of investment growth, an increase in the share of investments in the gross domestic product, it is impossible to overcome the gap in the growth of the gross domestic product and industry, low profitability of production, low wages of employees (Horyachova, 2020).

Thus, investments can be characterized as a reflection of relations, which is associated with the early investment of financial, property and

intellectual values invested in the objects of the enterprise, in fixed assets and scientific and technical development of the enterprise, obtaining in the future economic effect and net income

Certain authors, defining the term «investments», believe that they exist only in monetary form. But capital investment can also be made in any property form or in the form of non-property assets; totality of technical, technological, commercial and other knowledge; production experience; the right to use land, water, resources, buildings, as well as other property rights (Mayorova, 2009).

Innovation means newly created (applied) and (or) improved competitive technologies, products or services, as well as organizational and technical solutions of a production, administrative, commercial or other nature, which significantly improve the structure and quality of production and (or) the social sphere; these are real processes of creating new knowledge, systems and means of production, technologies and their implementation in the sphere of economy or public administration, trade or international relations (Guk *et al.*, 2022).

The relevance of investing in innovative activity lies in the fact that in Ukraine the investment process is mostly considered separately from the innovation process, and in order to make positive changes, it is necessary to determine the main problems and prospects for the development of the investment and innovation market itself.

The significant impact of the state innovation policy on the innovation sustainability of the country was emphasized by Freeman, who understood the national innovation system to be a network of public and private institutions, thanks to their cooperation, new technologies are initiated, imported, modified and disseminated (Freeman, 1987). Therefore, effective innovation investment involves the synergy of the state and private resource base with the aim of forming a full-fledged infrastructure, avoiding discrimination, encouraging partnerships at various levels of the innovation and business ecosystem, implementing the concept of sustainable economic development for the sake of a high quality of life.

The development of the innovation and investment system in the conditions of a market economy is an objective and practically unceasing phenomenon that requires regulatory organizational and economic mechanisms and levers that will allow to effectively influence the dynamics and structure of changes in the economic system, since investments have a powerful transforming effect on the national economy. Thanks to a correctly formed innovation and investment policy, it is possible to create such a structure of the national economic complex that would ensure the most efficient use of available resources and prerequisites for the sustainable development of the country.

3.2. Leading global practices of investment innovation activity

The development of the world economy is characterized by the acceleration of the innovation process, the growth of labor productivity, and the intensification of competition on the world market. Under such conditions, an important indicator that characterizes the external influence of factors and affects innovation activity is the indicator of costs for innovation activity, since it characterizes not only the use of production potential, but also the presence of demand for competitive products to improve the economic status of the enterprise and the country.

As the experience of developed countries shows, the main factor in the development of innovations is a stable political environment, socio-economic, informational, technical condition and other factors, in particular, the use of labor resources that are able to perform both intellectual and physical work as efficiently as possible.

To assess the state of innovative activity in the world and the spread of progressive practices and models, the World Intellectual Property Organization (WIPO) annually compiles a ranking of countries – the Global Innovation Index, which is formed by 2 groups and 7 subgroups of indicators, 82 variables (Global Innovation Index, 2021).

Since 2011, Switzerland has remained the leader in innovative activity. The 20 leading countries in terms of innovation include 5 Asian countries - the Republic of Korea (5th place), Singapore (8th place), the People's Republic of China (12th place), Japan (13th place), Hong Kong (14th place). In 2021, the record number of Hague system applications was recorded by Asia with 22% of the total number of applications, while Europe's share is more than 70%. The most active users are applicants from Switzerland, Germany, the United States of America (hereinafter – the USA, the Republic of Korea, the Netherlands, Japan, France, Great Britain and Turkey (World Investment Report, 2021).

General statistics for 132 countries ranked by the Global Innovation Index (Global Innovation Index, 2021) prove a direct relationship between the level of economic development and innovation. But the issue is not only the availability of resources, but also the quality of resources. And since innovations are primarily intellectual capital, we can state the exceptional importance for every country of building an effective education system and ensuring equal access to it for all social groups.

The countries of North America and the USA are among the leaders among the regions of the world in innovative activity and the production of high-tech products. Due to the large scale of the US market, businesses have the opportunity to mass sell their products. After the emergence of competition in this direction from Japan and Germany in the 1970s and

1980s, the leadership of these countries began to pay more attention to the development of innovative activities, as well as to increasing the competitiveness of products produced in the country.

Thus, in 1980, the USA financed 60% of inventions and had 28,000 patents, of which only 4% were implemented at enterprises. Almost 33% of the state budget is allocated for the salaries of scientists engaged in development. 90% of financing for innovative activities is carried out by large companies at their own expense (World Investment Report 2021).

In the US, innovation investment volumes are closely related to the country's budget and large industrial enterprises in the agricultural sector, nanotechnology, materials science, and medicine. Representatives of large industrial enterprises are interested in receiving long-term innovative projects financed by state budget funds. The main areas of development of innovative activity in this country in recent years are: "industry of medicine, transport industry, infrastructure development, energy-efficient technologies, technologies in education, space research, development in the field of computer technology" (Horyachova, 2020: 101).

Innovative activity in the USA is mostly created at the expense of enterprises. At the same time, the country has a stable legislative framework for the protection of intellectual property objects, obtaining preferential loans, and the economic interest of enterprises. Considerable attention is paid to the support of scientific and technical knowledge, as well as scientific research laboratories and universities that are engaged in research work and have a connection with industrial enterprises.

It is worth noting that the innovative activity of the USA occupied the first place in the world for some time and despite the fact that the submission of applications for the object of industrial property has decreased in the country, the quality of innovative products is more qualitative than the products of China and most countries of the European Union.

China scores highly in the global innovation index for the number of trademarks, patents and industrial designs, but lags behind other countries in areas such as human capital and higher education. China is the leading country in the world in submitting applications for industrial property objects and spending on innovative activities. The number of applications submitted for the period from 1985 to 2021 is about 22 million applications for: inventions – 36%, utility model – 37%, industrial design – 27% (World Investment Report, 2021).

The most developed innovative industries in this country are: electronic and information technologies, biotechnology, technologies of new medical preparations, aerospace technologies, nuclear technologies, marine industry, new materials and technologies and their implementation, energy-saving technologies, environmental protection, agricultural

technologies. The most famous in China are the following technology parks: «Zhongguancun» technology park in Beijing; open technology zones in Guangzhou and Nanjing; high-tech parks «Zhangjiang» in Shanghai and Tianjin.

During the period from 2010 to 2021, there was an increase in all types of industrial property objects in the PRC. The largest number of applications were submitted for trademarks, inventions and industrial designs, which indicates that innovative products of the PRC are in demand on the world market. At the same time, the growth of industrial production decreased somewhat (World Intellectual Property Organization WIPO). In general, as evidenced by our analysis, innovative activity in China is developing every year.

Great Britain is increasing its innovative potential in the field of financial technologies, and is currently one of the world leaders in this area. There are 2,500 fintech firms operating in the country, which currently focus on managing investments in the technology space. Today, the focus is shifting from financing servers and physical assets to cloud capabilities and data usage. Leading investment managers allocate about 50% of the budget to these most important strategic priorities, and the automation and robotization of business operations are among the strategic priorities, which is due to the need to constantly increase margins and the need for companies to meet the requirements of regulatory documents (Guk *et al*., 2022).

The specified areas of innovation are among the most expensive. Investment managers are paying more attention to investing in fintech companies: in 2021, a record number of financing rounds with a total amount of $4.5 billion, in which investment companies participated, was recorded. And some medium and large investment managers are expanding their activities and providing services to other smaller fund managers. The collaboration model helps not only to increase profits, but also to retain customers due to a more customized set of services (Painter, 2022).

High rates of scientific and technical progress require simultaneous transformations in education, mastering of digital technologies and constant updating of knowledge. Therefore, the issue of improving the quality of education is one of the priorities in Germany as well. And since innovative development is determined by a complex of factors, increasing the efficiency of innovative activity requires consistency of strategies and coordination of actions of the relevant line ministries, a clear numerical expression of target benchmarks, etc.

Previously, the leading direction of investment in Norway was the development of the oil industry. Currently, the country is implementing a diversification model and is refocusing on the development of biotechnology

and agriculture as new promising directions. But at the same time, Norway felt a shortage of specialists and knowledge in these areas of activity.

The standard in today's conditions is the experience of investment innovation activity of the leader of the global innovation index rating - Switzerland. A significant factor in the country's leadership in innovation is the large amount of financing for innovation. It is one of the countries with the highest R&D expenditures relative to their gross domestic product. The private sector accounts for more than two-thirds of Swiss spending on such works, currently accounting for more than 3% of gross domestic product, or about 22 billion Swiss francs. The state's participation in funding research depends mainly on the proactive work of researchers, the principle of competition and international cooperation. State institutions at various levels invest in research. Projects for funding are selected on a competitive basis (Research and Innovation in Switzerland, 2021).

Switzerland is active in various areas to create a favorable innovation and investment climate. The priority tasks of the state policy of innovative development include ensuring: the quality of education at all levels; accessibility of their state institutions; reliable political and legal environment.

In Switzerland, at the legislative level (Our activities and objectives. Division of Business and Economic Development, 2022), the support of the Confederation of Innovation Infrastructure, namely: the Swiss National Science Foundation (SNSF) and the Swiss Agency for the Promotion of Innovation (Innosuisse), 30 research institutions of national importance, is established , the Swiss Academy of Arts and Sciences, the institution «ETH» environment. The country also participates in numerous international research organizations and research programs, such as CERN and multi-annual framework programs of the European Union, and also promotes bilateral research cooperation with certain priority countries (Research and Innovation in Switzerland, 2021).

From the above, we can conclude that the factors of an effective innovative development model in Switzerland are: sufficient amounts of funding for innovative activities, strong state support; adherence to the principles of competition, which allows effective use of state financial resources; creation of parity conditions for the development of science and research in different regions.

In general, the leading countries of the world have a balanced resource potential of innovative activity and the results of innovation, and about 80% occupy leading positions in five out of seven criteria, namely: according to the resource potential of innovative activity, it is institutional support; according to the results of the implementation of innovations, this is the development of technologies and the economy; results of creative activity; human capital and research; business development.

The analysis of the state of the global investment market made it possible to identify the following trends: 1) annual increase in costs for innovative activities (primarily Switzerland, the Republic of Korea, the USA, other countries of Asia and the European Union); 2) close cooperation of universities and research organizations with business and enterprises brings significant income to the economy of the leading countries of the world, which creates the basis for the implementation of innovative developments and their commercialization; 3) in general, the quality of innovative developments of the USA is higher than the quality of innovative developments of most EU countries and Asian countries; 4) for several years in a row, Switzerland has taken the first place among the EU countries as a country with high innovative development (it is this model of investment activity that can become a benchmark for Ukraine).

3.3. Ukrainian prospects of investment and innovation activity

It is difficult to overestimate the role of the state in the formation of an effective national innovation system. In view of the purpose of our research, as well as taking into account the questions that were revealed in the previous sections of the scientific article, we consider it appropriate to consider the priority directions of foreign capital investments in Ukraine.

One of the key means of ensuring economic growth and progressive development of Ukraine is foreign investment. According to the analysis of past years, the most priority industries in Ukraine were: processing industry (25%), financial activity (15%), trade (10%) and other directions of foreign capital investments (27%). The lowest priorities include: electricity production and distribution (1%), agriculture (2%), extractive industry (3%), transport (4%) and construction (5%) (Huk et al., 2021 , p. 17). However, the war in Ukraine forced a reassessment of the attitude to investment. Some tools proved to be reliable, some were underestimated, and some did not work at all.

It is necessary to single out the conceptual problems of the development of investment and innovation activity in the economy of Ukraine: the imperfection of the legislation regarding the development of innovation activity; indeterminacy of priorities for the development of basic sectors of the economy and lack of favorable conditions for attracting investments in order to ensure the development of high-tech production; underdevelopment of innovation infrastructure (innovation centers, innovation business incubators, technopolises, technology parks, science parks, technology transfer centers and industrial clusters); low rates of introduction of high technologies; high energy intensity of the domestic gross product; insufficient volume of savings of the population, funds of business entities and the state for investment in order to implement investment and innovation projects; the uncertainty of the legal instrument for attracting non-state investments for the purpose of economic development.

In particular the mechanism for ensuring the development of public-private partnerships; depreciation of fixed assets; non-compliance by business entities with the requirements of legislation regarding the registration of objects of intellectual property rights and the absence of a mechanism to encourage the introduction of such objects into commercial circulation; imperfection of the mechanism of commercialization of the results of scientific research and development; a small number of domestic manufacturers of high-tech products participating in the international exchange of technologies; insufficient state support for the introduction of innovations to ensure the development of small and medium-sized enterprises.

Among the reasons for the unfavorable investment climate in Ukraine and, therefore, the restraint of economic development, numerous domestic and foreign studies note the instability of Ukrainian legislation, excessive regulation of most markets, insufficiently developed market infrastructure, including the stock market, strong tax pressure, bureaucracy and government corruption.

As rightly noted in the scientific literature, transformational processes that take place in the national economy and affect changes in the investment system are caused by improper organization and institutional support of the investment process (Guk *et al.*, 2021). For example, one of the biggest problems in Ukraine regarding the introduction of innovations in the industrial sector is: low level of development of clusters; insufficient procurement of technological equipment by enterprises due to lack of financing; low level of foreign investment attraction and technology transfer.

Analyzing the investment and innovation activity of Ukraine, it should be emphasized that despite the availability of stable resources, in recent years, trends towards the country's loss of human capital have been observed. In the conditions of war, and this is not surprising, insufficient funds are allocated for the development of innovations in Ukraine. Real reforms in the field of higher education are necessary, on which human capital depends on the further development and implementation of intellectual investments.

Tax policy has a significant influence on the stimulation of investment activity, however, due to the high tax burden and significant differentiation of taxes by type of activity, financial resources are washed out of industry in favor of the financial and trade spheres, which leads to a decrease in industrial potential, i.e. technologically complex and knowledge-intensive industries lose their financial resources, which cannot contribute to investment in innovation and modernization of the economy (Mytyai and Slatvinsky, 2014).

Therefore, it is necessary to revise and introduce schemes for tax incentives for innovative activities, to conduct a favorable state policy for venture financing; provide tax benefits only to those investors who finance projects that correspond to the priority directions and strategy of innovative development of the state (Tymoshenko *et al.*, 2022).

Investment attraction is also influenced by regulatory and legal regulation of investment activity and its institutional support. Despite the fact that the regulatory and legal framework in Ukraine is quite developed, at the same time, its multi-level and complexity makes its implementation quite difficult, therefore, accordingly, it needs to be simplified.

Under the existing socio-political and economic situation in Ukraine, in order to stimulate investment in modernization on an innovative basis in the short-term, it is necessary first of all to radically improve the investment climate, as well as to increase the efficiency of the functioning of state institutions, provided: the formation of legal foundations, the reduction of investment risks based on the improvement of the functioning of the judiciary systems and improving the quality of guarantees for the protection of investors' rights; implementation of a set of measures in which all participants in the investment process will participate on an equal basis – both the state and enterprises; reorientation of the financial and monetary systems in accordance with modern requirements for the needs of updating industrial production and modernization of the economy, in particular, promoting the reduction of interest rates to a level corresponding to the efficiency of capital investments in fixed assets.

In the long term, it is necessary to take into account the development model of countries (first of all, the USA, Switzerland, Germany and other EU countries), which provide for an orientation towards innovation. Since the use of innovations is related to ensuring flexibility in the conditions of the market environment, it is necessary to create conditions for doing business. It should be understood that strict regulation of the economy negatively affects investment in innovation and modernization. Thus, we see the feasibility of simplifying the administrative regulation of the economy and creating conditions for the interest of enterprises in innovation and modernization, which will stimulate investment.

Undoubtedly, each country has its own model of innovative development and its "blind" copying is impractical for Ukraine with its own characteristics, however, common for any country is the achievement of the effect of building effective interaction at various levels for the purpose of progressive development and improving the quality of life. At the state level, direct and indirect measures to stimulate innovative activity should be developed, a favorable investment climate should be created; at the level of private business, investments in the production of innovations and technology transfer should be implemented; at the level of other participants of the

ecosystem, the formation and development of innovative infrastructure should be ensured.

In July 2022, at a conference in Lugano, Ukraine presented a powerful and comprehensive plan for the recovery of the country. The implementation of this strategy is designed for 10 years and it received favorable evaluations and support from international partners. Ukraine sets itself an ambitious, but quite realistic goal: by 2032, to make the leap from a transitional (transit) economy to a developing economy.

In order to attract foreign investors to the Ukrainian economy, a unique electronic platform Advantage Ukraine has already been created, which collects more than 500 investment projects and opportunities in 10 sectors of the economy. Each potential investor, after registering on the platform, will receive comprehensive information about investment opportunities, specific projects and the benefits that he will have from investing in the economy of Ukraine (Koznova, 2022).

It should be pointed out that the Government of Ukraine is doing a lot of work to improve the conditions for doing business and unlocking obstacles to business development. Current deregulation in wartime conditions makes it possible to optimistically assess the prospects for the recovery of entrepreneurial activity under the conditions of a favorable course of the wartime situation. An example is the relocation of enterprises, because the recovery of the Ukrainian economy largely depends on the activation of Ukrainian business.

Thus, from the start of the relocation program until August 3, 2022, almost 700 enterprises moved to safe regions as part of the relocation program, and 692 companies moved to safe regions, of which 484 started working. Among the relocated enterprises that have already resumed their activities, the largest share is the companies of wholesale and retail trade, repair of motor vehicles and motorcycles (39% of the total number), processing industry (33%), information and telecommunications (6%), professional, scientific and technical activities (5%) (projects (Overview of business support tools during the martial law in Ukraine, 2022).

At the same time, it is expedient to create a separate plan of measures to increase lending to small and medium-sized enterprises on terms acceptable to business. To this end, it is necessary to speed up the unblocking of obstacles to the functioning of programs and financial mechanisms introduced by the state, as well as the attraction of funds from microfinance organizations and donor countries for the implementation of important socially significant projects (Overview of business support tools during martial law in Ukraine, 2022).

Also, the war against Ukraine and the possibility of an energy crisis accelerated the development of «green» initiatives. It is important for

investors to consider this fact when forming and adjusting their long-term investment strategies. There are many companies that are structurally important to the green market. These are both producers of green energy (wind, solar) and companies that supply raw materials (rare earth metals, components for technological solutions, etc.).

Quickly restoring the power system after damage is a difficult task, so the issue of attracting technical and grant assistance for the restoration of the power system is very important. The Government of Ukraine in general, and the Ministry of Energy in particular, are working hard to attract funds and resources from international partners so that energy workers have everything they need to eliminate the results of shelling. For example, it was recently announced that the European Investment Bank had provided EUR 550 million for the restoration of energy infrastructure. Separate purchases are made by USAID at the expense of international donors within the framework of programs implemented by the Ministry of Energy (Bondarchuk, 2022).

The results of an online survey of 430 private investors from all regions of Ukraine regarding investment initiatives are interesting. Thus, 40% of respondents intend to continue to spend free funds to help the country, the military, and volunteer initiatives during the war. This high indicator is quite expected and understandable, because the help of the army and volunteering is the main «investment» in the future of Ukraine, without which all other projects are unlikely to be successful. A third, or 33% of respondents believe that investments in the domestic economy can become one of the tools that will help avoid devaluation risks. So, we have another confirmation of quite serious intentions of a retail investor – to support the country in the most difficult times (Karpilovskyi, 2022).

In addition, according to the results of the survey, the most promising industries for the retail investor were those related to basic human needs, which is quite similar to Maslow's pyramid. Agriculture and construction received 56% and 50% of responses, respectively. Next come infrastructure (transport, warehouses, post) and processing - 41% and 40% (Karpilovskyi, 2022). According to some analysts, after the war, Ukraine will need businesses in the following areas: logistics (creating rail connections with European capitals); processing of agricultural products; construction; services; Light industry; creation of new technologies (in particular, in combination with the defense industry); a new system of education and training of specialists; development of energy efficiency (Business and investment in the conditions of war: how Ukrainian entrepreneurs are looking for new opportunities for development). Considering the state of war in which Ukraine is today, we believe that in the near future we should expect the emergence of startups in Ukraine in such areas as defense, cyber security, green energy, medicine and construction. And here, without a doubt, state support will be needed.

We share the point of view of scientists, that in view of the importance of the prospective development of the domestic production of weapons and military equipment in order to ensure the territorial integrity and independence of Ukraine, to minimize threats to national security, venture capital, under the condition of state support and the appropriate defense industry policy, can become a locomotive for the innovative development of the defense industry, which will give an impetus to the active shift of the innovative «center of gravity» to civilian sectors of the economy, while ensuring the rapid development of high-tech projects (Tymoshenko *et al.*, 2022).

There is no doubt that the effective post-war recovery of the country is possible only if appropriate state policy is implemented, including a liberal innovative economy (creating conditions for fair business competition and cooperation, attracting investments and forming a high level of trust in the state; developing human potential; stimulating the development of innovations and modernization (including digitization) of the economy, barrier-free movement of capital and anticipatory development (recognition) of virtual assets, etc. (Dligach, 2022).

Finally, we note that in the conditions of war in which Ukraine found itself, the development of a full-fledged innovative infrastructure in all regions will be facilitated by: paying significant attention to the factor necessary for innovative development – quality education; encouragement of international cooperation, which will contribute to effective export-import of innovations, attracting additional funding from the European Union to improve the quality and effectiveness of innovative activities.

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Conclusions

For the modernization of the economy, innovation and intellectual capital play a key role, the use of which has led to the prosperity of the world's leading economies. The current situation in the economy of Ukraine, caused in particular by the military actions, does not allow us to carry out an effective policy to stimulate investment in modernization and ensure the stable development of the country's economy.

In this regard, in the short term, the stimulation of investment in innovation should be based on the radical improvement of the investment climate, the formation of legal frameworks for the reduction of investment risks, the increase in the efficiency of the functioning of state institutions, the reorientation of the financial and monetary systems in order to stabilize investment processes.

The long-term perspective of improving investment and innovation activities consists in the introduction of simultaneous changes in state policy and approaches to the activities of business entities. In the state policy, emphasis should be placed on creating a favorable economic environment, educational policy oriented to the requirements of the time, and the application of economic approaches to stimulate investment in innovation while carrying out structural restructuring of the country's economy.

Stimulation of intellectual investment activity in Ukraine requires the introduction of an effective taxation system, improvement of legislation in the field of investment and provision of proper protection of intellectual property rights. The country should become a direct leader of investment and innovation development, a customer and organizer of research and development in the most modern directions of scientific and technical progress, as well as promote their implementation in all spheres of economic activity.

The most attractive form of investment in Ukraine today are priority sectors for foreign investment, such as: defense industry, energy, financial activity, information technology and trade. It is expedient to improve the country's investment attractiveness through the direct participation of the

state in guaranteeing the protection and safety of the investor's capital investments, the formation of the necessary legislative framework in the field of innovation and investment processes, the construction of an effective investment strategy, and the harmonization of domestic legislation with the standards of the European Union.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 136-161
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal approaches to the regulation of migration processes in the European Union

DOI: https://doi.org/10.46398/cuestpol.4176.07

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Abstract

Using an interpretative methodology, the article examines approaches to the regulation of migration processes in the light of the increasing flow of immigrants to the European Union EU. In this context, two main directions of regulation of migration processes are considered: legal regulation and integration measures. It can be concluded that the international legal regulation of migration processes in the EU is based on adopted and ratified declarations, conventions, covenants and protocols, which form a general international legal basis for the regulation and management of migration processes at the interstate level. Accordingly, the analysis of migration legislation and state border legislation allows distinguishing three types of documents according to their content, which are related to the fight against irregular migration: a) regulatory legal acts determine the model of legal entry and stay of a migrant on the territory of the country; b) law enforcement rules establish responsibilities and regulate the application of other coercive measures in case of violation of migration rules, and; c) documents of organizational content determine the competence of the authorities involved in the process of combating illegal immigration.

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Recibido el 18/11/22 Aceptado el 11/01/23

Keywords: migration processes; illegal migration; migration policy; migrants in Europe; immigration and integration.

Enfoques jurídicos para la regulación de los procesos migratorios en la Unión Europea

Resumen

Mediante una metodología interpretativa, el artículo examina los enfoques de la regulación de los procesos migratorios a la luz del creciente flujo de inmigrantes hacia la Unión Europea UE. En este contexto, se consideran dos direcciones principales de regulación de los procesos migratorios: la regulación legal y las medidas de integración. Todo permite concluir que, la regulación jurídica internacional de los procesos migratorios en la UE se basa en declaraciones, convenios, pactos y protocolos adoptados y ratificados, los cuales forman una base jurídica internacional general para la regulación y gestión de los procesos migratorios a nivel interestatal. En consecuencia, el análisis de la legislación migratoria y de la legislación en frontera estatal permite distinguir tres tipos de documentos según su contenido, que se relacionan con la lucha contra la migración irregular: a) los actos jurídicos reglamentarios, determinan el modelo de entrada y permanencia legal de un migrante el territorio del país; b) las normas de aplicación de la ley establecen responsabilidades y regulan la aplicación de otras medidas coercitivas en caso de violación de las normas migratorias, y; c) los documentos de contenido organizacional determinan la competencia de las autoridades involucradas en el proceso de lucha contra la inmigración ilegal.

Palabras clave: procesos migratorios; migración ilegal; política migratoria; migrantes en Europa; inmigración e integración.

Introduction

Activation of migration processes is one of the main trends of modern world development. It is first of all due to the unevenness of the economic growth of different countries in terms of globalization, the diversity of inter-ethnic, social, international conflicts, and the peculiarities of demographic processes in the regions. Mass migration posed two problems to society: the integration of migrants into the host society and the permissible limits of its change under the influence of mass migrations.

The process of globalization, which reached large scales in the 21st century, opened up new problems for the modern world community. To date, one of the loudest challenges in Europe has become the problem of migration. Migrants seeking a better life, needing help, looking for work show interest in the economy of more developed countries. The specified migration processes endanger the state policy of the European Union, they can cause the destruction of the unity of states and national identity.

Such large-scale migration flows necessarily affect the political, economic and demographic processes in European countries by a sharp increase in the non-native population, a possible increase in rebellions and quarrels between migrants and demographic residents, a decline in the economy of states in connection with the needs of migrants, often those who have no work and rely on social benefits from the host state.

Any migration processes, in one way or another, affect the dynamics of the population in different countries and regions. Upon resettlement, migrants bring significant changes to the social life of the country. In the modern world, migration plays a major role in the political, economic and social life of a country. Thus, given the importance of this phenomenon, according to research data, the crisis began in 2013, when the migration of Syrian and Lebanese refugees began. Despite the fact that the acuteness of the crisis has been removed in recent years, the problem itself does not cease to bother the European world.

As a result of the extensive policy of the European Union, which does not take strict measures to regulate migration processes, referring to the natural human rights of movement and security, the flow of migrants in Europe, despite the crisis, continues.

The peak of the crisis was in 2015 and 2016, when more than one million people applied for asylum, and the total number of migrants was almost four million people.

The magnitude of migration flows turned migration into one of the global problems of humanity and forced the whole world to think about it as a crisis phenomenon. Migrants have a huge impact on various aspects of life in the countries they move to. Thus, for example, international migration has become an important factor in population growth and reproduction in many countries with a low birth rate.

A large influx of migrants is accompanied by many negative consequences. The flow of migrants, sometimes dominated by refugees, falls on host countries, causing dissatisfaction among the indigenous population. Besides, a number of problems arise as a result of the clash of cultures - migrants are often subjected to discrimination and mortal danger, besides, the issues of integration of international migrants into the host community are aggravated.

States have always taken measures to regulate migration policy. But in terms of the current migration crisis in European countries, new measures are needed. Recently, border control has been strengthened in many countries, barrier walls and fences are being erected, refugee camps are being destroyed, and army units are being involved, which, however, does not currently bring striking positive results. The ambiguity of the measures adopted in relation to migrants and the regulation of migration flows indicates that European countries are not ready to deal with this problem at the moment.

In view of the above, the relevance of scientific research is determined by the importance of assessing and forecasting the impact of large-scale population movements on the political and social system of the European Union, the impact on the course of modern international relations and the system of ways to overcome the phenomenon of the migration crisis in the EU.

1. Legal regulation of the EU migration policy: current state

Real guarantees of the declared freedom of movement of EU citizens is the primary task of its migration policy (Zolka *et al.*, 2021). The right to work, study, and live in other countries provides significant benefits to both member countries and their citizens, ranging from ensuring greater efficiency of the labor market to expanding educational opportunities and deepening cultural exchanges.

Since the 1960s, the EU has adopted a number of documents designed to promote the internal European mobility of citizens. In 2004, two regulations and nine directives on the procedure for entry and stay of citizens of EU member states were combined into one legislative act, which was supposed to simplify the use of these procedures both for individuals and for authorities. It regulates the conditions under which EU citizens and their family members can move freely and reside within the territory of member states, resettle for permanent residence, and also establishes restrictions on the exercise of this right for reasons of public health and safety (Malinovska, 2018).

To enter the territory of any EU country, an EU citizen must have only an identity document. This is enough for a short-term stay of up to three months. Family members of EU citizens who are third-country nationals enjoy the same rights as the EU citizen with whom they move around Europe.

A longer stay in another EU country is allowed if certain conditions are met. A citizen must either be economically active (employed or self-

employed), or have sufficient financial resources, health insurance, that is, prove that he or she will not become an additional burden for the host country's social protection system. The same requirement applies to students and pupils. A citizen who meets the specified conditions can move together with family members (Koppel and Parkhomchuk, 2004).

EU citizens do not need residence permits. However, member states may require them to register their stay on their territory no later than three months after moving. If their family members are citizens of third countries, they must apply for a residence permit, which is issued for a period of five years. Moreover, the death of an EU citizen, his departure to another country, dissolution of marriage or termination of partnership relations do not necessarily lead to the loss of one's right to residence by a member of one's family - a citizen of a third country. EU citizens acquire the right to permanent residence in the territory of another member state after five years of continuous residence, if the authorities of the host country have not taken a decision on their expulsion.

This right is already granted without any conditions. It is also used by family members of EU citizens who are citizens of third countries, if they have been in a family relationship with an EU citizen for at least five years. The right to permanent residence is lost only in case of absence from the territory of the respective country for two or more years (Peers, 2021).

EU citizens, if they wish, can obtain official confirmation of their permanent resident status. Their family members, if they are citizens of third countries, receive a permanent residence permit that is automatically renewed every ten years. In order to prove that the relevant persons have really lived in a particular country continuously, any suitable evidence can be provided.

Persons who have the right of residence, as well as their family members, enjoy the full range of rights. However, in the first three months, host countries are not obliged to include them in their social protection systems, unless they are officially employed. Likewise, member states are not obliged to provide education assistance (grants, loans) to immigrants from the EU until they become permanent residents.

EU citizens and their family members may be expelled from the territory of another country for security reasons. Economic reasons cannot lead to expulsion. Restrictive measures are applied only in case of a real threat to the fundamental interests of the country and exclusively on an individual basis. Before making a decision on expulsion, such circumstances as the length of residence in the country, the age of the person, the level of integration and family situation in the host country, and the presence of ties with the country of origin must be carefully considered. The expulsion decision can be appealed. A lifetime entry ban is not possible under any

circumstances. A person who has been expelled can apply for a review of the relevant decision after three years (Council of the EU, 2008).

The regulation adopted in 2011 is dedicated to clarifying and codifying the rights of workers who move within the EU and their family members. It prohibits a special procedure for the employment of citizens of other EU countries, guarantees equal access to employment, vocational training for both migrants and their children, equal working conditions and pay, access to social benefits, participation in trade unions. The only exception to the principle of equality can be access to jobs in the field of national security, if the state deems it necessary to fill them only at the expense of its own citizens. Two documents related to labor mobility were adopted in 2016.

The first concerns the European network of employment services and provides for the modernization of the electronic job portal, the activation of the exchange of relevant information between countries. The second is aimed at promoting mobility by simplifying the requirements for registration and unifying the documents required for employment.

A number of legal acts of the EU define common approaches to ensuring legal immigration and guaranteeing the rights of migrants. In particular, in 2003, a directive was adopted regarding the legal status of citizens of third countries who have continuously resided in the territory of member states for a long time (at least five years). Its effect extends to citizens of third countries who have a stable and regular source of income, health insurance, do not pose a threat to the security or public order of the country of residence.

This document provides persons who have a residence permit in one of the EU countries the right to move and reside in the territory of other EU states, guarantees basic economic and social rights on a par with citizens, namely, the right to employment and entrepreneurial activity, education and vocational training, social protection and basic benefits. In 2010, an agreement was reached that the rights provided for in this Directive also apply to beneficiaries of international protection, i.e., refugees from third countries, if they meet the basic requirements regarding the duration of residence in the EU (Buromenskyi *et al*., 2010).

A subsequent directive granted migrants the right to family reunification and guaranteed the rights of persons arriving as members of their families (2003). According to it, citizens of third countries who legally reside in the EU can bring their minor children and spouses to the country of residence. Host countries can, at their discretion, expand this circle and allow the immigration of an unmarried partner, adult children and parents if they are dependents of the migrant. Persons arriving as family members have the right to employment and professional training on the same basis as other third-country nationals.

After five years of residence, they can obtain autonomous legal status if family ties are maintained. At the same time, the right to family reunification is not absolute and may be limited in the interests of public order and state security. A migrant who applies for permission for the arrival of his relatives must have sufficient income, housing, and health insurance to support them, he must live in the country for a certain period, the requirement for the duration of residence, however, cannot exceed two years. Penalties are also provided for concluding fictitious marriages for the purpose of obtaining an immigration permit.

In order to simplify bureaucratic procedures in the immigration process, a Directive on the introduction of a single permit for both employment and residence of citizens of third countries in the EU, as well as a common list of rights and freedoms that they can enjoy was adopted in 2011. Such a decision was aimed at improving the situation of migrants and the possibilities of their adaptation in host countries. In order to establish Europe as a world center of education and science, the EU has developed joint legislation regarding students and scientists from third countries.

In particular, in 2004, common rules were approved for the admission of foreigners to study in higher and secondary educational institutions, for paid internships, as volunteers. The conditions for accepting students are adequate knowledge of the language, availability of financial resources, medical insurance, etc. Foreigners who have come to study receive a residence permit for a period of one year, which can be extended. Under certain conditions (participation in international programs, possession of a residence permit for at least two years), students have the right to move around the territory of the EU to continue their studies (Buromenskyi *et al*., 2010).

A special Directive of 2005 introduced a simplified procedure for the immigration of scientists at the invitation of recognized scientific institutions for a period of more than three months. A scientist who obtains the right to stay automatically acquires the right to work, that is, they do not need a separate permit for employment, as well as passing a labor market test. Scientists enjoy the same rights in terms of working conditions and social protection as local citizens, they have the right to engage in teaching activities, to move freely between the countries of the Schengen zone for a period of up to three months for the purpose of conducting scientific research.

In 2016, instead of the two Directives mentioned above, one was adopted, the category of migrants covered by the new legislation was expanded to include interns, volunteers, schoolchildren, au-pairs (young people from abroad who look after children while living in families). Opportunities for student employment have increased – 15 hours a week instead of 10. After completing studies or a contract for conducting research, graduates

of educational institutions and scientists have the right to stay in the EU for nine months in order to find a job or start their own business. Family members of scientists can join them and look for work in the host country.

Considerable attention of European legislators is devoted to the regulation of immigration of specialists. In particular, in 2009, the procedure for the admission of highly qualified migrants from third countries was approved through the introduction of "blue cards", that is, a special type of residence permit. We are talking about people who have a higher or secondary special education and a salary that is at least one and a half times higher than the average for the EU country where they work. According to the procedure agreed at the EU level, they have free access to all member states and can move to another country after 18 months of stay, but must apply for a new "blue card" already in that country.

The signing and adoption of the European Convention on the Legal Status of Migrant Workers in 1977 became a significant event in the field of regulation of migration and its processes in Europe.

Labor migration law contains several points:

1. creation of valid conditions for approval of an invitation to work in the countries of the European Union;
2. unimpeded movement in any branches of the EU;
3. implementation of activities by migrant workers on the basis of legal norms;
4. have equal rights with the employees of the host country;
5. voluntary deportation from the territory of the EU member state after the end of the labor activity of the migrant, in accordance with the principles of the European Union (Aloyo and Cusumano, 2021).

In 2012, 3 600 "blue cards" were issued, and in 2016 - already 19 500. In 2014, a Directive on the admission of seasonal workers from third countries was approved. They must have a contract, where the working conditions are prescribed, get appropriate temporary housing. They are guaranteed the same labor and social rights as local workers, except for unemployment benefits and family allowances.

Within the permissible time of stay (from five to nine months per year), seasonal workers have the right to change employers, extend or enter into a new contract. Member countries can stimulate the circular, i.e., repeated, migration of seasonal workers by simplifying the procedures for their admission to their territory. In the same year, a Directive on intra-corporate transfers was adopted, which simplified the procedures for transferring foreign employees of multinational companies to their branches located in

the EU, which should improve opportunities for innovation and promote investment.

An important component of the regulation of immigration processes in the EU is the proper informing of migrants, which should contribute to a more organized and legal movement of people. In 2011, the EU Immigration Portal was opened, which functions in English, French, Spanish and Arabic, contains extensive information on immigration procedures of all 28 member states, contacts with national government bodies and non-governmental organizations in the field of migration. Such electronic portals are designed to provide potential migrants with up-to-date information on entry channels and operate in most member states.

At the same time, despite a significant number of common legal norms, the volume of economic immigration, as before, is regulated independently by each EU country, depending on its own needs and capabilities. Although the mechanisms of immigration are standardized, the issue of admission to the sovereign territory, as confirmed in the Treaty of Lisbon (2007), which defined the current foundations of the functioning of the EU, will continue to remain within the competence of national governments.

Along with ensuring legal immigration in the interests of progressive economic development, a significant place in the common migration policy of the EU belongs to the control of immigration processes and the fight against illegal migration. Practice has shown that it is easiest to develop standardized approaches precisely in this area, where the common interests of the member countries are most obvious. As already mentioned, the Schengen agreements, that is, the abolition of control at the internal borders of the EU and its transfer to the external border, were incorporated into EU legislation with the adoption of the Treaty of Amsterdam (1997).

Today, the zone of free movement in Europe, to which not only the member states of the European Union, but also a number of other states have joined, covers almost the entire continent. Under these conditions, the interests of internal security require EU countries to make joint efforts to protect the external border. The European Border and Coast Guard Agency (FRONTEX) was founded in 2004 with the main functions of coordination of joint actions at the external border, personnel training, risk analysis and forecasting of the migration situation, allocation of resources and assistance to member countries facing mass arrivals of illegal migrants.

In 2016, the mandate of FRONTEX was expanded. The Agency was authorized to act also outside the EU. Common rules for control at the external border are defined by the Schengen Borders Code, approved in 2006 and modernized in 2016. It provides for simplified control when crossing the external border by citizens of EU member states, as well as those foreigners who have the right to free movement (family members

of EU citizens), and, at the same time, increased control over citizens of third countries. This code is also aimed at deepening the cooperation of law enforcement structures of the member countries in the interests of common security, and defines the conditions for the temporary restoration of control at internal borders (European Parliament and the Council of the EU, 2016).

In 2008, a decision was made to create a Visa Information System (VIS), which enables member countries to promptly exchange information regarding Schengen visas. It gradually accumulates data on applications and issuance of Schengen visas in various regions of the world. The main purpose of VIS is to check the visa history of third-country nationals, as well as control whether the visa is being used by the person to whom it was issued (Yakubovsky, 2015).

The strengthening of control at the external border of the EU was accompanied by measures to simplify the procedures for its crossing for law-abiding travelers. This is convincingly demonstrated by initiatives to introduce a "smart border". The corresponding package was prepared by the European Commission in 2016, according to which an automatic entry/exit control system (Entry/Exit System, EES) was introduced, which records all entries/exits of citizens of third countries at the external border of the EU.

The main legislative acts of the EU directly aimed at combating illegal migration are several Directives. In particular, the sanctions imposed on carriers transporting foreigners to the EU without proper documents have been harmonized. Before taking a citizen of a third country on board, they are obliged to check that he has the necessary documents for entry into the EU. If the border guards do not allow such a citizen into the EU territory, the carrier must transport him at his own expense to the country from which he or she arrived.

Transportation of illegal migrants threatens the company with sanctions of up to 5 thousand euros for each person. The following EU Directive obliged air carriers to transfer information about passengers to the control authorities of the destination country even before arrival at a point in the territory of the European Union. Violation of this requirement may result in financial sanctions up to confiscation of the vehicle or suspension or loss of the license to transport (Buromenskyi *et al.*, 2010).

To combat illegal migration, the European Union developed a legislative framework consisting of four main documents:

1. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (Council of the EU, 2002);

2. Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (Council of the EU, 2002);
3. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (European Parliament and the Council of the EU, 2008);
4. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (European Parliament and the Council of the EU, 2009).

Council Directive 2002/90/EC of 28 November 2002 and Council framework Decision of 28 November 2002 are interdependent and complementary to each other, as they are the basis of the legislation under which, by the end of 2004, all EU countries were obliged to adjust their criminal codes and other laws regulating intrastate relations, with the help of sanctions for criminal actions and aiding illegal migration.

On the basis of the documents listed above, it can be said that illegal migration is perceived by the European Union through the prism of measures addressed to employers who provide work to undeclared foreigners, as well as through the analysis of possible ways and means of an effective policy for the deportation of migrants.

An important role in the regulation of migration processes is played by the International Organization for Migration - IOM (1951), whose task was to organize the movement of migrants. Today, its powers include:

1) recruitment of migrants;

2) preparation for the migration process;

3) promotion of language training;

4) implementation of information activities for visiting foreigners;

5) passing a medical examination;

6) location of migrants;

7) conducting and organizing various events to promote reception and integration;

8) provision of consultations on migration issues.

To regulate migration flows, the European Union uses two directions: regulatory and legal regulation and integration measures (Kuryliuk *et al.*, 2021).

Regulatory and legal regulation affects the size and number of the flow of migrants, in such a measure, national states and European institutions are the subjects, and migration flows and the results of migration are the objects. Integration acts as a forced measure for radical change and integration of foreigners into the national society of the host party.

Universal international principles and norms are:

1) freedom of movement and the right to freely choose a place of residence;

2) prohibition of deportation;

3) prevention of discrimination;

4) maintenance of family reunification programs;

5) the right to protection by judicial authorities.

In April 2012, the European Council approved the Strategy of the EU's response to migration pressure, which defines a number of strategic priorities for the EU's activities in this area. Among them: strengthening of cooperation with countries of origin and transit regarding migration management; improvement of external border management; prevention of illegal migration across the Turkish-Greek border; prevention of abuse of legal migration channels; ensuring compliance with the right to freedom of movement while preventing its abuse by citizens of third countries; improvement of the system of regulation of migratory movements, including the return of migrants to their homeland.

As part of the implementation of the first priority, i.e., cooperation with third countries, it was planned to improve their own capacity to regulate mixed migration flows (that is, those that consist partly of refugees and partly of economic migrants). For this purpose, it was envisaged to arm the countries of first asylum with the necessary means to provide protection to refugees in accordance with international standards, thus preventing further movements of refugees; ensure the implementation and continuation of readmission agreements; deepen partnership in the field of mobility with third countries; to develop a dialogue with the countries of the Eastern Partnership in the context of challenges caused by migration flows from the Southern Mediterranean moving through the Western Balkans.

Improving the management of external borders involved the further development of political and legislative tools for border control, including ensuring the functioning of the surveillance system and exchange of information on border risks (European Border Surveillance System, EUROSUR), the preparation of proposals for the entry and exit registration system, the use of prejudicial information about international passengers to identify ways of illegal entry into the EU.

In order to prevent abuses of the right to free movement, including the right of migrants to family reunification, joint investigations, collection and analysis of information on detentions in connection with the presentation of false documents at the borders, exchange of information between the authorities of member states are used. The general goal of the Strategy is to strengthen the coordination of the efforts of member countries, in particular, the full implementation of directives on sanctions against employers and the return of illegal migrants, including further support for voluntary return, providing the necessary statistical and scientific support for the policy of combating illegal migration, studying and disseminating advanced experience (Chacon Hernandez, 2021).

Therefore, the international legal regulation of migration processes at the large-scale level is based on declarations, adopted and ratified conventions, pacts and protocols, which form the general international legal framework for the regulation and management of migration processes at the interstate level. The main decisions are developed by the United Nations, followed by its specialized organizations: the International Labor Organization, UNESCO and specialized bodies - the Economic and Social Council of the United Nations, the Office of the United Nations High Commissioner for Refugees, the International Organization for migration.

To date, the European Union, being a special form of the commonwealth of different states, has developed its own system for the regulatory and legal regulation of migration flows, which is supported by various international documents, regulatory and legal acts of institutions and organizations, founding treaties, acts that apply directly to the participating countries and do not require the actual implementation of obligations at the international level, which passes into national legislation.

To resist and prevent illegal migration, the system of normative legal acts provides quite large aspects that reflect migration problems in general. But at the same time, there is no single strategy for conducting migration policy in the EU countries, as each country follows its own course, not striving for cooperation with EU member states.

2. Evolution of means of combating illegal migration to Europe

The migration situation in the countries of the European Union has become a test of strength for the main political forces in Europe. Debates in every EU country often come down to the question: whether to support migration - the wave of refugees from the countries of the Middle East and Africa - or to oppose it.

As the first countries that refugees cross on their way to Europe, Italy and Greece have faced an unprecedented influx of migrants. However, some EU partners, mainly Visegrad Group member states (Poland, the Czech Republic, Slovakia and Hungary) are in no hurry to share the burden of responsibility with their neighbors and open their doors to refugees. Even Germany was forced to reconsider its approach under the pressure of public opinion in its own country. It should be noted right away that the EU and its institutions are a complex bureaucratic mechanism. Decisions, one way or another related to migration, are made at the level of the entire EU, which means that they are subject to implementation in all its member states, as well as at the local level of states.

When it comes to the migration crisis in Europe, public opinion most often has in mind not migrants in general, but refugees as a separate category of migrants. It is very important not to confuse concepts and distinguish a migrant (motives for resettlement, which may be different, including purely economic ones) from a refugee or an applicant for his status. Article 1 of the UN Convention on the Status of Refugees (adopted on July 28, 1951) provides grounds for granting refugee status in the event of "fear of being persecuted on the grounds of race, religion, nationality, membership of a particular social group or political opinion".

The Convention also states that a refugee is outside the country of his nationality and is unable to enjoy the protection of that country or is unwilling to enjoy such protection because of such fears; or, having no definite nationality and being outside the country of his former residence as a result of such events, is unable or unwilling to return to it because of such apprehensions.

The main political decisions in the field of migration adopted in the EU in recent years are primarily aimed at refugees as a separate category of migrants.

The largest number of applicants for refugee status still come to the EU from Syria, Afghanistan, Iraq and East African countries. 53% of migrants from those countries are men. Germany remains the country that receives the most applications for refugee status (60% of all applications in the 28 EU countries go to Germany) (Malinovska, 2018).

Bringing refugee flows under control is not an easy task. Although the increase in the flow of refugees during hostilities is a logical and expected phenomenon, it is the instability in the countries of origin of the refugees that has triggered the increase in their flow, or it can be fully predicted. The EU was not ready to accept such a large number of people at the same time, despite the fact that the scale could be even larger: after all, a huge number of refugees were accepted by Turkey (2.9 million according to UNHCR data as of 2018-2019) and other countries in region, taking the brunt of it.

The Dublin Convention of 1990 stipulates that asylum must be requested in the country on the territory of the EU that the potential refugee crosses first. The document turned out to be unsustainable already in the first months of the new migration crisis. Refugees entered the EU, entering mainly through Greece, Italy and Hungary. These countries were not able in a short time not only to carry out all the necessary procedures for consideration of requests, but also simply to register all those who settle. Thus, in practice, due to the lack of human resources, a large number of people crossed these countries in an uncontrolled manner, heading to Central Europe.

Identification, document verification, overnight accommodation and provision of food and clothing became the first priority. Conducting interviews, checking all the circumstances of the case of potential refugees has also become a challenge for some countries. Standard procedures for consideration of this request for refugee status could take several months or even years in some countries. Now, in some cases, accelerated processes take from several weeks to several days, depending on the country. This certainly requires additional funding. The migration agencies of the EU countries are mobilized: for example, at some point the migration service of Sweden switched to a 24-hour mode of operation.

The next problem faced by EU countries was how to deal with those whose requests for refugee status were rejected for objective reasons. Expulsion of illegal migrants costs the budget of the EU countries a lot of money, as deportation procedures are usually not carried out in one day, but require planning. This is complicated by the fact that remission agreements have not been signed with all countries of origin of illegal migrants, which means that the deportation process in such cases becomes extremely difficult.

One of the constant difficulties that have become a European reality today is the process of integration of refugees: initially providing housing and funds to pay for small daily expenses, and then state support for measures for their future independent life in the EU without state subsidies. The latter is particularly difficult, because sometimes refugees do not even speak English, let alone the language of their new country of residence, and do not have professional skills (Ispas, 2021).

The main principles of the European migration policy are outlined in the European Agenda on Migration, a comprehensive document that came out in 2015. However, the EU migration policy needs to be revised. This is noted by both the expert community and the politicians themselves.

It is necessary to move from reactive measures in response to the crisis in the form of a large flow of illegal migrants and refugees to anticipatory measures, which will represent a coordinated coherent mechanism that works in all EU countries. Analyzing the main decisions and discussions in

official Brussels, as well as the roadmap on migration (Roadmap to deal by June 2018 on the Comprehensive Migration Package), the following can be noted:

1. The reform of the Common European Asylum System (CEAS) is currently blocked in the European Council. The cornerstone was the issue of mandatory redistribution of refugees from countries where there are too many of them to countries where there are fewer of them. This would allow responsibility to be shared between all EU countries. Separate quotas were calculated for each country taking into account its size, population, and other factors. However, no agreement was reached on this issue.

In order to somehow get out of this impasse, it is proposed to abandon the mandatory resettlement of refugees from one country to another and rely on the good will of the EU member states in this matter. Mandatory resettlement will be provided by law only in crisis situations.

2. Frontex, the European Union's external border control agency, was transformed into the European Border and Coast Guard Agency in 2016. Measures related to building the capacity of the transformed agency should improve the management and control of the EU's external borders. Among other things, the agency received an additional 1.5 thousand reserve employees and the opportunity to purchase the latest equipment for border management, available for mobilization in a crisis situation. However, EU countries should be ready to increase the agency's funding, if necessary, as well as provide additional human resources.

3. Cooperation with third countries or countries of origin of migrants is an important task. For example, the EU finances large-scale projects with Turkey, which has become a place of accommodation for a huge number of refugees. However, spot financing is not enough.

Thus, the EU needs to develop legal migration schemes with the main countries of origin of migrants, including primarily African and Middle Eastern countries. Pilot schemes on legal economic migration were proposed by third countries in May 2018. Cooperation with third countries, project financing and the development of schemes on legal migration will contribute to reducing the level of migration flows only if the leaders of third countries are ready to cooperate. A good example of this is Turkey, which is not itself the country of origin of a large number of refugees in the EU, but which is crossed by refugees on their way to the EU.

According to the agreement between Turkey and the EU, refugees entering Greece from Turkey can be turned back and Turkey will be obliged to accept them. The EU allocated additional funding for refugee settlements in Turkey. If Turkey completely closes its borders to refugees, they will still reach the EU borders one way or another.

4. The development of mechanisms for the return of illegal migrants must continue. This consists not only in signing remission agreements and protocols of their interaction with third countries, as well as in the actual expulsion of illegal migrants, but also in providing financing and support for reintegration measures for those who return to their countries of origin.

Therefore, the consolidated approach of the EU is based on the development of compromise solutions on those issues where there is no unity among the EU member states; on the reform of its internal institutions; on increasing cooperation with countries of origin of migrants (for example, by concluding remission agreements and legal migration schemes, as well as by financing projects to support governments and the population in these countries).

3. Prospects for improving the EU's migration policy

The migration crisis in Europe in 2015 became one of the key events in the modern history of the development of European integration. Despite the fact that the member states of the European Union have faced migration from other regions before, this crisis was particularly acute not only in view of the scale of migration flows, but also in view of the changes in the nature of migration and the increase in the number of so-called asylum applicants. As a result, the traditional European system of measures in the field of migration turned out to be ineffective for regulating migration processes taking place on the territory of the EU.

Before the beginning of the mass influx of refugees in 2014-2015, the role of the main regulator of EU migration policy was performed by the Dublin system, in accordance to which refugees were distributed according to the principle of "country of first entry". Thanks to this rule, it was possible to prevent a situation in which a refugee can submit an application to several EU countries at once and receive asylum in the most suitable country.

The Dublin Agreement clearly defined the country responsible for processing asylum applications. This system showed its unsustainability after the beginning of the 2015 crisis, when the main burden of migration fell on the border countries of the EU, primarily on Greece, Italy and Hungary. Moreover, as a result of the mass influx of migrants, the Schengen zone was under attack, given the danger of free, uncontrolled movement of unregistered migrants within the EU.

The inability of the Dublin system to offer a fairer criterion for the distribution of migrants within the EU, as well as the threat to the existence of the Schengen Agreement, have led to aggravation of disagreements

between member states on this issue. As a result, there are serious contradictions within the European Union on the issue of the effective distribution of immigrants between member countries. While the leader of European integration, Germany, advocates the initiative of the EU member states, the countries of Central and Eastern Europe take a mostly skeptical position in this regard and are not ready to take responsibility for the placement of refugees on their territory.

As a result, the European Union faces not only and not so much a migration crisis, but a crisis of European integration, which is most threatened by the growth of far-right attitudes among the population. The general growth of the terrorist threat, expressed in repeated attacks by people from non-European countries, further contributes to the growth of populist sentiments in Europe.

The ineffectiveness of the Dublin system, disagreements between member states on the issue of the distribution of migrants, public dissatisfaction with the actions of the authorities and, as a result, the growing popularity of far-right attitudes in Europe became the main reasons that led to the need to change the EU's approach to refugee policy and reform the entire system of migration legislation. In the period from 2015 to 2021, attempts of the member states of the European Union to develop a joint plan of action to overcome the negative consequences of the migration crisis are being observed.

If we analyze the course of events, we can distinguish two stages in the process of reforming the EU migration policy. As the first stage, the period from April to October 2015 can be singled out, when the term "crisis" was first used in relation to the situation with refugees and the necessary measures were taken to overcome the negative consequences of mass migration and prevent the possibility of an escalation of the crisis.

It was in April 2015 that a series of maritime disasters occurred in the Mediterranean Sea, as a result of which ships carrying several thousand migrants from North Africa sank. These events became the first impetus for the use of measures to respond to migration problems. The key phenomenon of this period is the approval of the "10 points" program based on the results of the meeting of the ministers of foreign affairs of the EU countries in Luxembourg on April 20, 2015.

The main purpose of this program was the adoption of emergency measures to rescue migrants in the Mediterranean Sea and the allocation of additional funds for rescue operations, as well as the coordination of increased measures in the field of security, which included the mandatory fingerprinting of all migrants who arrived on the territory of the EU. In addition, already in April, at an extraordinary meeting of the European Council, the possibility of starting negotiations with third countries for

a joint solution to the migration problem, in particular, with Turkey and African states, was discussed for the first time.

A joint action plan with third countries was agreed in November of the same year at the Valletta Migration Summit, where EU and African leaders signed an agreement on joint action in the field of migration, as well as within the framework of the EU-Turkey Action Plan aimed at suspending migration flow to Europe and the fight against illegal migration. In general, EU measures within this period can be characterized as a response to current problems and a search for possible ways and strategies to solve the migration crisis (Casagran, 2021).

The period from the end of 2015 to the end of 2017 can be marked as the second stage of migration policy reform, when decisions were made for the long term, not so much for the purpose of solving current tasks, but for the purpose of creating a more effective system of migration legislation at the pan-European level as a whole. During this period, not only was the final agreement concluded between the EU and Turkey on the issue of measures against illegal migrants (March 18, 2016), but also the provisions on the reform of the Common European Asylum System were approved, which, among other things, included the transformation of the Dublin system.

As a result, official frameworks were established for cooperation with third countries, primarily with Turkey, through which the main migration route to Europe passes, as well as proposed reforms, which include an accelerated procedure for considering applicants' applications, fixing migrants in one country and prevention of attempts to move them within the EU, as well as basic measures to integrate refugees, including into the labor market. In addition, the European Commission adopted the so-called list of "safe countries" in order to limit migration from those regions where hostilities are not taking place directly and there is no real threat to life.

In practice, this means that asylum applications from countries such as Albania, Macedonia, Montenegro, Serbia, Turkey, Bosnia and Herzegovina and Kosovo began to be considered under an accelerated procedure. Finally, on February 3, 2017, the "Malta Declaration" on migration was adopted, the main provisions of which touched on external issues, such as the fight against the illegal importation of migrants and human trafficking, the provision of assistance during the period of return of migrants to their homeland, as well as cooperation with Libya in the field of control along migration routes and support for Libyan Coast Guard employees (European Council, 2017). The main focus of this document is on the Central-Mediterranean route, along which more than 180,000 migrants arrived in the EU in 2016 alone (Malinovska, 2018).

Evaluating the results of the second stage, it can be concluded that after 2015, the EU seeks to develop a certain long-term action strategy that would

be able not only to overcome the crisis, but also to create a more effective legal framework for regulating migration processes on the territory of the EU and in the future.

It is obvious that the current process of migration to Europe had a serious impact not only on the internal development of the EU member states, but also on the political capacity of the European Union as a supranational body and, therefore, required fundamental changes to the existing legislation. The future viability of the European Union as an integration group depends on how effectively the EU can deal with the current crisis.

In 2017, the migration policy of the EU strengthened. At the summit held in Brussels on October 19, 2017, it was determined that the approach of EU member states and institutions to ensuring full border control should be consolidated. At the same time, the Conclusions of the European Union indicate that it is ready to react and stop any attempts to illegally cross the borders of EU member states (European Council, 2017).

However, the settlement of the issue has by no means become clearer, because in the European Union there is a problem of a "closed circle", which consists, on the one hand, in opposing immigrant flows, and on the other hand in observing the principles of protecting the rights of migrants, fighting poverty, etc. (Zastavna, 2021).

As for the actual results of the EU migration policy reform, the following results can be highlighted at this point. First, it was possible to strengthen control over the external borders and significantly reduce the number of illegal migrants arriving in the EU. In addition, due to the introduction of the list of "safe countries", it was possible to limit the opportunities for obtaining asylum for citizens from relatively safe regions, which helped to focus the main efforts of the EU on providing assistance to refugees from Syria, Iraq, Afghanistan and other countries where the internal political situation poses a real threat to life.

Agreements with third countries, primarily with Turkey and Libya, which assumed part of the responsibility for providing assistance to refugees, helped to significantly reduce the flow of migrants heading to Europe. Despite the contradictions that took place during the negotiations with Turkey on the issue of migration, positive changes could be observed already a month after the conclusion of the 2016 EU-Turkey agreement. According to data from the European Commission, if more than 56,000 asylum seekers arrived in the EU in February 2016, then during the next 30 days after the conclusion of the agreement, their number already amounted to 7,800 immigrants (Raczyński, 2015).

Thus, we can talk about the positive impact of reforms in the field of migration policy carried out by the European Union in recent years. In addition to limiting migration flows and reducing the number of illegal

migrants, other results were also achieved, in particular, an accelerated and optimized procedure for considering asylum applications, which helped to process a large number of applications in a relatively short period of time and, in case of refusal, to ensure the rapid deportation of immigrants to their homeland.

In addition, funds were allocated for the implementation of integration programs for refugees in order to ensure their integration not only into society, but also into the labor market. Positive developments are also observed in this area: in Germany, for example, between 2013 and 2020, the share of employees without German citizenship increased by 75% to more than four million (Bathke, 2021).

However, the European Union's response to the 2015 migration crisis also has weaknesses. Statistics show an increase in crime among refugees in the EU. According to Der Spiegel, the share of refugees among rape suspects in 2016 was the highest among other social groups and amounted to 33%. In addition, the number of terrorist acts and other serious crimes committed by immigrants in various European cities has been increasing in recent years (Bondarchuk, 2016).

A key problem in solving the European migration crisis is the inability to effectively allocate migrant quotas among member states. As a mechanism for the distribution of quotas for migrants, a possible proposed system of trading quotas for refugees is presented, in the framework of which a market mechanism is used for the distribution of migrants by country.

Such a mechanism allows each country to choose the most suitable option for itself: either to accommodate refugees on its territory, providing them with the necessary assistance, or, in case of a lack of resources for their proper accommodation, to provide financial support to those countries that accept refugees instead. It follows that, if the state is not ready to take direct responsibility for the accommodation of migrants, it is obliged to provide material and financial assistance to other countries, which will allow to achieve justice in the distribution of the migration burden between countries.

Each EU member state also has the right to combine both options - for example, to place fewer refugees in its country than it should according to the quota, but to allocate additional funds for other countries that have redistributed part of the migrants to themselves. In addition, the amount of financial assistance may vary depending on the level of economic development and the average income per capita of a country. According to this principle, the financial aid allocated by, for example, Finland will be much higher than the aid from Estonia or Bulgaria. When distributing migrants, it is also important to take into account the needs of each individual country: for example, to send labor migrants to those countries where there is a shortage of labor (Masoumi, 2022).

Thus, the European Union's policy response to the 2015 refugee crisis has both advantages and disadvantages. Among the latter is the inability to resolve differences between EU member states on the issue of migrant distribution, as some countries continue to take a hard line on refugees and are not ready to make concessions, as, for example, in the case of the Hungarian government. This factor, as well as internal problems arising in connection with mass migration (such as the increase in crime and the problem of integration), contribute to the strengthening of public distrust in relation to EU institutions and stimulate the growth of right-wing populist sentiments, thus undermining the foundations of the European Union functioning.

The proposed system has a number of advantages, as it allows countries to independently decide how to contribute to solving the migration crisis and for which categories of refugees to open borders. A flexible mechanism will not only help to achieve a certain consensus on the issue of the distribution of migrants between member countries, but will also contribute to a more effective integration of migrants into the host society, as the system will take into account the needs of a given society and country in certain categories of migrants.

Conclusions

The specificity of modern political processes is largely determined by migration flows from zones of armed conflicts and countries with an unfavorable political and socio-economic situation to more prosperous countries and regions. Migration, which has acquired a massive multi-million character in recent years, is one of the most significant phenomena of modern political reality. This is evident in the development of the European migration crisis.

Initially focused on providing assistance to migrants and refugees, the European Community faced a whole set of problems of a social, economic and humanitarian nature, among which particular significance is found, such as the migrants' ignoring and devaluation of European values, imposing their own way of life on Europeans, gradual Islamization, finding radical forms, as well as the direct escalation of tension and conflict. All these factors determine the crisis in the development of the situation in European countries, undermine their social, humanitarian, economic and political foundations.

Taking into account the fact that the situation in countries with military conflicts still has an extremely acute nature of armed conflict and the escalation of the terrorist threat, there is every reason to believe that the migration crisis will continue to develop in the near future.

The migration crisis revealed a number of internal problems of a political, institutional and social nature in the European Union, which must be solved both in the short and long term.

Germany, France and Great Britain occupy the leading positions among Western European countries in terms of the number of immigrants. In this regard, they face a number of problems, mainly related to the economic support of immigrants arriving in the country, integration into the native society of the host country and ensuring national security.

After the exacerbation of the migration crisis in 2014-2016, its decline began. The intensity of the influx of migrants and refugees in 2017-2019 significantly decreased, which gave Europe a noticeable relief. However, the year 2020 brought some aggravation of the migration crisis of the new era.

The main factors that provoked this aggravation and increased the flow of migrants in 2020 include: political, economic, national and legal instability in Africa and the Middle East; armed conflicts in Syria, Yemen, Afghanistan, Iraq, which were involved in the fight against ISIS; an increase in the number of the population in the named countries due to an uncontrolled demographic situation; large-scale unemployment; rapid growth of poverty; deterioration of the situation in the refugee camps created on the territory of Turkey and Lebanon. There was no social protection, no work, and funding was constantly being cut. That is why Syrians began to run to the countries of the Eurozone.

The analysis of the migration legislation and the legislation on the state border makes it possible to distinguish three types of documents according to their content, which relate to the fight against illegal migration: regulatory legal acts determine the model of a migrant's legal entry and stay on the territory of the country; law enforcement regulations establish responsibility and regulate the application of other coercive measures in case of violation of migration regulations; documents of organizational content determine the competence of authorities involved in the process of countering illegal migration.

In order to improve the migration policy, the structures of the European Union propose to strengthen the legislation for arriving immigrants, for persons who have committed crimes and offenses on the territory of the EU, as well as for illegal migrants. An important element of the new migration policy should be integration, but in a more intensive form: a clear concept should be formed that ensures the preservation of harmonious relations between the local population of EU member states and migrants. The process of integration can be facilitated by the availability of education, medical services, and jobs for a wider circle of refugees and immigrants. Expanding the principles of solidarity and fair responsibility among EU member states will facilitate the solution to the migration crisis.

Also, building a new dialogue between the EU states and third countries, based on compromises and equality of the parties, should be an essential step for the settlement of the political situation. This can be facilitated by the renewal of both the national and the elites of the European Union. The future of this political body depends on whether the European Union will be able to develop a new migration policy and cope with the challenges.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 162-171
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The right to an enabling environment in the system of public interests of the territorial community within the implementation of the sustainable development goals

DOI: https://doi.org/10.46398/cuestpol.4176.08

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Abstract

The purpose of the research was to study the essence of the right to an enabling environment in the system of public interests of a territorial society, within the framework of the implementation of the strategy for Sustainable Development in Ukraine. As the main content it is known that the national security strategy of Ukraine identifies corruption among the current and planned threats, which prevents the Ukrainian economy from depressing, makes its sustainable and dynamic growth impossible and, as a result, fuels the criminal environment. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. The obtained results allow concluding that, the effectiveness of legal regulation of the implementation and protection of the right to a favorable environment should be directed to the implementation of environmental and economic functions of the state and, fundamentally, to strict adherence to national environmental safety standards.

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Recibido el 15/10/22 Aceptado el 12/01/23

Keywords: administrative and legal relations; sustainable development; public interest; right to a favorable environment; social dialogue.

El derecho a un entorno propicio en el sistema de intereses públicos de la comunidad territorial dentro de la implementación de los objetivos de desarrollo sostenible

Resumen

El propósito de la investigación fue estudiar la esencia del derecho a un medio ambiente propicio en el sistema de intereses públicos de una sociedad territorial, en el marco de la implementación de la estrategia para el Desarrollo Sostenible en Ucrania. Como contenido principal se sabe que la estrategia de seguridad nacional de Ucrania identifica la corrupción entre las amenazas actuales y previstas, lo que evita que la economía ucraniana se deprima, imposibilita su crecimiento sostenible y dinámico y, como resultado, alimenta el entorno criminal. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Los resultados obtenidos permiten concluir que, la efectividad de la regulación legal de la implementación y protección del derecho a un medio ambiente favorable debe estar dirigida a la implementación de las funciones ambientales y económicas del Estado y, fundamentalmente, al estricto apego a las normas nacionales de seguridad ambiental.

Palabras clave: relaciones administrativas y jurídicas; desarrollo sostenible; interés público; derecho a un medio ambiente propicio; diálogo social.

Introduction

The state policy in the field of environmental protection in Ukraine cannot be assessed as sufficiently effective, as the state of natural resources continues to deteriorate. According to official indicators, the state of the environment on about 20% of the territory of Ukraine is defined as unsatisfactory. As a result, an additional 30,000-35,000 people die annually, and the economic damage reaches 10% of the value of the gross

domestic product. The martial law in Ukraine has led to the creation of emergency environmental situations, the overcoming of the negative manifestations of which, according to the most optimistic forecasts, will be carried out over the next decade.

The system for ensuring a favorable and safe environment includes many components, the leading place among which belongs to the formation of an appropriate mechanism for public administration in this area and the legal foundations for its functioning, optimization of the mechanism for its administrative and legal protection. This mechanism covers the entire process of using natural resources from granting the right to use them to bringing those responsible for its violation to legal responsibility and terminating this right. Suffice it to mention the numerous violations of the procedure for obtaining special permits for the use of natural resources, in particular in the field of subsoil use (spontaneous mining of amber, coal, etc.), forest resources (mass destruction of forests, including protected areas of the Carpathian region), disposal of man-made waste in violation of environmental safety requirements, etc.

These circumstances indicate a very low level of efficiency of the mechanism of public administration in the field of environmental protection. In this regard, it is urgent to develop and improve the system of administrative and legal regulation of public administration in this area, as well as a proper theoretical understanding of its content and ways of improvement.

1. Literature review

The study of the problems of ensuring the effectiveness of the mechanism of administrative and legal protection of the environment at different times is the subject of scientific research by Surilova and Leheza (2019), Pushkina *et al.* (2021), Kolpakov and Kolomoyetz (2020), Zolotukhina *et al.* (2020).

In accordance with Part 4 of Art. 5 of the Aarhus Convention defines the obligation of states to publish national reports on the state of the environment, including information on environmental quality and information on environmental pressures, at least once every three to four years.

On the other hand, according to the current legislation of Ukraine, the concept of the category “environmental quality” is not defined.

The establishment of environmental friendliness should take into account not only the requirements for compliance with established environmental safety standards, but also the relevant indicators of anthropogenic features of the development of society, in particular, determining life expectancy,

cancer incidence, taking into account the latest technologies for introducing innovations in industrial development, etc. Only taking into account such indicators will reliably reflect the interaction of man and the environment, optimizing the system for ensuring his right to its safety.

2. Materials and methods

The study is based on the work of foreign and Ukrainian scientists regarding methodological approaches to understanding the right to a favorable natural environment as a component of the Sustainable Development Strategy.

The ontological method of scientific knowledge is used to determine the system of methodological approaches to understanding the category of the right to a favorable natural environment as an integral element of the Sustainable Development Strategy and satisfying the public interest of the territorial community.

The logical-structural method made it possible to develop conceptual principles for the implementation and protection of the right to a favorable natural environment. The use of the system analysis method made it possible to determine the normative principles for ensuring the right to a favorable natural environment as an integral part of the Sustainable Development Strategy.

3. Results and discussion

The purpose of studying the essence of the right to a conducive environment in the system of public interests of a territorial society in the framework of the implementation of the Strategy for Sustainable Development in Ukraine.

The creation of conditions for the functioning of a person, which determine the characteristics of a favorable external environment, indicates the implementation by the state of the function assigned to it - the ecological function.

Ensuring the effectiveness of the implementation of the ecological function of the state is of particular relevance, starting from the second half of the twentieth century. The ecological function of the state is understood as the direction of activity of state authorities and local self-government, which consists in ensuring environmental safety, rational use of natural resources, their protection and protection, which results in the formation of a favorable natural environment (Leheza, 2012).

The Association Agreement between Ukraine and the European Union 2014 is a kind of conceptual document, the content of which determines the totality of public interests, the achievement of which is a priority task of the national public administration system. It is necessary to single out such normatively defined public interests, which are priority goals for the development of Ukraine.

In particular, according to the Association Agreement between Ukraine and the European Union, the sphere of public interests in modern conditions should include: the gradual associative approach of Ukraine to the European community; intensification of political dialogue with the countries of the European Union; introduction of universally recognized democratic standards for the implementation of human rights and freedoms, including the improvement of the national justice system and ensuring the rule of law and respect for the individual; establishing close economic and trade relations in order to integrate Ukraine into the internal market of the European Union in the legal doctrine of the European Union "acquis Communautaire"; ensuring environmental protection standards, including the introduction of a system for assessing negative environmental impacts in accordance with Western European standards.

In accordance with the content of the Association Agreement between Ukraine and the European Union, the introduction of educational standards, standards for the provision of medical services and assistance is attributed to the public interests of the development of Ukrainian society. It is necessary to determine that the priority public interest for Ukraine in modern conditions is to ensure the success of the European integration process.

The Association Agreement between Ukraine and the European Union 2014 is a kind of conceptual document, the content of which determines the totality of public interests, the achievement of which is a priority task of the national public administration system. In particular, according to the Association Agreement between Ukraine and the EU, the sphere of public interests in the field of social security includes ensuring environmental protection standards, including the introduction of a system for assessing negative environmental impacts in accordance with Western European standards.

Despite the absence of a legislative definition of the concept of "environment" (or its synonymous category "environment"), research is constantly being carried out in the scientific community aimed at finding author's approaches to its understanding. In addition, noteworthy is the establishment of an encyclopedic understanding of its essence. In particular, the group of authors of the "Big Encyclopedic Legal Dictionary" under the general supervision of Yurii Shemshuchenko argues for the expediency of understanding the "environment" ("environment") as a set of

natural and natural-anthropogenic conditions (land, water, forests, subsoil, atmospheric air, flora and fauna) that surround a person and are necessary for his life and activities (Shemshuchenko, 2007).

This approach to the definition of the natural environment (environment) is correlated with the approach of its time, justified by Valery Matviychuk, as nature accessible to man (both inviolable and modified or created by man) (Matviychuk, 2011). An adherent of a broad interpretation of the concept of "environment" is Victor Ivanyushenko, which substantiated the expediency of its understanding as the identity of the environment and the environment, which is a set of objects of the natural environment, other social factors (in particular, living conditions, nutrition, education, recreation, etc., that is, factors reflecting the impact on life and health) of a person, on the effectiveness of his life (Ivanyushenko, 2009).

The absence of a legislative definition of the category "environment" complicates the problems of its application, but at the same time it is the basis for determining the essence of the generic object of environmental crimes (section VIII of the Criminal Code of Ukraine (Law of Ukraine, 2001). The absence of a legislative definition of the category "environment" complicates the problems of its application, but at the same time it is the basis for determining the essence of the generic object of environmental crimes (section VIII of the Criminal Code of Ukraine (Mykolenko *et al.*, 2010).

It should be noted that since September 2019, the relevant public administration body in Ukraine has also been called the Ministry of Energy and Environmental Protection of Ukraine, which was implemented in accordance with the provisions of the Decree of the Cabinet of Ministers of Ukraine dated September 2, 2019 No. 829 "Some issues of optimizing the system of central authorities' executive power" (Law of Ukraine, 2019). In the course of such reform changes, in fact, the recognition of the "environment" as an object of public administration, as an object of administrative legal relations, as a special object in need of protection and protection took place (Matviichuk *et al.*, 2022).

Taking into account the above considerations, it is necessary to draw several conclusions that will form the basis of further research. First of all, the author's understanding of the category "environment" is based on the need to single out as its component of human life and health, to determine as criteria for the favorable environment not only compliance with the requirements established by the current legislation on compliance with environmental pollution limits, but also to determine the relationship between human life expectancy and the corresponding state of the environment in a particular area (Villasmil Espinoza *et al.*, 2022).

In addition, the quality of environmental protection is also determined by the appropriate level of provision of standards for the improvement of settlements, which determines, among other things, the conditions of human life. Given this approach, it is necessary to abandon the use of the term "environment", which in its lexical and semantic understanding is an unsuccessful attempt to translate the term "environment", which corresponds to the Ukrainian word "environment".

The environment as an object of administrative and legal protection is understood as a set of natural and natural-anthropogenic objects, which is a forming set of factors influencing human life and health, while ensuring its favorableness has a functional direction of activity of public authorities and local self-government (Pushkina *et al*., 2021).

The basis of the administrative and legal regulation of ensuring the safety and favorable environment should be based on the regional concept of the integrated use of resources, which allows real effective measures, monitoring and evaluation of all types of resources that provide a certain territorial entity.

Increasing the efficiency of legal regulation of public administration in the field of environmental protection should be directed in the following areas. In particular, firstly, it is necessary to resolve the issue that the establishment of forms of ownership of natural resources. The ambiguity of approaches regarding the expediency of expanding the right of private ownership of natural resources entails numerous public discussions (Tylchyk *et al*., 2022).

In Ukraine, the institution of private ownership of natural resources is involved to a very small extent. There is an urgent need to expand the segment of private ownership of some of them (land, forest, individual water bodies), as well as collective, in particular municipal property, in order to enhance the possibilities of market self-regulation of nature management processes and achieve the optimal ratio of state, communal and private ownership of resources This will contribute to the formation of a market for natural resources (Kobrusieva *et al*., 2021).

Another direction of creating a market for natural resources is the transition to free market circulation of permits (limits, quotas) for the use of natural resources, by a certain analogy with the proven foreign practice of circulation of permits (quotas) for emissions into the atmosphere, discharges into water basins. The introduction of the practice of creating a market for permits (quotas) for the use of natural resources should be combined with a revision of their standards, a revision of the components of the mechanism for paying for the use of natural resources.

The amounts of payments for the use of natural resources levied in Ukraine are lower than similar payments in neighboring countries.

Therefore, it is necessary to increase the amount of collection of natural resource payments in Ukraine, which will strengthen their eco-efficient function and increase their role in the formation of tax revenues and financing of environmental activities (Halaburda *et al*., 2021).

These problems can be overcome by strengthening the environmental orientation of the tax legislation and the pricing system, expanding the possibilities of credit and financial support and helping business entities in the implementation of measures for rational environmental management through targeted special budget funds (Leheza *et al*., 2022).

Conclusions

The priority direction in the legal regulation of determining the right to a favorable environment at the present stage should be a combination of organizational and legal mechanisms with economic incentives for the use, protection and reproduction of natural resource potential, which is manifested in the differentiation of payments for the use and pollution of resources; in tax and credit benefits; insurance in the field of protection and reproduction of resources; replacement, on a necessary and reasonable scale, of direct, administrative management, indirect, organizational and legal market regulation.

There is a need for legal differentiation of social standards, taking into account the possibilities of regions for the use of natural resource potential. An important element of the regulatory mechanism is the market comparison of supply and demand, which can take place in the presence and development of an appropriate legal framework. The transformation of forms of ownership and mechanisms for regulating economic activity is an incentive to search for new methods and means of organizational and legal regulation of the favorable environment.

Therefore, it is necessary to create a fundamentally new organizational and legal regulatory mechanism based on a combination of the traditional prohibition, coercion, obligation with encouragement, stimulation. This mechanism, based on monitoring and control, will ensure the implementation of joint efforts of executive authorities, local self-government in the use, protection and reproduction of natural resource potential. According to the structure of legal relations, legislation should also develop through general and special norms.

The effectiveness of legal regulation of the implementation and protection of the right to a favorable environment should be aimed at the implementation of the environmental and economic functions of the state and strict adherence to national environmental safety standards. It provides

responsibility for the implementation of state programs; stabilization of policy in taxation, financing, lending and budgeting, that is, it acts as a real mechanism for incorporating environmental policy into the functioning of economic systems.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 172-185
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The European Union as a supranational association and the problem of state sovereignty

DOI: https://doi.org/10.46398/cuestpol.4176.09

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Abstract

The objective was to analyze the European Union EU as a supranational association, which, in turn, leads to problems of state sovereignty. The methodology employed consisted of general and special scientific methods. Sovereignty is an archaic political construct. There are two opposites: one focuses on the state and proclaims that sovereignty resides in a particular level of government, the parliament and the government derived from it; the other is the multilevel approach that presents sovereignty through a new prism, claiming that the concept itself is obsolete, challenging globalization and integration. The ability and right of existing states to exercise supreme authority over their territory, control access to it and defend their citizens has become more difficult to exercise. To conclude, globalization, transnational trade, culture and travel are just some of the factors that have challenged the effective capacity of the state. To adapt to these transformations, sovereignties are joined or shared with other states, as states are the main actors in an organization such as the EU because their interaction is so complex and intense that it has modified their independence.

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Recibido el 14/11/22 Aceptado el 28/12/22

Keywords: national sovereignty; obsolete sovereignty; supranationalism; supreme political authority; independence.

La Unión Europea como asociación supranacional y el problema de la soberanía estatal

Resumen

El objetivo fue analizar la Unión Europea UE como una asociación supranacional, lo que, a su vez, conduce a problemas de soberanía estatal. La metodología empleada consistió en métodos científicos generales y especiales. La soberanía es una construcción política arcaica. Hay dos opuestos: uno, se centra en el Estado y proclama que la soberanía reside en un nivel particular de gobierno, el parlamento y el gobierno derivado de él; el otro, es el enfoque multinivel que presenta la soberanía a través de un nuevo prisma, afirmando que el concepto mismo es obsoleto, desafiando la globalización y la integración. La capacidad y el derecho de los Estados existentes de ejercer la autoridad suprema sobre su territorio, controlar el acceso a él y defender a sus ciudadanos se ha vuelto más difícil de ejercer. Para concluir, la globalización, el comercio transnacional, la cultura y los viajes son solo algunos de los factores que han desafiado la capacidad efectiva del Estado. Para adaptarse a estas transformaciones, las soberanías se unen o comparten con otros Estados, ya que los Estados son los principales actores de una organización como la UE porque su interacción es tan compleja e intensas que ha modificado su independencia.

Palabras clave: soberanía nacional; soberanía obsoleta; supranacionalismo; autoridad política suprema; independencia.

Introduction

When European states emerged from the Middle Ages, creators worked to consolidate territorial possessions and rationalize territorial administration. The main goal of this period was to consolidate territory, often dispersed because of the dangers of inheritance or conquest. Thus, Austria gave up territories in southern Italy for the north, and France absorbed Franche-Comté, Alsace, and Lorraine, contributing to its efforts to replace the disorderly: "Pré carré, or straight line of division" and the chaotic 1659 border of the southern Netherlands (Abramson *et al.*, 2022).

That is, the main goal of these officials was to build increasingly efficient states bound by well-institutionalized boundaries. These increasingly effective state institutions played an important role in facilitating economic exchange between people who did not know each other, for example by providing clear rules and enforcing norms (Abramson *et al.*, 2022).

In the absence of effective state-building, individuals often relied on narrow and exclusive groups within which they could reliably engage in commerce. In sixteenth-century England, individuals formed exclusive associations to provide credit when the state was unable to provide a stable currency at all times (Abramson *et al.*, 2022).

Although frequent transfers of territory redrawing borders were part of the broader process of European state-building, at the local level they hampered efforts to build effective states. Regions with multiple border changes lagged behind, as territorial transfers interfered with state efforts to consolidate control.

Since the early days of the integration process, scholars have tried to establish how and to what extent integration and globalization have transformed sovereignty, both de jure and de facto. Although early theories of EU integration painted supranationality in contrasting colors, they only indirectly addressed the question of sovereignty.

The gradual transformation of the EU raised a critical question: How can power, united in a supranational union halfway between a federation and an international organization, be exercised collectively in a democratic way?

In the post-Maastricht era, member states of the European Union (EU) have been increasingly reluctant to delegate further powers to the supranational level, citing their willingness to protect their sovereignty. At the same time, recent crises in various policy areas, such as immigration, borders, monetary policy, trade, etc., have prompted decision-makers to expand, albeit in a limited way, the scope of EU institutions.

Not only the refugee crisis and attempts to save the euro but also the debate surrounding Britain's exit from the European Union has been a dominant sovereignty issue. This has provoked an unprecedented level of debate about the values underlying the EU's common policy and what many perceive as a new loss of sovereignty. Thus, the conundrum underlying notions of "common" or "pooled" sovereignty has once again found itself at the center of debates around the EU's legal, economic, and political legitimacy.

It is therefore important to reevaluate the issue of sovereignty in the EU in light of contemporary challenges. Although the notion of sovereignty has been central to the debate generated by the current EU

crisis, it remains strikingly under-researched. Big theories do not directly address the question of sovereignty and tend to limit their reflexions to the opposition between national sovereignty and supranationalism (Zaharia and Pozneacova, 2020).

Almost ten years after the explosion of the 2008 global and financial crisis and its European manifestation as the "Eurocrisis," there is a growing consensus that the latter has quickly outgrown or changed into a deeper democratic crisis (Nanopoulos and Vergis, 2019).

EU integration, as a top-down process, had a corrosive effect on European polity, delegitimizing the very idea of Europe's political unity, and at the same time promoting the growth of populist movements against the EU. Because of the obvious shortcomings of the European project, the only powerful narratives that seem to be populist rebuttals in blaming Brussels and, above all, are the conclusion that EU institutions are democratically delegitimized and cannot provide basic public goods such as employment, security, currency and the like (Longo, 2019).

This article is aimed at summarizing the understanding of the European Union as a supranational association and at the same time understanding that it is a problem of state sovereignty.

1. Literature Review

Various scholars have investigated this problem, and their results and conclusions have been used in addressing this issue.

In their work Zaharia and Pozneacova (2020) emphasis to the process of framing supranational and intergovernmental theories in a historical context to determine their significance in the development of the European Community. The concept of supranationalism was developed by Albert Einstein, Winston Churchill, Robert Schuman, and Jean Monnet. At the beginning, this concept was expressed, on the one hand, in terms of the need to create a supranational organization in control of military and nuclear forces. In addition, these eminent persons noted the possibility of a supranational economic union.

It should be noted that the intergovernmental theory was described by Stanley Hoffmann, Alan Milward, Jeffrey Garrett, and Andrew Morawczyk. According to them, the state is the main actor in the process of European integration, and its role cannot be limited even in the best periods of European integration. The adaptations of intergovernmental theory, on the one hand, analyze the importance of the state in the European Community, but, on the other hand, note the process of formatting preferences in national state policies.

One response to the desire for a more democratically legitimate Union and to meet citizens' expectations about political institutions, which today are channeled mainly into radical populist messaging, is certainly to increase participation and extensive access to the processes under discussion. This is all happening under the umbrella of Institutional Change in the EU, following the adoption of the Lisbon Treaty, as an innovative tool to involve people in the debate on politics and lawmaking at the EU level, by supporting and submitting legislative initiatives to the Commission, which aimed to create conditions for a new dialogue between political institutions, civil society, and people, to "transfer the social sphere formed by citizens using their rights and freedom in political freedom" (Longo, 2019; 32).

The transformation of the Economic Community into a political union has sparked debates about how they change the nature of national sovereignty. Throughout the 1990s, scholars tried to understand the emergence of the new European configuration and the transformation of the concept of sovereignty by introducing a wide range of metaphors, indicating that sovereignty is unified and shared. They also tried to understand the implications of a model of unified or shared sovereignty.

Does the abolition of the national veto, with a shift to qualified majority voting in most areas of EU decision-making, combined with a top-down European legal system, mark Europe's transition to a post-sovereign, a post-national political order based on human law? Or should it be perceived as a pre-sovereign configuration that "divides and distributes sovereignty in a way that eliminates the arbitrary power of any single agent or agency"? (Brack *et al.*, 2019).

Carmen (2022) points out that from the perspective of defenders of state sovereignty, the EU was a somewhat unintentional and ultimately undesirable evolution of the treaty creating a common economic space. The EU could be considered unintentional because once it became operational, individual states lost unilateral control over many of the changes made by successive treaties, and undesirable because it encroached on larger and larger areas of domestic politics.

The signatory states of the 1957 Treaty of Rome began a process that culminated in a regional organization that gradually asserted legal supremacy over the member states, thereby weakening the ability of these states to decide how to manage their own economies and other related economies. Civic nationalist views defending the idea of national self-determination and the value of state sovereignty can be interpreted as supporting this more skeptical view of the EU.

Over the past two decades, the formation of large coalitions has increased in the European Union (EU), even in countries that have had no previous political experience with them. Along with the significant growth of both

new and radical parties, large coalitions signal the growing fragmentation of contemporary European politics (Morini and Loveless, 2021).

An anti-essentialist perspective helps to better understand the phenomenon of Brexit and right-wing populist strategy in the United Kingdom. The success of the "exit" vote in the referendum was due to the ability of those defending exit from the EU to articulate a range of demands, in some ways heterogeneous. Tony Blair was largely responsible for the Brexit. He implemented a program that benefited the middle class in the south of England, which completely abandoned the more industrial northern regions. Neoliberal globalization has really devastated these sectors, and the Brexit referendum exit camp has managed to portray the European Union as the source of all the problems these communities face.

The Brexit has become hegemonic, highlighting a whole series of demands. In the construction of the people, heterogeneous demands are constantly being articulated. It requires a hegemonic qualifier that becomes a symbol that represents the demands; over which the people gather. The people of the exit campaign clustered around the symbol of the Brexit, which denoted all the heterogeneous competitions that were in fact resistance to the post-democratic conditions created by neoliberal hegemony.

Those leading the campaign for exit managed to express this not as a consequence of neoliberal hegemony, but as a consequence of belonging to Europe. On this basis, the decision was to take back control and leave the EU. This became the cement that crystallized the collective will. This collective freedom was not an expression of existing demands; there were no such demands against Europe. These demands were constructed by the discursive campaign "Leave" (Mouffe and Ouziel, 2022).

2. Methods

The article is based on scientific works, articles, as well as the constituent documents of the EU. The functioning of these organizations is clearly evident in the fact that on the one hand, there are supranational bodies, on the other hand, that successful integration is not necessarily connected with the creation of supranational bodies.

The methods of research have been selected taking into account the specifics of the goals and objectives of this work. In general, a systematic approach based on a combination of the dialectical method of scientific knowledge of international legal phenomena and processes, as well as general scientific and special research methods was used.

The methodological basis of the work consists of interdisciplinary and integrated approaches. The interdisciplinary approach is based on the

application of theoretical developments of jurisprudence, philosophy, history, political science, economic theory, etc., which enable the fullest comprehensive study of European integration and identify its impact on the state sovereignty of the European Union countries.

Consequently, the comparative legal method is used in the study of the content and signs of superpower. In turn, the logical-legal method allows to find elements, signs, and models of supranationality.

In the study is used a comprehensive approach aimed at revealing the multidimensionality and multifactoriality of ontological determinants of the integration process, contributing to the elucidation of connections between the various structural levels of public power in the EU.

The hermeneutic method was used in the interpretation of the constituent treaties and legislation of the EU, constitutions, and other sources of national law in the aspect of clarifying the powers of Union institutions, the legal regulation of issues related to the implementation of state sovereignty.

The use of system-structural and structural-functional methods helped to consider the EU as an institutional-functional organization of power, the legal order of the EU, giving it a character of integrity, as well as to define the degree of complexity of the political system of the EU.

The historical-legal method was used to cover the issue of the evolution of approaches to the unification of European countries.

In turn, the comparative legal method was used to clarify the legal nature of the EU as an integration association, identifying a trend to strengthen the supranational foundations in its institutional mechanism.

3. Results

Together with attempts at new forms of regional integration, the end of World War II ushered in a new phase for shifting territorial boundaries, political forces, and institutional structures on the European continent. From the outset, this sparked various political and scholarly debates about the further reconfiguration of state sovereignty, with federalists advocating the unification of former, mostly belligerent, nation-states into a European federation (Brack *et al.*, 2019).

Common values are the basis for establishing the institutional structure, defining the goals and objectives of the integration association, and legislating them. Common foundations give integration processes sustainability and a certain direction. The fundamental values remain largely unchanged and are generally preserved and proclaimed in all the founding acts of the EU. They may be formulated in different ways, undergo certain changes in the

relevant documents, but they remain unchanged in their essential content. The fundamental values laid down based on integration determine the nature and ways of achieving the set goals.

In practice, such goals and objectives are formulated and implemented as part of the development strategy, which may also undergo certain changes at different stages of the development of the integration process, depending on internal and external conditions. The objectives are directly related to the tasks, which are enshrined in the regulations and statutes. These are, first of all, founding treaties, as well as acts adopted to ensure their observance. Comparing the European Union with other geopolitical centers of power, it is necessary to bear in mind a number of its fundamental peculiarities.

The formation of the single market and the eurozone, contributing to the convergence of conditions in the EU countries, smoothing the differences between the national and regional models of the participants of these associations, did not deprive them of their national identity (Organisation for economic co-operation and development, 2019).

The commitment to common ideals, principles, and values is one of the most important conditions for the formation and stability of integration associations. Law does not establish values and ideals, it only consolidates and confirms their existence, builds upon them, and relies on them to ensure their fullest and most effective implementation (European parliament, 2021).

In the EU, the governance process is no longer carried out exclusively by the state, but by various supranational, state, and non-state actors in a polycentric and non-hierarchical system of governance. From this perspective, it seems that the political supremacy does not belong to the member states or to the supranational bodies of the EU, but between them is exercised in different ways and combinations according to the sphere of politics.

Over time, the EU has developed into a unique system of multi-level governance, in which national governments are limited in their ability to control the supranational institutions they have created at the European level. Who decides and how is not always clear in a policy that brings together 28 member states, a wide range of institutions, bodies, expert committees, national agencies, and national institutions in constant interaction with their domestic and international counterparts (Zaharia and Pozneacova, 2020).

The EU continues to consist of sovereign actors in international economic relations who have transferred only part of their sovereignty to supranational bodies, choosing European values as a guide in state-building processes. Within the EU, states often act for themselves but join forces

against third countries at the supranational level. A "Europeanization of values and nationalization of interests" is taking place (Razumkov centre, 2021).

Regarding the new European Union candidates, it is important to note that Central and Eastern European countries wishing to join the European Union must undertake public administration reforms at the national level to meet the Copenhagen and Madrid criteria for European Union membership. In turn, such reforms are expressed in the adaptation of EU values by introducing qualitative multisectoral reforms in order to bring national legal systems as close as possible to EU law (Gerasymova *et al.*, 2021).

In the liberal intergovernmental mechanism, "domestic social actors" are embodied, in essence, as economic producers who contribute to shaping the advantages of states and the "winning set" available to them during intergovernmental negotiations (Figure 1). In view of this, postfunctionalism is the only theoretical approach that emphasizes the primacy of domestic politics and the possible pressures it can have on reducing the level and scope of integration (Webber, 2019).

He also notes the relevance of politicizing issues related to identity and sovereignty, especially for explaining crises. For example, the migration crisis, the illiberal challenge, and Brexit can be explained in part by the moderating effect of the politicization of identity and/or sovereignty issues by political actors at the domestic level. These crises mobilized collective identities, which some saw them as sovereignty issues, and any attempts to depoliticize these issues had the opposite effect (Börzel *et al.*, 2019).

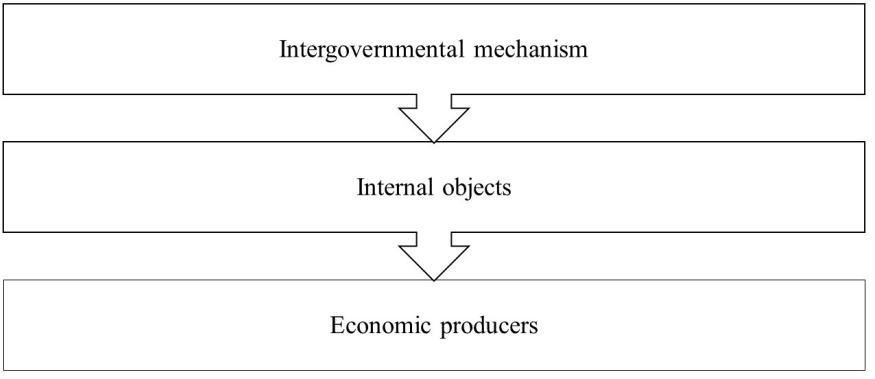

Figure 1. Liberal mechanism of formation of supranational European Union (author's own development).

Although post-functionalism does not offer a particular development of the concept of sovereignty per se, it emphasizes the need to go beyond the binary opposition of national sovereignty versus supranationalism and shows how important internal actors and events are for understanding EU integration and its crises (Brack *et al*., 2019).

Daring to categorize the European Union, it is necessary to agree with Villasmil (2022), who point out that it is the timely resolution of the crises in different democratic societies that will determine the continuation of this form of government in time, a situation that requires a specific scientific study of each experience of polyarchy in the hands of an interdisciplinary team and, more importantly, still through the support of an organized civil society that wants to build a better reality.

According to Bellamy, state sovereignty matters because people living in states have a long history of self-government. Liberal-democratic states give their citizens room to create and shape the institutions governing their social and economic lives to ensure freedom and justice, including political and social rights. But a proper assessment of state sovereignty does not require the abandonment of supranational institutional schemes that bring states together.

Indeed, supranational institutions such as the EU offer states a number of important advantages, including regulating their interactions to avoid interstate domination, addressing collective action, and cooperating to better meet the needs of their citizens. But to be consistent about respect for state sovereignty, cooperation among states is best realized through a "consensus agreement among democratic states," acting as democratic representatives of their citizens (Bellamy, 2019).

Since the famous Maastricht ruling of the German Constitutional Court in 1993, there has been a constant debate around the "No demos" thesis. In their ruling on the Maastricht Treaty, German judges argued that there were no pan-European demos that would underlie a possibly fully democratic European polity. Thus, the main problem with popular sovereignty in the EU is the impossibility of finding a sovereign who could grant powers to joint institutions (Rose, 2019).

On the one hand, the fact that different people remain distinct means that they retain control (i.e., veto power or withdrawal) over the constitutive rules of state structure; on the other hand, it also implies that different European peoples are obliged to exercise their sovereignty "only in agreement with all other members of the state or people."

Today's political practice, however, shows that a) on an intellectual level, the concept of democracy has no political or social consensus, and b) on a practical level, shared sovereignty is not (yet?) an operational concept; rather, it tests the limits of different types of sovereignty in everyday politics,

igniting vivid conflicts with destructive potential for democratic order in Europe (Brack *et al.*, 2019).

4. Discussion

Institutionalized cooperation among states does not diminish the sovereignty of member states and their people but can preserve and enhance it. It becomes possible: by creating the conditions of external sovereignty, providing for the protection of states from undue interference by other states, or by enabling states to increase their internal capacity to promote and protect the interests of their citizens.

In general, one can agree with the normative framework and the need to define more precisely the relationship between state sovereignty and supranational institutions. But, contrary to the arguments, one cannot see how a supranational structure like the European Union can be created without reducing the sovereign power of member states.

Over the past decade, the EU has been confronted with a "polycrisis". While it may seem that the EU is in a state of permanent crisis, this time is different, as the European project has never had to face so many challenges simultaneously, over such a long period of time, and with such a high price to pay for inaction (Brack *et al.*, 2019).

Over the past 10 years, not only have some Eastern and Central European countries consistently challenged the legitimacy of the EU and the Commission to take action when national governments adopt legislative changes that put pressure on the liberal constitutional order and the independence of their judicial systems, but more recently they have challenged the necessarily supranational institutions to defend the common values on which the EU was founded. This debate has raised fundamental normative, political, and legal questions about the nature of the EU's political regime and its role in protecting shared values and preventing member states from putting those values under significant pressure. This is an existential threat and a political challenge to EU integration (Brack *et al.*, 2019).

The result of the Brexit referendum on June 23, 2016, came as a shock not only to those remaining in Britain but also to pro-Europeans throughout the EU. Apparently, pro-European adherents significantly misjudged the support of most of their preferences. It is plausible to expect that an event with such visibility and ramifications will affect the shaping of beliefs and benefits not only among British citizens but also European citizens outside the UK (Delis *et al.*, 2020).

Conclusions

The EU is an example of an orderly confidence-building process, allowing governments to steadily cede elements of national prerogatives to supranational institutions. In an effort to lay the foundation for greater integration to make future wars in Europe impossible, a gradual approach was adopted, beginning with the European Coal and Steel Community as the area where the benefits of cooperation after the war were most evident. Based on this, the Treaties of Rome establishing the European Economic Community were signed in 1957.

The 1978 decision of the European Court of Justice established the principle of mutual recognition of judgments in any one state among all other European states. The Single European Act of 1987 abolished the requirement of unanimity in decision-making, and then streamlined Europe in 1992 and abolished border controls. The European Parliament evolved from a deliberative group of national parliamentarians to a directly elected body.

The Maastricht Treaty of 1992 called for a common currency and gave legal meaning to the concept of Union citizenship. The Lisbon Treaty in 2009 expanded European competence, strengthening the European Parliament. There have been ups and downs, and countries have progressed at different rates, but the Union has expanded to 28 members.

Since the end of the twentieth century, the EU is believed to have suffered from a significant legitimacy crisis, combining symptoms of a structural democratic deficit on the one hand and a general lack of effective solutions to common problems on the other.

Since the creation of the European project, the external relations of the European Union and its member states have been central to their development at the international level. A striking feature of international relations today is the increasing number of international organizations and international agreements, as well as the growing range of issues they involve. This naturally encourages the EU and its member states to make active use of their external powers. While the EU has gained a lot of external powers - because of treaties and case law - member states can still take autonomous actions, as long as they do not violate EU law.

Sovereignty is at the heart of conflicts over membership, as the Brexit showed. Although in the past "closest union" was the only way forward, and the return of sovereignty was unthinkable and legally impossible, the Lisbon Treaty allows member states to withdraw from the Union in accordance with their constitutional requirements. The extent to which leaving the EU allows a return to the world of "early sovereignty" is unknown, and Brexit is an interesting case in point. Similarly, the conflicts in Britain over the

Brexit reveal a fundamental tension between different types of sovereignty, in particular between popular sovereignty and parliamentary sovereignty. These crises demonstrate that conflicts of sovereignty occur at different levels, in different domestic situations, and involve different spheres of politics.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 186-206
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The impact of decentralization on the administrative service delivery speed in different fields

DOI: https://doi.org/10.46398/cuestpol.4176.10

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Abstract

Using an analytical and documentary-based methodology, the objective of the study was to establish the relationship between the degree of decentralization and the speed of delivery of administrative services at the local level in different fields in European countries and Ukraine. The study involved indicators of the speed of delivery of administrative services (company registration, building permit and land registration) according to the World Bank's Doing Business methodology. The relationship identified between the degree of decentralization and the speed of administrative service delivery at the local level was the basis for establishing that the time to register a company and obtain a building permit decreases as a function of the higher degree of decentralization. The time to register property increases as the degree of decentralization increases, which is partly explained by the complexity of the administrative procedure models and their duration. It is concluded that, a comparison of the speed of providing administrative services (business registration, construction permit, land registration) in Ukraine with the average indicator of a group of countries revealed significantly better results in Ukraine.

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Recibido el 15/12/22 Aceptado el 16/01/23

Keywords: public administration; decentralization of management; administrative services; local self-government bodies; impact of decentralization.

El impacto de la descentralización en la velocidad de prestación de servicios administrativos en diferentes campos

Resumen

Mediante una metodología de base analítica y documental, el objetivo del estudio fue establecer la relación entre el grado de descentralización y la velocidad de prestación de servicios administrativos a nivel local en diferentes campos en los países europeos y Ucrania. El estudio involucró indicadores de la velocidad de entrega de servicios administrativos (registro de empresa, permiso de construcción y registro de propiedad) de acuerdo con la metodología Doing Business del Banco Mundial. La relación identificada entre el grado de descentralización y la velocidad de prestación de servicios administrativos a nivel local fue la base para establecer que el tiempo para registrar una empresa y obtener un permiso de construcción disminuye en función del mayor grado de descentralización. El tiempo de registro de la propiedad aumenta a medida que aumenta el grado de descentralización, lo que se explica en parte por la complejidad de los modelos de procedimientos administrativos y su duración. Se concluye que, una comparación de la velocidad de prestación de servicios administrativos (registro de empresas, permiso de construcción, registro de propiedad) en Ucrania con el indicador promedio de un grupo de países reveló resultados significativamente mejores en Ucrania.

Palabras clave: administración pública; descentralización de la gestión; servicios administrativos; órganos de autogobierno local; impacto de la descentralización.

Introduction

The development of territorial communities is one of the key issues in the public administration system. The need to improve the effectiveness of the territorial entities, to ensure the ability to perform functions of the state at the local level require new approaches to the distribution of power at different hierarchical levels. The economic and social reform policy in the context of strengthening the regional and local capabilities of self-governing entities offers the concept of decentralization of power.

This model of the distribution of power is widely used both in the world as a whole (123 countries started administrative decentralization processes during 1970-2014 (Tester, 2021)) and in the European Union. Significant experience has been accumulated regarding different approaches to the organization of the distribution of resources and powers in view of the growing role of subnational levels of public administration in the EU countries. An important result of decentralization is an effective and open system of territorial organization of power in the country.

Decentralization involves strengthening the capabilities, responsibility and effectiveness of the public administration system at the local level, and improving the provision of public needs. In turn, these processes create problems related to the growth of territorial distinctions in terms of development, financial and administrative capacity, and the possibilities of providing administrative services by the public administration system. Balanced approaches to providing decentralization with a financial component can improve the efficiency of resource allocation and use, ensuring the territorial community's ability to fulfil spatial development tasks and expanding the opportunities of inclusive solutions. This is crucial for both European countries and Ukraine, which has recently implemented a decentralization reform.

The discussion on the construction of a centralized or decentralized system of public administration is quite old. Key political issues in the current debate on the development are reducing centralized control and delegating power to local authorities. Decentralization policies assign local self-government bodies an institutional role to implement the achievements of democracy through leadership training, political stability, local consultation and more effective public accountability.

The liberal approach emphasizes decentralization for better organizational efficiency in providing goods and services, for environmentally sustainable development, and in promoting local development through citizen participation. The researchers' interest in the consequences of decentralization for the economy focused mainly on economic growth, and some studies indicate that there is an optimal level of decentralization that maximizes the growth rate of the economy (Martinez-Vasquez *et al*., 2017; Camões, 2022; Canare, 2022).

Public administration and fiscal decentralization reform increase the autonomy of territorial entities and reduce dependence on the state budget. Local self-government bodies improve public welfare and the service quality on the basis of expanded management of their own finances. In this connection, multi-level management models have gained key importance in the political mechanisms of European countries in recent decades, thereby strengthening the capabilities of local self-government bodies. The transition from the creation of facilities to service delivery sets up an

environment which provides citizens with an opportunity to choose service providers from the perspective of their own benefit and quality (Mihálik *et al*., 2019).

Decentralization of administrative, fiscal and political powers has made local authorities able to provide the population with basic services that contribute to the quality of life and well-being in the community. Researchers of decentralization processes consider the importance of formal political institutions, which, by means of reform, change the approach to public services through institutional mechanisms associated with democratic development. There is an opinion that the quality of public services was influenced by the inadequate professional level of the employees, the lack of basic administrative infrastructure, etc. As a result, it can be difficult to meet public needs even with available resources and powers. At the same time, global experience shows that fair local elections, transparency, citizen participation, capacity of civil servants and existing basic infrastructure are key factors for effective decentralization in order to improve service delivery at the local level (Sujarwoto, 2017).

Decentralization has enhanced interest in local politics and public services, while local-level democratic processes have increased competition in local political struggle (Ziegenhain, 2015). It is important to have sufficient powers and financial resources in view of the possibility of decentralization to improve the work of local self-government bodies by responding to the direct citizens' participation requests. The institutional models of decentralization differ from country to country, but they are all based on the democratization of the effective public service delivery processes (Nishimura, 2022).

Decentralization can be considered as a process in which local political and institutional actors receive varying degrees of autonomy in relation to central public authorities. This implies a change in the relationship between the national and local levels in the field of rights and responsibilities and the expansion of the powers of authorities at the local level (Borrett *et al*., 2021). The Organization for Economic Co-operation and Development considers the transfer of powers, responsibilities and resources from central authorities to subnational authorities with a certain degree of autonomy as an important aspect of decentralization (OECD, 2019).

The decentralization consists of political, administrative and fiscal aspects. The decentralization reform may be implemented at a different pace and depth in different countries in view of their launch at different time and established needs. The decentralization of the above three aspects will be asynchronous, but the interaction between them is important. So, attempts to measure decentralization will have certain limitations, as any approach to this issue must provide for the definitions, concepts and methods used by researchers, which will affect the results (Borrett *et al*., 2021).

Administrative decentralization involves the transfer of responsibility for the provision of public services from central authorities to the territorial communities. Fiscal decentralization involves the transfer of authority over the revenues and expenditures of the budget to local self-government bodies (Chaudhary and Iyer, 2022). Political decentralization is based on the model of the exercise of power by autonomous local authorities elected directly by citizens. Administrative decentralization speeds up decision-making at the operational level, thereby preventing delays caused by the need to transfer issues to a higher level of the hierarchical authority structure (Gardi *et al*., 2020).

The existing need to determine the degree of decentralization raises the issue of creating the required methodology. Approaches to the decentralization indices became clearer in the academic environment in the late 1990's. Decentralization indices are based on a ranking system that classifies sub-national entities based on their degree of territorial autonomy through evaluation. Researchers determine institutions and institutional resources, styles of intergovernmental relations, party ties, and political leadership as the main dimensions of territorial capacity (Harguindéguy *et al*., 2021).

There are other approaches that, for example, demonstrate the degree of decentralization in the EU countries based on a special study of the distribution of powers, including on the legal basis for different governance structures in the EU Member States (Harguindéguy *et al*., 2021; European Committee of the Regions, 2022). The general degree of decentralization in the EU country can be determined using the available data on the level (index) of fiscal, political and administrative decentralization.

The decentralization processes, providing for the autonomy of the territorial entity, contribute to the expansion of meeting the needs of individuals and legal entities. One of the important directions is the provision of administrative services by local self-government bodies. Studies show that local self-government bodies with a higher degree of financial (fiscal) decentralization reduce their own expenses and increase the number of public services.

Besides, increased accountability of local self-government bodies based on local tax transparency can improve local service delivery (Bianchi *et al.,* 2021). Delegating administrative powers to local authorities can improve public service delivery, taking into account the availability of information, understanding the needs of citizens or conducting monitoring at the local level (Chaudhary and Iyer, 2022).

When considering the issue of satisfaction with the administrative services by local self-government bodies, one of the key parameters is their delivery speed in different fields, which may indicate a certain administrative

capacity of the authorities at the local level. Based on the foregoing, the aim of the study is to find out the degree of influence of decentralization processes on the speed and quality of administrative services provided at the local level in different fields in European countries and Ukraine. The aim involved the following research objectives:

1. Define of the degree of decentralization;
2. Identify the terms of the main widespread administrative services in different fields;
3. Determine the correlation between the degree of decentralization and the administrative service delivery speed;
4. Comparison of the time of administrative service delivery in Ukraine with certain global indicators.

1. Methods

The methodological approach of the research is divided into several stages: making a list of countries to be analysed; determination of the administrative service delivery speed; determination of the degree of decentralization; finding a relationship between the degree of decentralization and the administrative service delivery speed; comparison of average European indicators of the administrative service delivery with Ukrainian ones.

It is proposed to include the EU countries in the sample to be analysed (Belgium, Latvia, Germany, Sweden, Denmark, Finland, Spain, Poland, the Czech Republic, the Netherlands, Slovenia, France, Italy, Portugal, Croatia, Estonia, Austria, Lithuania, Hungary, Romania, Bulgaria, Greece, Slovakia, Luxembourg, Cyprus, Ireland, Malta).

The time of administrative service delivery to the customer (consumer) is determined in accordance with the following services: company registration, construction permit and property registration. These types of administrative services are selected as one of the most widespread, sufficiently complex in terms of registration procedures and the availability of relevant data.

Separate indicators of the World Bank's Doing Business methodological approach assessment were used to obtain data on the time of administrative service delivery. Doing Business indicators include sections that directly address the time of the relevant administrative service delivery (World Bank, 2020a; World Bank, 2020b). The Decentralization Index of EU countries (European Committee of the Regions, 2022; Harguindéguy *et al.,* 2021) was used as an indicator of the degree of decentralization. Possible

dependencies of the administrative service delivery speed on the degree of decentralization of the country are determined based on the selected indicators using a graphic method (scatter diagram).

The comparative analysis determined the level of administrative services in Ukraine relative to the EU high income countries and OECD.

2. Results

It should be noted when analysing such administrative services as company registration, construction permit and property registration in the EU countries that the processes of execution of individual documents will take into account certain features. The specified features include the work regulations of public authorities authorized to deliver a particular service, and the number of procedures provided for by the regulations of a particular country, which must be carried out for obtaining this administrative permit/service.

Data on the time of administrative service delivery are provided in the World Bank's Doing Business report (World Bank, 2020a; World Bank, 2020b) as separate indicators that characterize the state of the provision of administrative services in 190 countries of the world in 2020. A graphic analysis will be conducted on the basis of available data on the time for company registration, obtaining construction permits and property registration in individual countries of the European Union and the number of administrative procedures provided for by the current legal acts of each country (Figure 1).

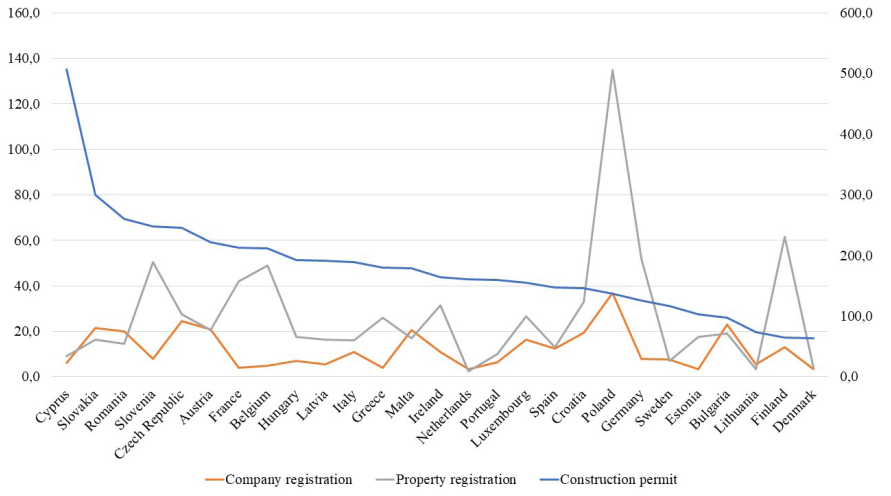

Figure 1. Speed of administrative service delivery in selected EU countries, days (World Bank, 2020b).

Analysis of time for administrative service delivery (Figure 1) shows significant differences between countries. For example, the company registration in the studied countries ranges from 3.5 (Denmark, Estonia, Netherlands) to 37 days (Poland). At the same time, property registration takes from 2.5 (Netherlands) to 135 days (Poland). A construction permit service takes much longer to complete: from 64 days (Denmark) to 507 days (Cyprus).

For a better understanding of effective service provision, it is possible to determine the conditional speed of one administrative procedure as an illustrative example with a view to different approaches to the company registration processes determined by the national legislation of each country (Figure 2).

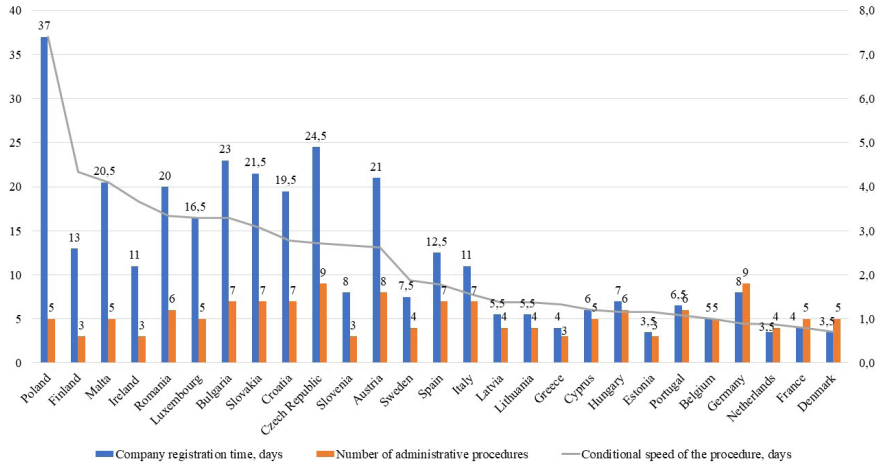

Figure 2. The time of company registration, the number of administrative procedures and the conditional speed of the administrative procedure (World Bank, 2020b).

The study of the degree of decentralization of selected EU countries, carried out in accordance with the existing methodical approach, showed that the indices of general decentralization range from 0.8 (Ireland, Malta) to 2.5 (Latvia, Germany). As noted above, the general Decentralization Index consists of the indices of fiscal, political and administrative decentralization. It should be noted on the basis of these directions that the countries are in the range from 0 (Malta) to 3 (Germany, Sweden) according to the Fiscal Decentralization Index. Ireland (1.2) obtained the minimum index of political decentralization, while Latvia, Germany obtained the maximum – 2.5. The Administrative Decentralization Index was the lowest level in Ireland (0.6) and the highest in Denmark (2.5) (European Committee of the Regions, 2022; Harguindéguy *et al.,* 2021).

The dependence of the speed (time) of obtaining a building permit on the degree of decentralization can be identified in Gretl using graphical analysis. The conducted analysis based on the scatter diagram demonstrates the general trend of most of the studied countries (Figure 3). The trend proves that when the degree of decentralization increases, the time of providing an administrative service (a construction permit) decrease. The indicators of Cyprus, where the time-of-service provision — 507 days — was recorded, can be considered the most significant deviation.

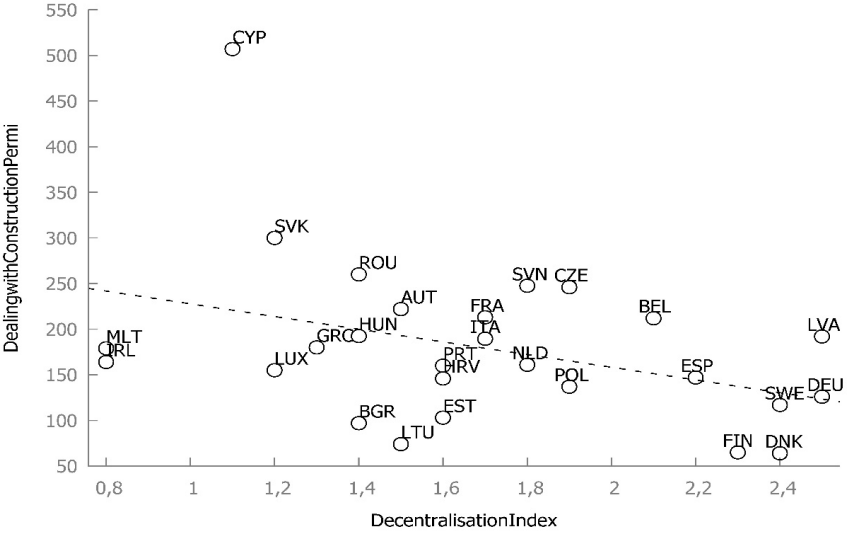

Figure 3. The relationship between the time of obtaining a construction permit (days) and the degree of decentralization.

We can see a similar situation in the analysis of the dependence of the time of company registration on the degree of decentralization (Figure 4). The indicators of Poland (37 days) can be distinguished, which are significantly different from the general trend.

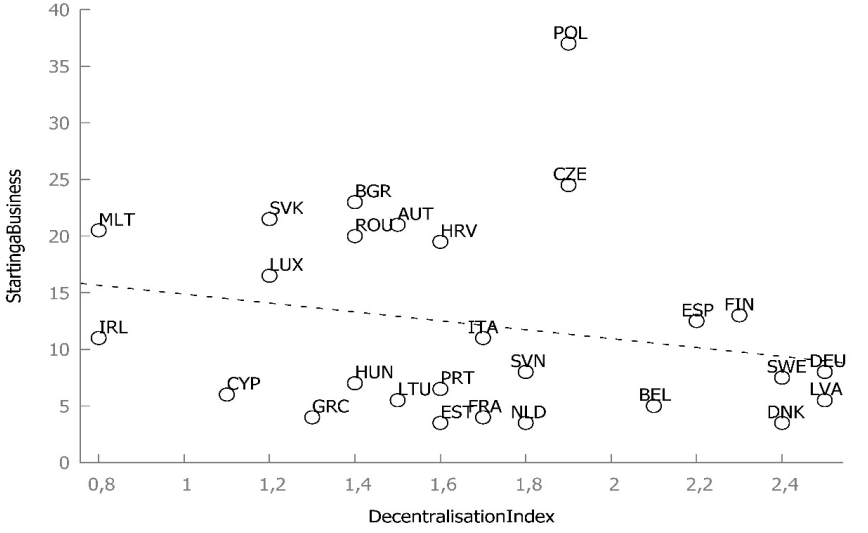

Figure 4. The relationship between the time of company registration and the degree of decentralization.

The situation is the opposite when the dependence of the time of property registration on the degree of decentralization is analysed (Figure 5). A certain increase in the time of obtaining an administrative service is noticeable with an increase in the degree of decentralization in the country. Poland's indicators (135 days) differ significantly from the general trend.

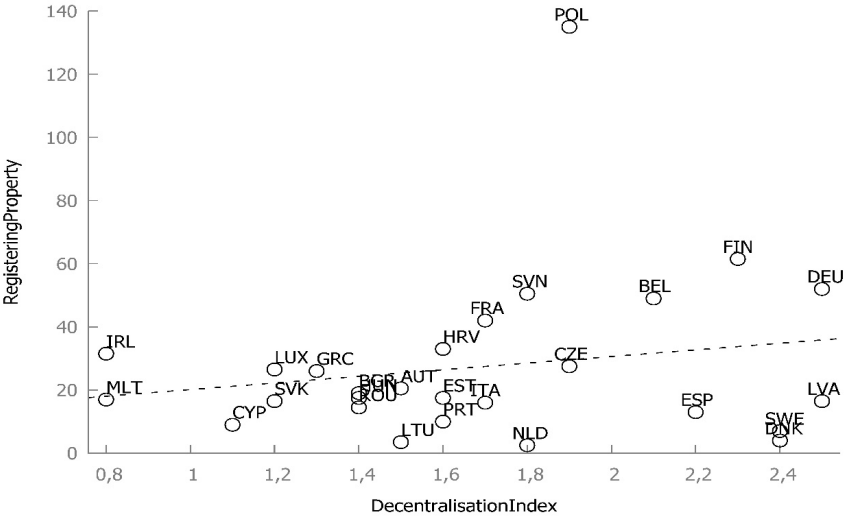

Figure 5. The relationship between the time of property registration and the degree of decentralization.

In general, it should be noted that the property registration and the company registration procedures take significantly less time (with the exception of Poland) than obtaining a construction permit in the EU countries.

The reform of the system of local self-government and territorial organization of power in Ukraine has been ongoing since 2014. This provides for complex reforms in key areas aimed at establishing democratic institutions, ensuring coordination of the interests of the state and territorial communities, improving the quality of life through decentralization (Siryk *et al.*, 2021).

The indicators of the number of procedures required to obtain an administrative service (company registration, construction permit, property registration) in Ukraine and the average indicator for a group of countries (Europe and Central Asia; high income OECD countries) (Table 1) are compared blow.

Table 1. Number of procedures in the provision of administrative services, 2020 (World Bank, 2020c).

Indicator	Ukraine	Europe and Central Asia	High income OECD countries
Company registration procedures (number)	6	5.2	4.9
Construction permit procedures (number)	10	16.2	12.7
Property registration procedures (number)	7	5.5	4.7

Table 1 shows that the indicators of Ukraine slightly exceed the average data for the group of countries "Europe and Central Asia2 and "the OECD", and, for example, the indicator for a construction permit turned out to be better in Ukraine.

The speed of administrative service delivery (enterprise registration, construction permit, property registration) in Ukraine and the average indicator for a group of countries (Europe and Central Asia; high income OECD countries) will be analysed in the same way (Figure 6). The obtained results show that these indicators are significantly better in Ukraine: the time spent on obtaining an administrative permit is almost 2 times less than the maximum value in the "company registration" group, 1.5 times less than the maximum value in the "property registration" group, and 2.3 times less in the "construction permit" group.

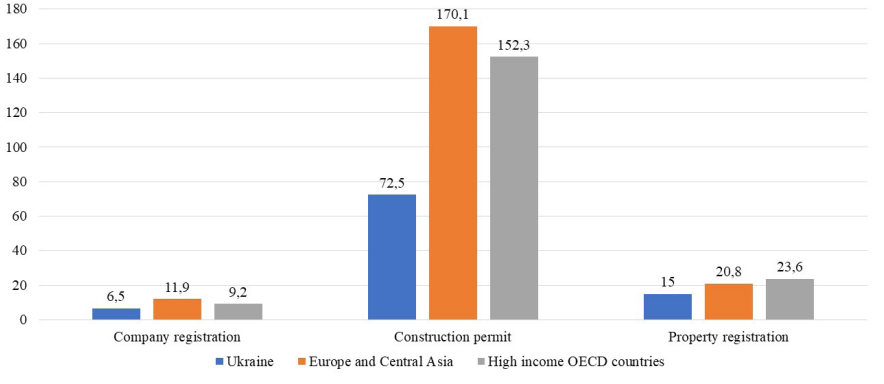

Figure 6. Time of administrative service delivery (days), 2020 (World Bank, 2020c).

In September 2022, a survey was conducted among employees of local self-government bodies (442 respondents) as part of the PROSTO Project "Support to Services Accessibility in Ukraine" in partnership with the All-Ukrainian Association of United Territorial Communities (Prosto, 2022). The purpose of the survey was to find out the level of basic administrative services in Ukraine by various entities of government bodies authorized to provide relevant services. Figure 7 illustrates the results of the assessment of administrative procedures.

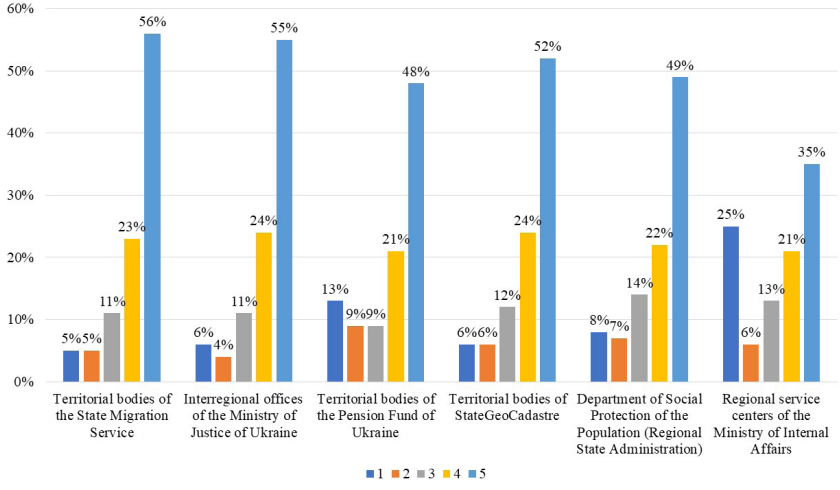

Figure 7. Assessment of the provision of the most requested administrative services in Ukraine in 2022, points (Prosto, 2022).

The above assessment indicates a significantly high level of administrative services in the field of land resources, social services, obtaining permits and certificates, etc. in Ukraine. Most of the entities authorized for the provision of administrative services received the highest score from half of the respondents for the quality of services, and one entity received the highest score from more than a third of the respondents. In general, the decentralization processes in Ukraine enabled reducing the time of providing administrative services at the local level and the quality of these services improved.

3. Discussion

So, the public administration decentralization processes, which transfer the state functions from the central to the local level, have a positive effect on the organization of administrative services and can influence social results through the simplification of approaches, social responsibility, meeting the needs of individuals and legal entities.

A review of academic approaches to assessing the degree of decentralization showed that there is no single best approach. The research involved an approach based on the methodology of determining the general Decentralization Index, which is based on a combination of administrative, fiscal and political decentralization. An important methodological limitation is that the definition, with the exception of the fiscal dimension, of indicators that measure decentralization depends on researchers and experts collecting and evaluating reliable information (Borrett *et al*., 2021).

The limitations of the study are the use of data only for the selected European countries, as there are no methodologically similar decentralization indexes for a larger number of countries, where a comprehensive index based on political, administrative, and fiscal decentralization is used. It is appropriate to use countries of the world with different levels of economic development and degree of decentralization for further extended analysis.

The conducted research demonstrates that feedback reveals the dependence of the speed of obtaining a construction permit and company registration on the degree of decentralization. An increased degree of decentralization, i.e., an increased political, administrative and fiscal capacity of local authorities, enables to reduce the administrative service delivery time. This is implemented mainly by reducing the number of administrative procedures or speeding up certain procedures.

The issues related to urban planning documents, land use, compliance with the current fire prevention, sanitary and epidemiological, construction legislation in the course of obtaining a construction permit fall under the powers of the territorial community. Coordination, transfer of documents between authorized government bodies takes place in a short period of time, thereby increasing the speed of providing administrative services while expanding administrative functions of local self-government bodies.

The same applies to company registration, the procedure of which remains shorter and more simplified compared to all the studied administrative services. In this case, the simplification is enhanced by the aspiration of local self-government bodies for stimulating the environment for the development of entrepreneurial initiative and operation of companies that pay taxes to the local budget, through administrative law mechanisms (World Bank, 2020d; World Bank, 2020e; World Bank, 2020f).

The dependence of the time of property registration on the degree of decentralization can be distinguished in the general understanding of the state of affairs regarding the administrative service delivery speed. In this case, there is (mostly) a noticeable increase in the time of administrative service delivery with increased degree of decentralization. The countries in which property registration procedure is quite quickly: the Netherlands (2.5 days), Lithuania (3.5 days), Denmark (4 days), Sweden (7 days) should be single out here. Although these countries have a different Decentralization Index, all of them are characterized by a fairly prompt certification of ownership — no more than a week.

At the same time, countries with a high degree of decentralization (Germany, Finland) have indicators of administrative service delivery speed of 52 and 61.5 days, respectively, which are almost comparable to countries with average values of the Decentralization Index (Slovenia, property registration time — 50.5 days; France, property registration time – 42 days).

In our opinion, some procedures that involve preliminary property registration (verification of collateral, sales agreement certification) and post-registration procedures provided by local self-government bodies increase the time the said administrative service delivery. For example, in Latvia, property registration procedures include verification of ownership rights in the Land Cadastre, denial of the local self-government body regarding immovable property, entry of information into the Land Cadastre.

The expansion of the powers of the local self-government body in Latvia in the property registration process includes the denial to use the property for the performance of municipal functions. In the event that the local self-government body does not provide an answer within the period specified by law, the ownership may be transferred to the applicant after 27 days (World Bank, 2020e).

The practice of registering ownership rights to real estate in Germany also has national features related to the expansion of the powers of local authorities. The applicant must obtain a waiver of pre-emptive rights from the municipality within 14 days. Besides, 20 days are allocated for the procedures related to the entry of relevant data into the land cadastre (notification, cancellation of encumbrances).

It takes 15 days to pay the real estate transfer tax and receive a notice from the tax authority, and the directly final stage of registering the new owner in the land register takes the same 15 days (World Bank, 2020f). Therefore, it can be argued that excessive coordination of procedures at the local level complicates the provision of an administrative service (property rights registration) and increases the overall time of the procedure.

An important limitation is the need to understand the differences in the decentralization systems of Ukraine and European countries. Governing bodies in the EU Member States at the regional and local levels can receive common EU resources that enable strengthening local development and the distribution of powers between the state and sub-national components. For countries with significant budget constraints, this allows co-financing of development projects and improving the ability to provide high-quality administrative services.

Besides, the direction of decentralization in the EU Member States is more related to the regional level, and current social issues are focused on the level of territorial communities. Transfer of the focus of management decision-making and administration to the community level enables minimizing the costs of providing public goods and stimulating their provision, which implies further improvement of the institutional environment.

The issue of providing services in decentralized management systems is actively discussed in the academic literature. The problem of the quality of serviced provided by local self-government bodies and its inequality within the country is discussed. Some researchers are uncertain about the above issue, because the capabilities of local authorities are influenced by many factors: local taxation conditions, lack of accountability mechanisms, targeted transfers, equalization models, infrastructure provision needs, etc. (Arends, 2020).

Local authorities should apply different technologies, methods, systems and strategies to solve service delivery problems, taking into account the complexity of criteria that affect management and decision-making to improve the quality of life (Bostanci and Erdem, 2020). The impact and results of the models used by local self-government bodies to provide services at the local level (self-provision, use of municipal enterprises, use of private enterprises, inter-municipal cooperation) are also important (Schoute *et al*., 2018).

The successful implementation of local self-government reforms requires institutional and administrative capacity, as well as the use of innovative approaches and tools. It should be added that decentralized governance for effective service delivery requires professional and qualified personnel in local self-government bodies; further improvement of the legislative framework of decentralized governance systems; acceleration and economic efficiency of the administrative services (Sabir *et al*., 2021).

The specified terms for the provision of administrative services, which were used in the study, may be shorter in practice than those determined according to the applied methodology. This may be influenced by the expanded use of electronic governance, the submission of most documents in electronic form, changes in the legal framework regarding the reduction

of certain terms, the transition to the implementation of a single registration body.

The fairly good results obtained for Ukraine may be adjusted for the worse, because the study did not take into account the effects of possible corruption factors and the specifics of the human factor. Although it should be noted that in recent years, Ukraine has taken significant steps to shorten the terms of providing administrative services and minimized bureaucratic and corruption factors in many areas of public services. Further studies should include the indicators of a larger number of countries that have actively implemented the decentralization reform, and an expanded list of administrative services provided at the local level.

Conclusion

Therefore, the state mainly tries to solve organizational, administrative and financial issues in the process of providing administrative services. It tries to attract the necessary resources in order to strengthen its own capacity, including the provision of services, to speed up administrative procedures, to improve quality of services provided at the local level. The decentralization reform provided for the transfer of certain functions of the state to the subnational level, which expanded the capabilities of local self-government bodies in terms of administrative, political and fiscal areas. But the degree of decentralization of different countries is different.

This study involved a methodological approach based on the Decentralization Index of the EU member states. This enabled clarifying certain regularities of the impact of the degree of decentralization on the administrative service delivery speed. The study found that the time of a construction permit and company registration procedures decreases with increased degree of decentralization. At the same time, a slight increase in property registration time is noticeable with a higher degree of decentralization.

The analysis of property registration systems and procedures in the selected countries demonstrates the legislative and procedural complexity of property registration processes and the rather long terms of coordination of some issues by local self-government bodies, which partially explains the obtained result. A comparison of the terms of the provision of administrative services in Ukraine with the average indicators of certain groups of countries demonstrates a greater efficiency of the provision of services in Ukraine than in the countries selecting for the comparison.

The study proves that the further implementation of the decentralization reform provides the results of improving the quality of local services in

the future in view of the current changes in the legislative framework, strengthening of fiscal capacity, creation of innovative mechanisms of interaction with local self-government bodies. But it is also important to take into account the peculiarities of each particular country, which are determined by the general level of economic development, the peculiarities of economic activity, the institutional environment, the development of the electronic government system, the transparency and accountability of the public administration system, the effectiveness of anti-corruption policy, etc.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 207-221
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The role of digital technologies in the public administration sphere

DOI: https://doi.org/10.46398/cuestpol.4176.11

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Abstract

The article is devoted to highlighting the role of digital technologies in the public administration sphere, taking into account the modern experience of the EU countries. The methodological basis of the research is the institutional approach, which provides for ensuring the effectiveness of the interaction between the components of the institutional system and the mechanisms of its implementation and control over the use of digital technologies and makes it possible to create an effective network of relationships between all levels of the system horizontally and vertically, as well as to increase the efficiency of the entire system public administration and the quality of public services. The advantages of the implementation of digital technologies in public administration are highlighted, which makes it possible to: increase the efficiency of public administration, reduce administrative costs, improve the quality of public services and ensure their availability, and reduce the level of corruption. The results of the implementation of digitalization of public services in the EU countries were analyzed in accordance with the program for the implementation of digital

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Recibido el 20/11/22 Aceptado el 12/01/23

measures within the framework of the Recovery and Sustainability Fund. The necessary directions for the activation of the implementation of digital technologies in the public administration system are substantiated.

Keywords: digital technologies, digital public services, public administration, institutes of public administration.

El papel de las tecnologías digitales en el ámbito de la administración pública

Resumen

El artículo está dedicado a resaltar el papel de las tecnologías digitales en el campo de la administración pública, teniendo en cuenta la experiencia internacional actual. La base metodológica de la investigación fue el enfoque institucional, que prevé asegurar la efectividad de la interacción entre los componentes del sistema institucional y los mecanismos de su implementación y control sobre el uso de las tecnologías digitales y, al mismo tiempo, posibilita la creación de una red efectiva de relaciones entre todos los niveles del sistema en sentido horizontal y vertical, así como incrementar la eficiencia de todo el sistema de la administración pública y la calidad de los servicios públicos. En las conclusiones se destacan las ventajas de la implementación de las tecnologías digitales en la administración pública, que permiten: aumentar la eficiencia de la administración pública; reducir los costos administrativos; mejorar la calidad de los servicios públicos y asegurar su disponibilidad, y; reducir el nivel de corrupción. Finalmente, se analizaron los resultados de la implantación de la digitalización de los servicios públicos en los países de la Union Europea de acuerdo con el programa de implantación de medidas digitales en el marco del Fondo de Recuperación y Sostenibilidad.

Palabras clave: tecnologías digitales; servicios públicos digitales; administración pública; institutos de administración pública; politicas digitales.

Introduction

Modern globalization challenges of creating a post-industrial society are based on the development of an open information space, which serves as the basis of democracy, socially oriented economic development, productivity improvement, and quality of life in general. Within the paradigm of post-

industrial development, digitization processes become a necessity and an unconditional attribute of everyday life, permeating all spheres of social extended reproduction. The role of introducing digital technologies into all spheres of public life, including public administration, is becoming important.

The purpose of the article is to outline the role of digital technologies in the public administration sphere, taking into account the modern experience of the EU countries. To achieve the goal, the authors set the following tasks:

- the importance and relevance of this topic is substantiated, taking into account modern globalization trends of establishing a paradigm of post-industrial development;
- the advantages of the implementation of digital technologies in the field of public administration are clarified;
- e-governance models and digital technologies in public administration were analyzed;
- directions for ensuring the implementation of digital technologies in public administration are substantiated.

1. Literature Review

Ensuring effective management in the conditions of digitalization requires the use of electronic government, electronic management, establishing a system of electronic services, ensuring electronic democracy and electronic commerce. That is why the issue of introducing digital technologies in public administration is urgent. Scientific researches on the above-mentioned issues were carried out by the following scientists: Ap-Azli *et al.* (2019); Chyrun *et al.* (2020); Cosmulese *et al.* (2019); Derhaliuk *et al.* (2021); Gowd (2022); Kholiavko *et al.* (2021); Khrushch *et al.* (2022); Kyeong *et al.* (2022); Martinez *et al.* (2020); Melnychenko *et al.* (2022); Mustafa *et al.* (2022); Najimi (2020); Popelo *et al.* (2022); Pratap *et al.* (2020); Saleh (2019); Tyagi and Goyal (2021) and other.

Within the framework of the scientists' article (Gowd, 2022), network management is used as a theoretical basis for determining key success factors by analyzing the role of state and non-state actors in the implementation of a public distribution system. Scientists note that the e-governance approach is becoming an important theoretical basis in the field of management and public policy for identifying challenges and problems in the field of politics and building electronic networks between government entities, markets, civil society and citizens.

Scientists (Mustafa *et al.*, 2022) are investigating the impact of e-services management on local self-government. The authors provide empirical evidence on the factors that influence citizens' willingness to use electronic services. The article analyzes the role of such factors as: awareness of e-services, poor infrastructure and technical problems (quality of e-services) in the use of e-services.

The results show that factors such as availability at any time, reduced waiting time and quality of information are the most important factors that increase the importance and willingness to use e-services. The authors note that the conducted research theoretically and empirically contributes to the acquisition of knowledge about the management of electronic services of local self-government.

The authors of the article (Kyeong *et al.,* 2022) argue that institutional and political resources affect the selective response of the government, scholars try to prove this argument through Korea's e-government system. Scientists are convinced that the results of the research contain practical lessons for practitioners who are concerned about the e-government system as a space for communication between the government and citizens.

The study (Tyagi *et al.,* 2021) examines and presents the gaps in various e-Governance services developed, implemented in India, an initiative taken under the concept of achieving the Digital India agenda announced by the Government of India through information and communication technology.

The authors (Martinez *et al.,* 2020) prove that, despite the fact that e-governance was institutionalized as a state policy that promotes citizens' access to information, transparency and control of state institutions, according to the results of research by scientists, the introduction of e-governance did not immediately cause a positive impact on reducing corruption, and, as a result, state government policy needs improvement.

The purpose of the scientists' article (Najimi, 2020) is to study the role of e-government in the least developed countries in the context of public finance management and service provision. The article examines the challenges and opportunities in the way of modernizing management systems, fighting corruption, and improving the space for the country's development.

It has been explored (Pratap *et al.,* 2020) that e-government uses technology to increase transparency, reduce remoteness, and empower people to participate in the political processes that shape their lives.

The authors of the article (Chyrun *et al.,* 2020) consider the issue of optimizing the choice of a cryptographic algorithm for the protection of information for the management of IT projects of electronic government by using a non-linear convolution of criteria based on the method of hierarchies, taking into account the requirements: security, speed, characteristics of the

algorithm. Based on the results of the research, scientists determine the optimal cryptographic algorithm that ensures the integrity and availability of information during the management of the IT project of electronic government, user authentication and the impossibility of denying the fact of sending/receiving information.

Within the framework of the study (Saleh, 2019), citizens' satisfaction with the innovative online passport application service introduced by the Immigration Service was analyzed. The researchers assessed which types of innovation (technology, access, process, product, and payment method) had the strongest and weakest effects on citizen satisfaction.

Based on the results of the analysis, scientists (Ap-Azli *et al*., 2019) have clearly defined the mechanism for solving issues of improper management of electronic document management. The authors outline the problems of improper management of electronic documents with a constructive reflection of the approach, mechanism and elements of proper management.

Despite the existing publications in the field of e-government and the use of other aspects of digitalization, the question of the role and place of digital technologies in public administration requires further study, analysis and systematization of existing research.

2. Methodology

The methodological basis of the research is the institutional approach. The institutional approach makes it possible to consider public administration as a set of rules, norms, methods of activity, thinking, etc. The institutional approach involves ensuring the effectiveness of the interaction between the components of the institutional system and the mechanisms of its implementation and control over the use of digital technologies, which makes it possible to create an effective network of relationships between all levels of the system horizontally and vertically, as well as to increase the efficiency of the entire system of public management and the quality of provision public services.

3. Results

We would like to note that relations related to the creation, preservation, accumulation, processing, dissemination and protection of information in general were of great importance for social development even before, but modern technologies change the essence and role of information, affecting all spheres of life. The development of information and communication technologies has increased the importance of information as a resource,

as well as increased the relevance of ensuring human rights in society in relation to freedom of expression, the right to information and access to it, the right to non-distribution of information and the preservation of its confidentiality, etc.

World experience proves that the implementation of digital technologies in public administration makes it possible (Fig. 1):

- to increase the efficiency of public management as a result of simplifying management procedures and reducing time;
- to reduce administrative costs due to the introduction of progressive methods of decision-making and publication;
- improve the quality of public services and ensure their availability for all sections of the population of all territories;
- to ensure the transparency of the work of power institutions, to increase their effectiveness due to the introduction of new methods of control and diagnosis of their work;
- improve the quality of work of state authorities and local self-government by involving citizens in discussions and making management decisions;
- reduce the level of corruption and achieve a qualitatively new level of public administration.

Modern globalization challenges cause an urgent need to implement digital technologies in the field of public administration. Each country, taking into account the specifics of the public administration system, implements a certain model of e-government.

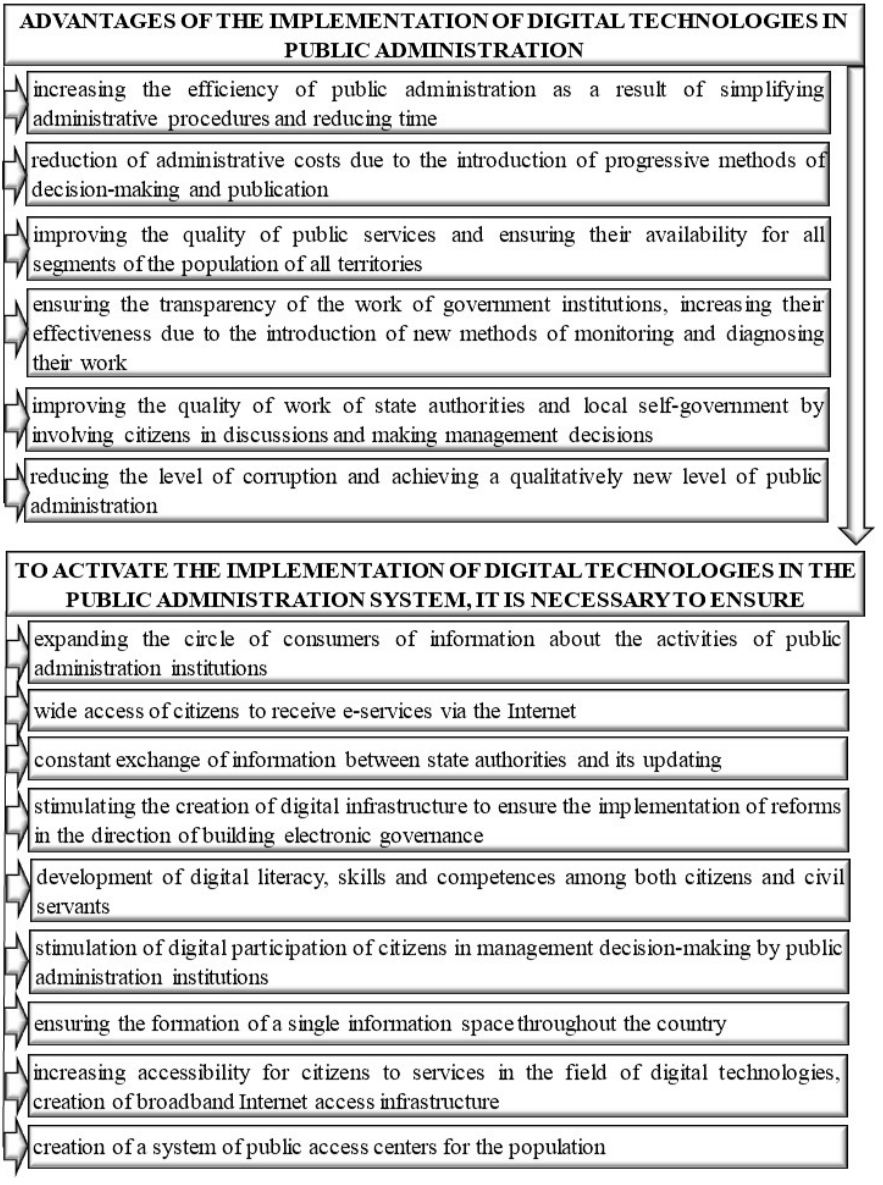

Fig. 1. Activation of the digital technologies' implementation in the public administration sphere. Source: constructed by the authors.

The implementation of a certain model of e-governance depends on the definition of the role and place of state institutions in social development, the system of formation, development and implementation of social development policies, the level of decentralization of power, public activity in making management decisions, etc. Taking into account the outlined features, the most common models of electronic governance are e-Government 1.0 and e-Government 2.0.

E-Government 1.0 involves the creation of conditions for citizens of the country with the help of digital technologies thanks to electronic access to electronic services through the web resource of state authorities and local governments. In this model, the dominant role is given to public administration bodies that implement their public functions thanks to digital technologies through e-government. Citizens in such models play the role of consumers of public services thanks to digital technologies implemented on the e-government platform.

The e-Government 2.0 model has other features, in which there is a more active interaction and density of relationships between public administration bodies and citizens of the country, since the latter are not just consumers of public services, but act as an active partner in the development and adoption of management decisions. Australia, Great Britain, Canada, Germany, Norway, New Zealand, and the United States are among the world's countries with the most successful implementation of the e-Government 2.0 model.

In these countries, it is considered to be the most successful experience of implementing partnership relations for establishing relations between institutions of public administration and citizens. That is, such a system, it aims not only to implement digital technologies as a tool for the implementation of public administration, but also provides an opportunity to transform the state administration system itself towards its consumers, that is, society, involving it in the justification, making of management decisions and monitoring their implementation.

Digital technologies expand the possibilities of public administration, the term «e-Government» becomes synonymous with such words as improving the quality of public services, efficiency, transparency and democracy. Recently, a powerful impetus for the introduction of digital technologies into the public administration system was the COVID-19 pandemic, during which digitization became the norm and forced ordinary citizens to accept these innovations.

EU member states have set the goal of full digitization of public services by 2030. It should be noted that there are already countries that have almost achieved such results, but there are also those that have not yet integrated digital services in public administration. In general, the general trend of

the introduction of digital technologies shows their widespread distribution and the business sector, rather than for ordinary citizens.

Incidentally, we note that digitalization is closely related to the plans of developed countries to achieve recovery and sustainability. Thus, according to the reform plans within the framework of the program for the implementation of digital measures within the framework of the Recovery and Resilience Fund (RRF), it is planned to invest in digitalization 46 billion euros, which will be directed to the digitalization of public services, including the implementation of electronic health care (13 billion euros), electronic justice and e-justice (24 billion euros), digitalization of transport and energy system, etc.

Countries such as Lithuania, Malta, Finland, and Croatia allocate more than half of the planned funds to the digitalization of public services. The main principle within the implementation of digital measures within the framework of the Recovery and Resilience Fund (RRF) is the integration of eID solutions into all government processes and the implementation of the «Only Once Principle».

In EU member states, indicators regarding the implementation of digital services in public administration have significantly improved. Thus, in 2021, the number of e-government users in EU countries as a whole increased to 65%, compared to 61% in 2020. The volume of digital public services for citizens was 75% in 2021, and digital public services for business was 82%. Estonia, Bulgaria, Greece, Malta, the Netherlands, Romania, and Finland are among the countries with the greatest growth and indicators of public services digitalization.

Figure 2 presents data for 2021 regarding e-government users who had some interaction with state authorities via the Internet during the year.

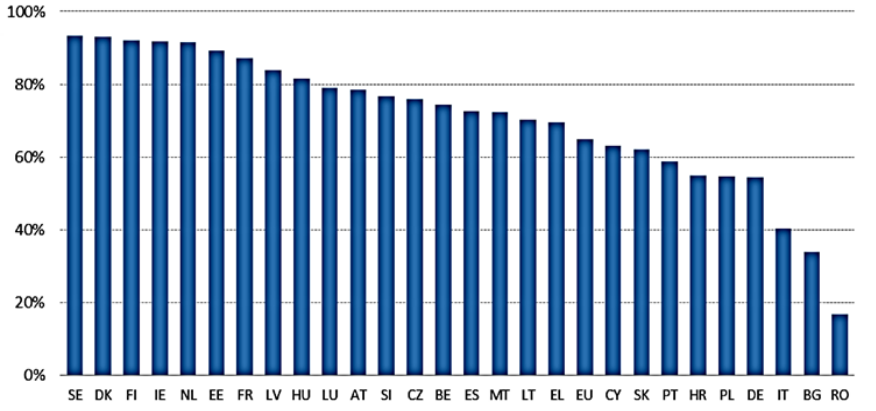

Fig. 2. E-Government users interacting online with public authorities over the Internet in the last 12 months (% of internet users), 2021. Source: Eurostat, Community survey on ICT usage in Households and by Individuals (Digital Economy and Society Index, 2022).

Denmark, Ireland, Sweden and the Netherlands are among the countries where the highest percentage of users of public services is tracked. In these countries, more than 90% of Internet users between the ages of 16 and 74 have interacted with public administrations to resolve their issues over the Internet using various digital platforms. The fewest users of public services were observed in such EU countries as Bulgaria, Romania and Italy. In these countries, such users were less than 50% of Internet users.

As for the implementation of the «one-time principle» for filling out various forms for economic entities and citizens, which works through the establishment of information exchange platforms between public administration institutions, the best results according to the results of 2021 were demonstrated by such countries as Estonia, Denmark, the Netherlands, Lithuania, Malta, Denmark, Sweden. However, it should be noted that there is a significant difference between countries according to this «one-time principle» indicator, since, for example, Romania has 20% of such interaction, and countries such as Croatia and Cyprus have about 40%.

Figure 3 presents the results of the provision of digital public services for citizens and measures the extent to which public services are spread through digital technologies using state digital platforms. Public services can either be provided entirely with the support of digital technologies, or be provided partially online or completely offline. The indicator was calculated

in relation to how much blood citizens need to spend online or offline to solve their issues and whether they can be solved completely with the help of digital technologies on the digital platforms of public administration institutions.

Such services may include a wide range of services from property registration, doctor's appointment, appeal of court decision, etc. According to these measurements of the provision of digital services for citizens, the best results were demonstrated by countries such as Estonia, Malta, Luxembourg, which had an indicator of 90% in 2021. EU countries such as Malta, Estonia, Luxembourg, Latvia, Finland, Spain, Sweden, Denmark, the Netherlands, Ireland, Finland scored within 80% of digitalization of public services for citizens. The smallest volume of digital public services was observed in countries such as Poland and Bulgaria.

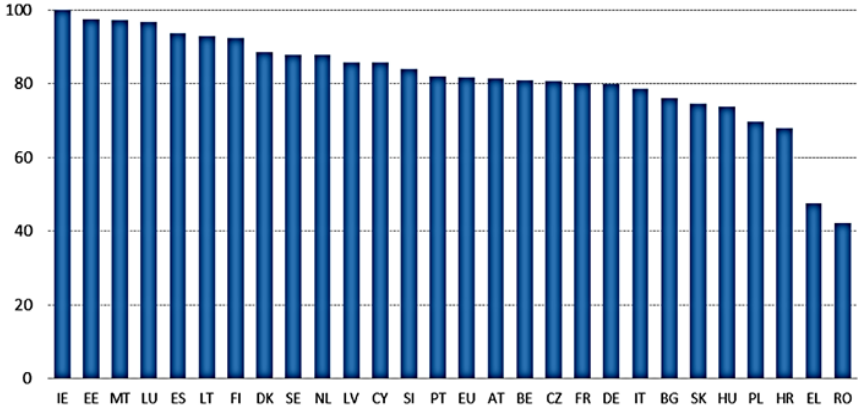

Fig. 3. Digital public services for citizens (score 0 to 100), 2021. Source: e-Government Benchmark, Capgemini (Digital Economy and Society Index, 2022).

Digital technologies in public administration are implemented in four directions, namely:

- government-to-government (G2G), which involves the establishment of interaction between public administration institutions through the implementation of a unified document flow, information exchange between authorities, and the application of the principle of unification between electronic registers;
- government-to-citizens (G2C) – involves interaction between citizens and the government, which provides for the provision of high-quality and timely public services for all citizens, ensures the

participation of citizens in making management decisions, forming state policy. Provides an opportunity to evaluate and control the activities of public institutions. The implementation of G2C provides an opportunity to obtain constructive communication between public authorities and citizens, which in turn not only increases the quality of public services, but also the quality of facilitating management decisions;

- government-to-business (G2B), provides interaction between business structures and public administration bodies, which is aimed at supporting business entities and developing business initiatives and provides for the provision of high-quality administrative and other services, provides for the development of public-private partnerships and participation business structures in the implementation of state policy;
- government-to-employees (G2E), which involves the use of digital technologies for the government's interaction with civil servants and makes it possible to ensure, using digital technologies, their training and improvement of competences, establishing communications using electronic document flow and online interaction.

Digital technologies make it possible to quickly take into account the opinions and views of economic entities, various microsocial groups and individual citizens. Involve citizens in solving existing problems through the adoption of management decisions. Digital technologies play a key role in optimizing the system of communications in order to overcome internal corporatism and bureaucracy, which gives new impetus to the development of public administration institutions.

But an important factor is not only the implementation of digital technologies in the public administration system, but also the necessary provision:

- expansion of the circle of consumers of information about the activities of public administration institutions;
- opportunities for participation of citizens in the implementation of public administration measures;
- wide access of citizens to receive e-services via the Internet;
- constant exchange of information between state authorities and its updating;
- stimulating the creation of digital infrastructure to ensure the implementation of reforms in the direction of the development of electronic governance;

- development of digital literacy, skills and competences among both citizens and civil servants;
- stimulation of citizens' digital participation in management decision-making by public administration institutions (introduction of participation);
- development of the digital economy as a key area of state policy;
- creation of broadband Internet access infrastructure throughout the country;
- ensuring the formation of a single information space throughout the country;
- increasing accessibility for citizens to modern services in the field of digital and telecommunication technologies;
- creation of a system of public access centers for the population.

Conclusion

Therefore, the main role of the introduction of digital technologies into the public administration system is not only to ensure the functioning of e-government, which turns the state into a digital service platform, but also to ensure the creation of equal opportunities, rights and freedoms of citizens, democratic social development and the involvement of citizens in decision-making in public management Digital technologies make it possible, through the involvement of citizens in the Internet, to guarantee the transparent activity of public administration institutions and their democracy. Digital technologies are the innovative toolkit that makes it possible to ensure the state-guaranteed freedoms, legal interests and duties of citizens.

The scientific novelty of the study is the development of directions for the activation of the implementation of digital services in public administration using an institutional approach, which were identified on the basis of the analysis of electronic governance models and digital technologies in public administration.

Further research is required on the issue of increasing the digital culture of citizens for the introduction of innovative developments and their acceptance in society, which will contribute to the activation of government programs on the digitalization of public administration.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 222-240
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Realization of social rights of Ukrainian citizens under martial law

DOI: https://doi.org/10.46398/cuestpol.4176.12

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Abstract

A scientific analysis of the mechanism of realization of social rights of Ukrainian citizens in the conditions of martial law was carried out: for social protection, for housing, for a sufficient standard of living. The place of social rights in the system of human rights, their legal regulation and mechanisms for ensuring them are determined. It was concluded that there are such types of social protection of the family, childhood, maternity and paternity as social assistance, social services and social benefits. In addition, the general principles and legal regulation of family and child protection in Ukraine are defined, the main directions of transformations aimed at ensuring rights in the social sphere are described. In particular, the state guarantees of compliance with the rights, freedoms and legitimate interests of internally displaced persons displaced by war were analyzed. Finally, it was noted the presence of consolidated approaches to judicial practice in the field of family relations, in particular, in terms of the primacy of the principle of the best interests of the child.

Keywords: social rights; social protection; family relations; internally displaced persons; right to housing.

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Recibido el 11/11/22 Aceptado el 03/01/23

Realización de los derechos sociales de los ciudadanos ucranianos bajo la ley marcial

Resumen

Se llevó a cabo un análisis científico del mecanismo de realización de los derechos sociales de los ciudadanos ucranianos en las condiciones de la ley marcial: para la protección social, para la vivienda, para un nivel de vida suficiente. Se determina el lugar de los derechos sociales en el sistema de derechos humanos, su regulación jurídica y los mecanismos para garantizarlos. Se concluyó que existen tipos de protección social de la familia, la infancia, la maternidad y la paternidad como la asistencia social, los servicios sociales y las prestaciones sociales. Además, se definen los principios generales y la regulación legal de la protección de la familia y la infancia en Ucrania, se describen las direcciones principales de las transformaciones destinadas a garantizar los derechos en la esfera social. En particular, se analizaron las garantías estatales de cumplimiento de los derechos, libertades e intereses legítimos de los desplazados internos por la guerra. Finalmente, se ha constatado la presencia de enfoques consolidados de la práctica judicial en el campo de las relaciones familiares, en particular, en cuanto a la primacía del principio del interés superior del niño.

Palabras clave: derechos sociales; protección social; relaciones familiares; desplazados internos; derecho a la vivienda.

Introduction

The problem of ensuring respect and observance of human rights is of great importance in the modern world and in Ukraine in particular. Ensuring human rights and freedoms is not only an internal matter, but the goal of the entire world community, for which the doctrines and standards of human rights and freedoms are a problem of a global nature. Human rights and freedoms are those universal legal values that are characterized by the establishment of uniform international legal standards in the field of protection of individual rights (Krasnov, 2004).

In the conditions of local armed conflicts and wars, which have recently been taking place in various parts of the world, the issues of development and protection of basic human rights and freedoms are becoming more and more important. Their aggravation is felt especially in the social sphere.

The peculiarity of social rights is that they are targeted and implemented in individual and collective forms. Ukraine, as a welfare state, is obliged to perform a social function: to protect people's work and health, to establish a guaranteed amount of wages, to provide state support for the family,

the elderly and persons with disabilities, to develop the system of social services, to establish state pensions , benefits and other guarantees of social protection.

Such a function of the state is aimed at mitigating and overcoming such difficulties of the current transitional period as poverty, deepening inequality and growing unemployment; on the stabilization of the standard of living of the population and a more even distribution of the weight of economic troubles between different groups of the population.

Special attention in this sector of issues and provisions should be paid to the implementation of constitutional social rights: the right to work (Article 43); for social protection (Article 46); for housing (Article 47); to a sufficient standard of living for oneself and one's family (Article 48); on health care, medical assistance and medical insurance (Article 49) (Constitution Of Ukraine, 1996).

In this regard, theoretical and practical questions related to the recognition and protection of social rights of citizens, and, first of all, of such a category as internally displaced persons, are topical issues of jurisprudence.

1. Methodology of the study

The study of mechanisms for ensuring the social rights of Ukrainian citizens under martial law is based on the use of the principle of the unity of theory and practice, forecasting the development of socio-political and legal processes based on the application of the method of scientific abstraction.

To achieve the goal and solve the tasks of the scientific article, the following methods of scientific research were used: the dialectical method (when studying the prerequisites for the formation and development of the system of social protection of citizens); historical-logical method (when studying the content and evolution of the «category social protection of the person»); system-structural (when studying the transformation of the system and structure, object-subject parameters of social protection of the population, determining the institutional and structural-functional characteristics of its components); analysis and synthesis (when studying trends and problems of social protection of the population, internally displaced persons, criteria and performance indicators of institutional protection mechanisms and mechanisms for ensuring a decent standard of living of socially vulnerable categories of the population).

The method of quantitative and qualitative comparisons (when assessing the state of social security of certain categories of persons); expert assessments and forecasting (when substantiating the strategic directions

of reforming the Institute of Social Protection of the Population, improving institutional mechanisms for providing social benefits to internally displaced persons); statistical and graphic methods (during processing and summarization of statistical data and their display in tables and diagrams).

The normative and legal acts of Ukraine, acts of international law and the work of scientists on the selected issues became the source and statistical base of the scientific article.

2. Analysis of recent research

Legal scholars and practitioners have conducted many studies devoted to social human rights, in particular in the comparative legal aspect with international standards (Krasnov, 2008; Shevchenko, 1998; Gretchenko, 2022a; ShevchenkoBitenska, 2015; Nikyforenko, 2015; Turuta, 2014; Yaryhina , 2019; Romanova, 2022; Lopushnyak, 2011, etc.). However, basic social rights as a separate phenomenon in the system of human rights in the new socio-economic realities in the conditions of war were not specifically investigated by branch sciences in Ukraine.

Due to the constant change in the socio-political situation, the imperfection of legal regulation, the branches of government, their interaction and functioning, which is connected with the war on the territory of Ukraine, recently the scale of violations of the right to social protection, to work, to housing, to sufficient standard of living, health care and quality medical care.

The purpose of this article is to determine the place of social rights in the system of human rights and freedoms, legislative regulation and mechanisms of their provision in the modern Ukrainian state.

Table. Introduction of state institutes of social insurance and social security in economically developed countries of the world

Types of social security	Great Britain	France	Italy	Germany	Canada	Sweden
	Years					
Pension insurance and provision	1908	1910	1919	1889	1927	1913
Social insurance in connection with illness	1911	1930	1943	1883	1971	1910

Assistance to families	1945	1932	1936	1954	1944	1947
Unemployment insurance	1911	1967	1919	1927	1940	1934
Medical insurance and provision of free medical care	1948	1945	1945	1880	1972	1962
Insurance against accidents at work	1906	1946	1898	1884	1930	1901

Source: authors' elaboration.

3. Results and discussion

After the signing in 2014 of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states, on the other hand, Ukraine confirmed the choice of the European vector of development, which should be the basis of the state policy of ensuring the fulfillment of obligations human rights issues. Also, according to the Guiding Principles of the United Nations, one of the main responsibilities of the state is to raise the level and quality of life of the population, care and concern for those who need help, in particular, families with children and children.

In view of the European integration, most spheres of life are being reformed in Ukraine, including the social protection of the population. The war in Ukraine actualized the need to increase social guarantees for such categories of persons as military personnel, war veterans, mothers and children, internally displaced persons, etc.

Reforming the sphere of social protection is impossible without improving or making corrections to national legislation in order to bring it into line with current international acts, since the perfection of the legal mechanism means its ability to provide for these needs (Turuta, 2014). At the same time, it should not be denied that it is a comprehensive approach to the implementation of state policy in this direction that will contribute to the quality provision of social and other state-guaranteed rights of citizens.

In this regard, we also share the point of view of some scientists that from the standpoint of state administration, when developing and adopting acts aimed at increasing the effectiveness of both state policy regarding children in Ukraine and its implementation, it is appropriate to use the term «social

and legal protection of children», which has two aspects: 1) social protection of children (provision of social assistance, pensions, social benefits, social services, etc.); 2) legal protection of children (Yaryhina, 2019).

3.1. Explanation of the terms used in the scientific article

One of the important directions of state policy in the field of social protection of the population is the establishment of appropriate social guarantees, which are the minimum amounts of wages, citizens' incomes, pensions, social assistance, amounts of other types of social benefits, determined by laws and other regulatory acts, established by law , which provide a standard of living not lower than the subsistence minimum.

We share the point of view of scientists who note (Lopushnyak, 2011) that the concepts of «social protection» and «social security» are not identical, since «social protection» is broader in scope and includes social insurance, social standards and population guarantees and social security as components.

Speaking about the content of the concept of «social protection», it is possible to state the existing variety of approaches to its interpretation both at the regulatory level and at the level of legal doctrine. In particular, the International Labor Organization defines social protection as general basic social support for all citizens, regardless of their contributions or the length of their work experience (92).

In the Resolution of the Board of the Pension Fund of Ukraine dated 03.03.2021 № 8-1 «On the approval of the Procedure for the implementation of the experimental project for the implementation of the functions of the first phase of the Unified Information System of the Social Sphere», social protection is understood as the provision of social benefits, benefits, services, measures by social protection institutions and other guarantees provided for citizens by law, at the expense of state and local budgets, the Pension Fund of Ukraine, mandatory state social insurance funds, international technical assistance and other sources not prohibited by law (Queues Of The Unified Information System Of The Social Sphere, 2021).

Social protection, as a legal category, is also enshrined in the provisions of Art. 46 of the Constitution of Ukraine, which provides for the right of citizens to social protection, which includes the right to support them in case of total, partial or temporary loss of working capacity, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided for by law (Constitution Of Ukraine, 1996).

Thus, the social protection of the population is a multifaceted system of economic, legal and social guarantees of realization of the most important social rights of every member of our society, regardless of their place of residence, work capacity, gender, age, interconnected with all legislative and executive decisions of different levels. In a broad sense, social protection is a system of organizational, legal and economic measures to ensure the basic social rights of a citizen in Ukraine

We believe that the types of social protection of the family, childhood, motherhood and parenthood should include: social assistance; social services (material assistance and social services); social benefits.

Analyzing the shortcomings and advantages of the understanding of social assistance by scientists and practitioners, we suggest that state social assistance, as one of the types of social protection of the family, childhood, motherhood and parenthood, should be interpreted in the following two aspects: as a type of social activity of authorized state and social bodies; as monetary payment and assistance in kind.

State social assistance, as one of the types of social protection of the family, childhood, motherhood and parenthood, should be understood as the type of social activity of authorized state and social bodies, which is aimed at ensuring an adequate standard of living for families with children, large families, single-parent and low-income families, orphans and children deprived of parental care, disabled from childhood and disabled children by making one-time, periodic or monthly payments in the amount determined by current legislation, with the aim of increasing their income level and overcoming or mitigating relevant social risks (poverty, orphanhood, disability, etc.), as well as difficult life situations in which the corresponding category of people found themselves.

Like any legal phenomenon, state social assistance to families with children, large families, single-parent and low-income families, orphans and children deprived of parental care, disabled from childhood and disabled children is endowed with its own characteristics, which should include such: address, target character; monetary and in-kind form; alimony character; mostly financing at the expense of the state budget in the form of subventions to local budgets (except for women regarding the payment of assistance in connection with pregnancy and childbirth; military servicemen and law enforcement agencies, etc. – at the expense of the relevant budgets); provision of state social assistance to certain categories of citizens, regardless of whether they have other income (child support for single mothers, support after the birth of a child, etc.); limitation of the appropriate duration of the payment of assistance.

The most widespread in science is the definition of social rights as those that provide a person with a decent standard of living and social security.

As the scientific literature emphasizes, today it is undeniable that for a person who does not have minimum social security and well-being, most political rights are an «empty place» (Turuta, 2014). Thus, social rights can be defined as the legally defined capabilities of a person, which determine his right to work, education, rest, normal working conditions, medical care, pension, etc.

States that seek to recognize them as democratic, legal and social have politically recognized and legally protected these rights, enshrining them at the constitutional level. In particular, the Constitution of Ukraine of 1996 contains a system of social rights of a person and a citizen, which include: 1) the right to work (Article 43), by which the state guarantees equal opportunities in choosing a profession and type of work, the right to a salary not lower than from defined by law; 2) the right to social protection (Article 46), i.e. the state guarantees the provision of sufficient funds or assistance to citizens who, due to objective circumstances, have completely or partially lost the opportunity to work and receive remuneration for work, as well as to families in connection with birth and upbringing of a child.

For this purpose, mandatory state social insurance, budgetary and other sources of social security are provided; a network of state, communal, and private institutions is created to care for disabled, internally displaced persons as a result of the war, etc.; 3) the right to housing (Article 47); 4) the right to a sufficient standard of living for oneself and one's family (Article 48), which includes sufficient food, clothing, and housing. Of course, disabled citizens (persons with disabilities, pensioners), families with children, single mothers and some other categories of low-income citizens are provided with state aid and benefits to equalize their incomes; 5) the right to health care, medical assistance and medical insurance (Article 49) (Constitution Of Ukraine, 1996).

3.2. General concept of family and childhood protection in Ukraine

The family, as a social phenomenon that has developed in society, is very important for every individual, and in society itself constitutes a generally recognized social value (Shevchenko, 1998), it is the main center of society and plays a key role in social development The family has the right to comprehensive protection and support (Copenhagen Declaration On Social Development, 1995), and its protection is defined at the constitutional level (Part 1, Article 46) (Constitution Of Ukraine, 1996).

Social protection is one of the priority tasks of Ukraine, the purpose of which is to support people who have found themselves in difficult life circumstances, to raise and ensure the appropriate standard of living of both individual families and the population as a whole, by providing social

benefits, social and rehabilitation services , introduction of various benefits, compensations, establishment of guarantees, social work with families, children and youth, etc. (Burlaka, 2015).

The Constitution of Ukraine, the Family Code Of Ukraine and the Law of Ukraine «On the Protection of Childhood» determine the key principles of family relations and the priority of the best interests of the child: family, childhood, motherhood and parenthood are protected by the Constitution of the state; equality of rights and duties of father and mother in relation to their children, responsibility for non-fulfilment and evasion of parental duties; the main concern and the main duty of parents is to ensure the interests of their child; each parent has the same responsibility for the education, training and development of the child; parents or persons replacing them are responsible for violating the rights and limiting the child's legitimate interests in health care, physical and spiritual development, education, failure to fulfill and evasion of parental duties in accordance with the law (Constitution Of Ukraine, 1996; Family Code Of Ukraine, 2002; On Childhood Protection, Law Of Ukraine, 2001).

The defining characteristic of the social law of families with children and children is the property nature, which is manifested in the ability to receive material assistance and social services, if a certain difficult or extraordinary situation has arisen, in order to overcome it or reduce the degree of negative impact.

Today, problematic aspects of family disputes mainly concern such issues as: alimony obligations; participation in upbringing and education of the child; obstacles in communication with the child to a friend of the parents or other relatives; grounds and mechanisms for returning children taken abroad by one of their parents or another family member after 24.02.2022, evacuated and forcibly relocated children to the Russian Federation.

Emphasizing the grounds of family legal responsibility, it is expedient to emphasize that deprivation of parental rights over a child is an extreme measure of influence.

Considering the possibility of deprivation of parental rights, in the case of one of the parents staying in a temporarily uncontrolled territory and self-removal from participation in raising children and providing them with assistance, it should be noted that the residence of one of the parents in the uncontrolled territory of Ukraine destabilizes the socio-economic situation in such regions, the limited influence and control of the Ukrainian authorities on the situation and the impossibility of fully supporting residents in difficult circumstances can really affect the ability to properly fulfill parental duties.

It is important that, under such circumstances, the parents maintain understanding, ensure a break in ties, and take every possible action and

attempt to communicate with the child. Parents' evasion of their duties occurs when they do not take care of the child's physical and spiritual development, his education, preparation for independent life, and do not create conditions for him to receive an education. The mentioned factors, both individually and in combination, can be considered as evasion of raising a child only if the parents deliberately neglect their responsibilities.

In the conditions of war, a mechanism for providing social services to internally displaced persons (residential institutions for the social protection of the population, stationary branches of territorial centers of social services, centers for the provision of social services) has been developed at the state level in an emergency (crisis), which consists in the coordination of the services involved in this, to solve current issues regarding receiving clothes, food, transport, consulting services, psychological support, care (Sulima, 2022).

Also, in view of the state of war, the government simplified the criteria for the activities of social service providers. In particular, they can now engage workers and volunteers who do not have documents confirming their professional level. The government included volunteers in the circle of subjects who can identify persons in difficult life circumstances and those who need outside help (Sulima, 2022).

In our opinion, in the field of social protection, the following main directions of transformation aimed at ensuring rights in the social sphere should be outlined: the introduction of universal social assistance, to replace the extensive system of social payments, which will depend on the level of income and the composition of the household, and will guarantee the minimum necessary for life level, first of all, inoperable, which will ensure maximum addressability, simplified administration, digitalization and further verification; development of the Unified Information System of the social sphere with the aim of providing citizens with the accruals and payments of social benefits from the most affected regions thanks to a centralized mechanism; quick registration of internally displaced persons, remote registration of social benefits; implementation of active programs of employment and development of entrepreneurship, which will contribute to the gradual change of the status of persons from unemployed immigrants who receive social assistance to taxpayers who will create new jobs.

Given the requirements for the volume of relevant scientific research manuscripts, in the following subsections of the article we will focus on the scientific and practical analysis of individual rights of the family and child to social support, assistance and protection, as well as on social guarantees of internally displaced persons.

3.3. State guarantees of compliance with the rights, freedoms and legitimate interests of internally displaced persons

The introduction of martial law in Ukraine became a huge challenge for the social sphere, and the damage caused by the war - psychological, material, physical - is one of the factors that negatively affect life. First of all, those who are in difficult life circumstances cannot take care of themselves, who have lost housing, work, health, families with children. Currently, the number of people who need the help of social workers has increased significantly, which necessitates the prompt adjustment of the social services system (Sulima, 2022).

It is the duty of the state to create a financial base and organizational structures for citizens to realize their constitutional rights: to work and to social protection. All of the above is particularly relevant for citizens of Ukraine given the fact that today millions of citizens are considered internally displaced, and therefore need urgent social and legal protection (especially for families with children), support from the state.

We will pay attention to such important issues as the status of an internally displaced person, the order of its acquisition and accounting; legal aid, social support and compensation payments; rights and obligations of internally displaced persons. We will outline the legal guarantees and practices of ensuring the rights of children from among internally displaced persons, paying them state aid in case of displacement accompanied by persons who are not legal representatives, exercising the right to education and medical care of minors in conditions of martial law.

Particular attention should be paid to the legal principles and practice of registering citizens who have changed their place of residence in order to obtain the status of an internally displaced person (hereinafter referred to as IDP), the mechanism of issuing a certificate of IDP registration as a mandatory document for further implementation by individuals special powers based on acquired status.

To obtain an IDP certificate (an adult or a minor - in person, and a minor child, incapacitated person or a person whose legal capacity is limited - through a legal representative) submits an application for registration to: the unit for social protection of the population at state administrations; executive bodies of village, settlement, city councils; Center for the provision of administrative services - through the Diya Portal. Persons who, after the introduction of martial law by the Decree of the President of Ukraine dated February 24, 2022 № 64 «On the introduction of martial law in Ukraine», have the right to receive a certificate, have moved from the territory of the administrative-territorial unit in which hostilities are taking place and which is specified in the list, approved by the order of the Cabinet

of Ministers of Ukraine of March 6, 2022 № 204 «On approval of the list of administrative-territorial units, on the territory of which assistance is provided to insured persons within the framework of the «eSupport» Program.

The legislation enshrines the rights of internally displaced persons, such as: family unity; assistance in finding and reuniting family members who have lost contact due to internal displacement; information about the fate and location of missing family members and close relatives; safe living conditions and health; reliable information about the existence of a threat to life and health in the territory of her abandoned place of residence; creation of appropriate conditions for her permanent or temporary residence and payment of the cost of utility services, assistance in moving her movable property and assistance in returning to her previous place of residence; provision of medicines and provision of necessary medical assistance; placement of children in preschool and general educational institutions; receiving social and administrative services at the place of stay; receiving humanitarian and charitable aid and a number of others (Gretchenko, 2022a).

Taking into account the regulatory and legal changes, the following people will be able to receive assistance for IDPs: citizens who have moved from the territories where hostilities are taking place, or those who are temporarily occupied or surrounded (blockade); citizens whose housing is destroyed or uninhabitable due to damage, and who have submitted an application for compensation, in particular through the Unified State Web Portal of Electronic Services.

The state has established a number of guarantees for the specified category of persons aimed at ensuring the realization of their basic social rights. In particular, in order to employ these persons and provide them with a decent standard of living, the state has established a special procedure for terminating an employment contract with an employer located in the occupied territory of Ukraine, as well as a simplified procedure for registering a person as unemployed and receiving appropriate assistance. Internally displaced persons are not subject to a probationary period when they are hired (On Ensuring The Rights And Freedoms Of Internally Displaced Persons Persons. Law Of Ukraine, 2014).

Also, to support IDPs, employers can, under certain conditions, receive compensatory payments from the state for employing internally displaced persons. (Law of Ukraine «On Population Employment»)

It is worth emphasizing the importance of the list of documents for registering a child as an IDP as a prerequisite for the payment of state aid and other social guarantees.

The legal representative of an orphan child or a child deprived of parental care, officials who take measures to protect the rights of such a child, in the event of the need to confirm or check the child's personal data, may obtain relevant information based on a written request to the Ministry of Social Policy.

In the case of submitting an application for registration by a legal representative of the person on whose behalf the application is submitted, the following documents are additionally submitted: a document certifying the identity of the legal representative; a document confirming the person's authority as a legal representative, except in cases where the legal representatives are parents (adoptive parents); if necessary, a child's birth certificate (Gretchenko, 2022b).

In the case of submitting an application for registration of a minor child by the head of a children's institution, a health care institution or a social welfare institution for children to which the child is placed, by a guardian, custodian, adoptive parents or foster parents in the case of placement of a child in a family of citizens under guardianship, guardianship, foster family, family-type orphanage, relative (grandmother, grandfather, great-grandmother, great-grandfather, adult brother or sister, aunt, uncle) or stepfather, stepmother, in which the child lives (stays), additionally submit: document , certifying the identity of the applicant; documents confirming the family relationship between the child and the applicant; a document confirming the authority of a representative of a guardianship authority or the head of a children's institution, a health care institution, or a social protection institution for children in which the child is on full state support, and a document confirming the fact of the child's enrollment in such an institution. Also, a minor child has the right to independently apply for assistance.

3.4. Implementation of the right to housing by internally displaced persons

According to Art. 9 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (On Ensuring the Rights and Freedoms of Internally Displaced Persons. Law Of Ukraine, 2014) an IDP has the right to: create appropriate conditions for her permanent or temporary residence; payment of the cost of communal services, electricity and thermal energy, natural gas in places of compact IDP settlement at the appropriate rates; provision by authorities of the possibility of free temporary residence (on the condition that the person pays the cost of utility services) within six months from the moment the internally displaced person is registered; for large families, persons with disabilities, and the elderly, this term can be extended; assistance in returning to the previous place of residence.

Realization of the right to housing is carried out by: payment of IDP housing allowance; temporary accommodation (hotels, hostels, social centers, etc.); financial support to the owners of housing that provided temporary shelter to IDPs.

The mechanism for providing accommodation assistance to internally displaced persons is regulated by the Procedure approved by the Resolution of the CMU of March 20, 2022 № 332 "Some issues of payment of accommodation assistance to internally displaced persons" (Mechanism For Providing Accommodation Assistance To Internally Displaced Persons, 2022).

IDPs who have the right to receive housing assistance include: citizens who have moved from territories where hostilities are taking place, or those who are temporarily occupied or surrounded (blockade); citizens whose housing is destroyed or uninhabitable due to damage, and who have submitted an application for compensation, in particular through the Unified State Web Portal of Electronic Services. Also, in accordance with Clause 11 of the Procedure, supplemented by Resolution of the Cabinet of Ministers № 602 dated 17.05.2022), in case of illegal or repeated receipt of housing assistance by the IDP for a certain period, the amount of the paid assistance is returned by the person voluntarily or at the request of the social protection body.

The procedure for compensating costs for the temporary accommodation of internally displaced persons who moved during the period of martial law is approved by Resolution № 333 of the Cabinet of Ministers of Ukraine dated March 19, 2022 (as amended by Resolution № 490 of the Cabinet of Ministers of Ukraine dated April 29, 2022) (Resolution № 331 Of The Cabinet Of Ministers Of Ukraine, 2022; Resolution № 490 Of The Cabinet Of Ministers Of Ukraine, 2022).

An internally displaced person and members of his family are provided free of charge housing from the fund at the place of actual residence / stay within the territory of the authorized bodies for a period of up to one year with the possibility of extension for the next period in case of no changes in their status and if they have not acquired another place of residence.

The primary right to provision of housing from the fund is for: families with many children; families with children; pregnant women; persons who have lost their ability to work; persons of retirement age from among those whose housing was destroyed or became uninhabitable as a result of the armed aggression of the Russian Federation. In case of submission of documents containing false information, the internally displaced person is responsible according to the law (On The Legal Regime Of The Martial State, 2015).

The decision to include an IDP in the register of citizens who need housing for temporary residence, or to refuse to be included in such a register, is taken by the authorized body within one working day after the submission of the relevant application. The grounds for refusing to accept an IDP for registration of citizens who need housing for temporary residence are: failure to submit the necessary package of documents, except for cases when such documents were destroyed or damaged, which is confirmed by the corresponding statement of the citizen; submission of documents containing false information (Gretchenko, 2021).

It is appropriate to indicate the grounds for deregistration of an IDP: an internally displaced person's application for deregistration; a person's change of residence; cancellation of the IDP registration certificate if there are grounds provided for in part 1 of Article 12 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons"; failure to receive within 30 calendar days without valid reasons a warrant for moving into a residential premises or failure to notify within the same period of valid reasons that prevent her from receiving a warrant for moving into a residential premises; submission of notoriously unreliable information, which is the basis for taking an internally displaced person into the register of citizens who need housing for temporary residence (On The Legal Regime Of The Martial State, 2022).

It is important that being on the register of citizens who need housing for temporary residence is not a reason for denying an internally displaced person further acceptance of such a person on: social housing register; registration of persons who have the right to receive housing (soft loans for the construction and purchase of housing) under state housing programs for certain categories of persons defined by legislation; registration of persons who need improvement of living conditions; other types of accounting for housing.

Forced eviction of an IDP and her family members from the residential premises of the foundation is carried out only on the basis of a court decision. An IDP that does not fulfill the obligations stipulated by the law and the contract of use under the contract of use bears the responsibility provided by law (On the Legal Regime of The Martial State, 2022).

Summarizing what has been said, we note that further scientific discussions are needed on the issue of social support for families in difficult life circumstances, regarding the organization of care at home, placement of elderly citizens and persons with disabilities in boarding houses for elderly citizens.

Conclusions

The economic soundness and effectiveness of the social protection system, its focus on the needs of the most socially vulnerable categories of the population, in particular internally displaced persons, is included in the generally recognized international standards of a socially oriented state, and the level of availability of social services is one of the indicators of determining the quality of life. The main task of the social protection system of Ukraine should be to mitigate the negative impact of factors characteristic of social and economic reforms on the most socially vulnerable categories of citizens, which should include people with family responsibilities.

The system of social support for families with children needs transformation and active redistribution of resources from the provision of social assistance according to the principle of universality and uniformity to the provision of social assistance and services, which will contribute to the formation of citizens in an active life position. Such a model of social support should be flexible, universal and based on the principles of humanism and social consciousness of citizens.

We note the formation of established approaches of judicial practice in the field of family relations, where instead of the widespread «presumption in favor of the mother» or «equal rights and obligations of parents in relation to the child», priority is given to the principle of the best interests of the child. In view of this, we see the expediency of defining in the Law of Ukraine «On Childhood Protection» the basis (principle) of ensuring the best interests of the child, taking into account international standards, which provides for actions and decisions aimed at meeting the individual needs of the child in accordance with his gender, age, state of health self, life experience, developmental characteristics, family, ethnic and cultural belonging.

The main directions of transformations aimed at ensuring the rights of citizens in the social sphere are defined as: introduction of universal social assistance, which will ensure maximum targeting, simplified administration, digitization and verification; digitization and centralization of the social sphere system in order to provide citizens from the most crisis regions with social payments; implementation of active programs of employment and development of entrepreneurship.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 241-258
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

The use of special knowledge in the investigation of violent crimes

DOI: https://doi.org/10.46398/cuestpol.4176.13

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Abstract

The article is devoted to highlighting the issue of the use of special knowledge in the way of conducting an examination during the investigation of crimes committed with the use of violence. The study illustrates that the proposition that the expert's participation in the evidence in criminal proceedings is based on the laws and categories of dialectics and formal logic and, moreover, is carried out by combining practical and intellectual activity. Also, the main and atypical types of examinations are distinguished: forensic medical; forensic psychiatric; forensic psychological; forensic biological; ballistics; cold weapons examination; trans- and dactyloscopic. Depending on the investigative situation at the time of the forensic examination and the available evidence, a list of issues to be resolved by the expert is indicated, such as: forensic chemistry during the investigation of violent crimes; forensic and orological; soil science; molecular and other genetic examinations, depending on the type of crime, the situation under investigation and the physical objects available. It was concluded that the theoretical and methodological foundations of such examinations need to be updated and adapted to the latest technology and the best state-of-the-art world experience.

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Recibido el 14/10/22 Aceptado el 22/12/22

Keywords: violent crimes; preliminary investigation; special knowledge; expert investigator; forensic medical examination.

El uso de conocimientos especiales en la investigación de delitos violentos

Resumen

El artículo está dedicado a resaltar el tema del uso de conocimientos especiales en la forma de realizar un examen durante la investigación de delitos cometidos con el uso de la violencia. El estudio ilustra que la proposición de que la participación del experto en la prueba en el proceso penal se basa en las leyes y categorías de la dialéctica y la lógica formal y, además, se lleva a cabo combinando la actividad práctica e intelectual. También, se distinguen los tipos de exámenes principales y atípicos: médico forense; psiquiátrico forense; psicológico forense; biológico forense; balística; examen de armas frías; trasológico y dactiloscópico. Dependiendo de la situación investigativa al momento del examen forense y de las pruebas disponibles, se indica una lista de cuestiones a resolver por el perito, tales como: química forense durante la investigación de delitos violentos; forense y orológico; ciencia del suelo; exámenes genéticos moleculares y de otro tipo, según el tipo de delito, la situación investigada y los objetos físicos disponibles. Se concluyó que los fundamentos teóricos y metodológicos de dichos exámenes deben actualizarse y adaptarse a la última tecnología y la mejor experiencia mundial más avanzada.

Palabras clave: delitos violentos; investigación preliminar; conocimientos especiales; investigador perito; examen médico forense.

Introduction

Practically every case of investigation of criminal offenses takes place with the use of special knowledge, that is, with the participation of specialists or forensic experts. This is primarily due to the fact that the investigation of criminal offenses is professionally carried out by specialists in the field of jurisprudence, criminology and other fields of scientific knowledge, beyond the boundaries of whose professional knowledge and skills lies much of the potential of science, technology, crafts, art, as it should be does not possess.

The need to engage non-legal specialists arises when one's own capabilities and knowledge, available methods and technical means of knowing the subject of such activity, skills in using such tools and methods are insufficient for effective collection, analysis, evaluation and use of information, establishing specific facts, detection of hidden connections, properties, features of the studied objects, performance of other tasks. Therefore, in all necessary cases, the authorized subjects of proof must resort to the help of specialists when solving issues that belong to their competence.

The criminal procedural law ambiguously resolves the issue of the possibility of using special knowledge during various investigative (search) and procedural actions. In some cases, the use of such knowledge is mandatory, in others it is optional (Part 2 of Article 242 of the Criminal Procedure Code of Ukraine) (Criminal Procedural Code of Ukraine, 2012).

Specialists in a certain field and field provide assistance to pretrial investigation bodies in the form of consultations, advice, recommendations, transfer of background information, participation in the preparation and conduct of investigative (search), covert investigative (search) actions, by conducting laboratory tests, surveying enterprises, areas of the territory and other activities.

Many forensic scientists and proceduralists draw attention to the underestimation of the possibilities of using the results of involving specialists in the conduct of investigative (search) actions, to the conduct of forensic examinations in the process of proof, to the imperfection of legal regulations and the organization of their use for this purpose, to the shortcomings of scientific and methodological provision of this activity.

At the same time, it is generally recognized that forensic examinations are one of the integral elements of the system of actions for gathering evidence, identifying and overcoming opposition to the investigation, allowing to obtain objective and convincing investigative and evidentiary information.

At the same time, conducting forensic examinations is of key, and often decisive, importance during the investigation of any criminal offense. It is difficult to overestimate the importance of using this form of special knowledge to establish the circumstances of a crime involving the use of violence, the quick and objective investigation of which is impossible without the appointment and conduct of forensic examinations.

As evidenced by the results of the study of the practice of the application of special knowledge, the possibilities of modern achievements of science and technology in the investigation of crimes and in overcoming opposition to the investigation are currently not fully realized in practical activities for various reasons. This was also pointed out by 78% of the interviewed investigators and experts.

So, in the conditions of new and particularly dangerous forms of criminal activity, on the one hand, and the reform of law enforcement bodies, criminal justice bodies, adaptation of Ukrainian legislation to the European one - on the other, the issue of analyzing the theoretical background and studying forensic expert practice with the aim of delineating problematic issues that exist in the field of expert support for the investigation of violent crimes, on the basis of this - the development of ways to solve these problems.

1. Methodology of the study

The methodological basis of the research is the dialectical method of knowing reality. To study the scientific views and approaches of scientists and practitioners, such methods as analysis, synthesis, analogy, comparison, statistical method were used, which made it possible to obtain new knowledge about the object and subject of research.

The statistical method was used to collect and analyze data on the results of activities of pre-trial investigation bodies in criminal proceedings on violent crimes, in particular those that contained information on opposition to the investigation; dogmatic method - when interpreting categories and definitions, clarifying the conceptual and categorical research apparatus; modeling – when developing forensic recommendations on the use of special knowledge in the investigation of violent crimes; sociological - to study the views of investigators and experts on the problem of appointing and conducting forensic examinations in criminal proceedings.

The complex application of the specified scientific methods made it possible to identify problems in the application of special knowledge in the investigation of violent criminal offenses and the use of the results of forensic examinations for the purpose of clarifying the circumstances of the criminal offense and overcoming opposition to the investigation of such crimes.

2. Analysis of recent research

In forensic science, the theory and practice of using special knowledge in the investigation of violent crimes and in overcoming opposition to the investigation has been studied by a significant number of scientists. However, modern research methods and scientific and technical means of obtaining evidence in criminal proceedings, as well as overcoming opposition to the investigation of violent crimes, were not always fully taken into account in scientific works.

It should also be noted that specialists in the field of criminal procedure and criminology, paying some attention to the procedure of using special knowledge in the investigation of crimes committed with the use of violence, in accordance with the content of the subject of their science, do not pay enough attention to the issue of the tactics of using expertise in modern conditions.

Currently, the issue of effective investigation of crimes using an interdisciplinary and integrative approach is especially relevant, since crime can adapt to various ways of concealing crimes, improve the means of their commission with the help of modern knowledge. The specified circumstances lead to the need to use, along with professional legal knowledge, the use of special knowledge in various fields of science, technology, art, crafts (medicine, auto engineering, economics, etc.) (Kryvda and Kryvda, 2021).

Thus, the research topic is relevant for the development and improvement of forensic science and the practice of investigating crimes committed with the use of violence.

The purpose of the scientific article is to develop a system of theoretical provisions and scientific and practical recommendations for using the capabilities of forensic examinations in the investigation of violent criminal offenses, as well as for overcoming resistance to such an investigation.

3. Results and discussion

Correct understanding of the concept of special knowledge in the criminal process is an important condition for their use in various forms by participants in criminal proceedings when investigating criminal offenses with the requirements of the law.

According to modern legal doctrine, special knowledge is non-common knowledge that is not widely distributed and is possessed by a limited circle of specialists (expert is a general term for a person who possesses special knowledge), so the use of special knowledge in pre-trial investigation is based, first of all, on the involvement of to the process of investigation of a specialist and an expert, that is, persons who possess such special knowledge and skills (Hora, 2013).

Special knowledge is an element that determines the procedural and legal status of participants in criminal procedural activities. They influence the formation of their rights and obligations, the system of guarantees, conditions and procedure of activity in the process of investigating criminal offenses, determine the characteristic procedural significance of the results achieved during such activity (Lazebny, 2016).

Without going into polemics regarding the forms of procedural application of special knowledge, we note that for half a century, the dominant opinion has been accepted by modern scientists and practitioners with minor changes and minor additions. We consider important the provision according to which special knowledge and scientific and technical means are used in court proceedings by directly authorized subjects of evidence, specialists, officially appointed experts (court experts) (Shepitko, 2001).

One of the procedural forms of using special knowledge is the specialist's participation in investigative and judicial actions. Based on criminal procedural norms, he is almost unanimously considered to be a person who possesses knowledge and skills and is engaged by an operational unit, an investigator, a prosecutor, or a court to assist in identifying, securing, and removing evidence (Ishchenko, 1990).

We will focus on the content of the activities of knowledgeable persons who are involved in criminal proceedings as an expert in the investigation of violent crimes. The activity of an expert differs significantly from the activity of a specialist in that the expert is a special procedural figure, and the task of the expert examination is the analysis of certain data in order to establish new facts that are important for the pre-trial investigation. In addition, the expert's opinion has probative value (Kravchenko *et al*., 2022).

Violent crime against life and health is a set of deliberate attacks aimed at interfering with the physical and mental integrity of the victim of the crime with the aim of causing death or bodily injury.

First of all, we note that the range of violent crimes against the life and health of a person is diverse and wide. They are provided for in Chapter II of the Special Part of the Criminal Code of Ukraine.

These include: premeditated murder; deliberate murder, committed in a state of strong emotional excitement; deliberate killing by the mother of her newborn child; intentional homicide in case of exceeding the limits of necessary defense or in case of exceeding the measures necessary to apprehend the criminal; manslaughter due to negligence; leading to suicide; intentional grievous bodily harm; intentional bodily injury of moderate severity; intentional grievous bodily harm, caused in a state of strong emotional excitement; intentional infliction of grievous bodily harm in the event of exceeding the limits of necessary defense or in the event of exceeding the measures necessary to apprehend the criminal; intentional slight bodily injury; beatings and beatings; torture; negligent serious or moderate bodily injury; threats to kill and others (Criminal Code of Ukraine, 2001).

The Law of Ukraine "On Forensic Expertise" defines the concept of forensic expertise as follows (Article 1) (On Forensic Expertise, 1994).

Forensic examination is a study by an expert based on special knowledge of material objects, phenomena and processes that contain information about the circumstances of a case that is being processed by pre-trial investigation bodies or a court (Markus, 2007).

Such actions are aimed at clarifying the circumstances that are important for criminal proceedings, which are reflected in the opinion of an expert, at the request of a party to criminal proceedings or at the request of an investigating judge or court (Nikitina-Dudikova, 2022).

First of all, we note that forensic examinations during the investigation of crimes committed with the use of violence can be appointed both at the initial and subsequent stages of the investigation. At the same time, one should not forget about determining the terms of conducting forensic examinations.

According to I.V. Pie, they depend on the following factors: the complexity of the study; workload of experts; availability of necessary equipment; the number and quality of objects, materials provided for research and questions posed for resolution; the average time spent on conducting research, the degree of development of the methodology for conducting this type of examinations (Pyrig, 2011).

A special place among forensic examinations during the investigation of crimes committed with the use of violence is held by the forensic medical examination, which is carried out in the vast majority (92%) of the mentioned criminal proceedings.

In criminal proceedings, forensic and medical knowledge can be applied separately. Thus, during the investigation of crimes, knowledge from such medical sciences as pathological anatomy (when examining a corpse), pathological physiology, traumatology (for gunshot injuries, various types of burns, etc.), dentistry, genetics, toxicology, forensic psychiatry, ophthalmology (for pretended diseases), obstetrics and gynecology, urology (when determining sexual states) (Avdeev, 1959). Also, forensic and medical knowledge can also be used in conjunction. On the border of this scientific knowledge, medical forensics, medical traceology arose, medical forensic examinations and medical forensic identification are carried out.

Forensic medical examination, as one of the types of forensic examination, is research based on special medical and biological knowledge of objects, phenomena and processes with the aim of providing a conclusion on issues that are or will be the subject of judicial proceedings and is an indirect means of proof.

The competence of the forensic medical examination includes (clause 1.4. Instructions): examination of corpses in cases of violent death; examination of corpses in case of suspicion of the use of violence or due

to other circumstances that determine the need for such an examination; examination of victims, accused persons and other persons; examination of physical evidence; examination of the materials of criminal and civil cases (On The Development And Improvement Of The Forensic Medical Service Of Ukraine, 1995).

Cases of mandatory forensic medical examination are regulated by Article 242 of the Criminal Procedure Code. This is the need to establish the causes of death; determination of severity and nature of bodily injuries; establishing the age of a person, if it is necessary to resolve the issue of the possibility of bringing him to criminal responsibility, and it is impossible to obtain this information in any other way (Criminal Procedure Code of Ukraine, 2012).

Thus, during the investigation of criminal offenses committed with the use of violence, the forensic medical examination can solve a wide range of issues, in particular, the nature and degree of severity of bodily injuries, the age and mechanism of injuries, the type and type of weapons used to inflict them, etc.

The object for which this examination will be conducted is also of great importance. In practice, in most cases (94%) this examination is conducted only in relation to the person of the victim. We believe that when such crimes are committed, it is necessary to conduct an examination of both parties at once, because it is not clear what status they will have at the end of the investigation, and the moment of conducting a forensic medical examination may be missed.

The term "forensic medical examination of living persons" (victims, suspects) means a specific scientific and practical study, which is carried out in accordance with current legislation to solve specific medical problems that arise during the investigation of a specific crime (Goncharenko, 2010).

For example, the appointment and conduct of forensic medical examinations during the investigation of bodily injuries is mandatory in order to establish their nature and degree of severity in the victim, as well as the suspect, if he has injuries that occurred as a result of the actions of the victim.

The expert's opinion is based on objective data obtained as a result of studying the circumstances of the proceedings, medical documents, interviewing and examining the victim, and conducting special research. In exceptional cases, when the forensic medical expert is not able to conduct an examination of the victim, but he has all the necessary medical documents for conducting a forensic medical examination on the state and nature of the infliction of bodily injuries, the examination is permissible without the presence of the victim.

Also, the expert has the right to apply to the subject of the appointment of the expertise to provide him with the documents necessary for conducting the specified investigative (search) action.

During the resolution of disputed questions about the degree of severity of bodily injuries, the mechanism and method of causing bodily injuries, it is recommended to appoint a commission forensic medical examination. In such cases, forensic medical experts are provided with criminal proceedings materials related to the issues to be resolved.

In cases of bodily injury at the scene or on the instruments of the crime, on the body of the criminal or on his clothes, surrounding objects, various traces of biological origin can be detected, such as blood, saliva, hair, parts of epithelial or other body tissues and other biological secretions of a person. therefore, there is a need to appoint a forensic biological examination.

The obtained conclusions of the forensic biological examination can be quite significant when solving a crime and proving the suspect's guilt, since the detection of biological traces of the suspect at the scene of the crime or on the victim convincingly indicates the involvement of a specific person in the commission of the crime.

Forensic biological examination of material evidence should be prescribed to establish the type of substance under investigation, group and typical signs of blood, hair, saliva, semen, urine and other objects. The study of criminal proceedings initiated for the commission of the examined category of crimes established that this type of examination is used in 8% of cases.

We consider such a small number of these examinations to be incomprehensible, because in most cases there is physical contact of the attacker with the object of the crime or the victim, instead, with the help of forensic biological examination, many controversial issues can be resolved during the investigation. We believe that such a low level of their implementation is explained by the specifics of identifying, extracting and fixing physical evidence of the specified category.

During the investigation of violent crimes, in cases of a large amount of blood traces, the investigator should order complex forensic examinations, such as forensic biological and forensic examinations, complex medical and forensic examination of blood traces.

The specified examinations are conducted jointly by forensic experts and forensic doctors during the investigation of the instrument of the crime, the marks on them, the nature of the injuries on the victim's body and the circumstances of their occurrence.

Forensic examinations, in particular, traceological, dactyloscopic, ballistic, cold weapon examination, and others, are of great importance during the investigation of crimes of this category of criminal proceedings.

According to the results of the examination of criminal proceedings, it was established that in 27% of cases of investigation of violent crimes, it was necessary to appoint a forensic psychiatric and forensic psychological examination.

A forensic psychiatric examination is prescribed in the case when there are doubts about the mental health of the suspect, caused by his inappropriate behavior, sudden aggression, a significant amount of physical damage inflicted on the victim, the presence of information about deviations in behavior, received from acquaintances or as a result of personal communication with the investigator . This examination is also prescribed for the victim in the event that the physical injuries inflicted on the person caused mental illness (Chronous, 2017).

During pre-trial debriefing, a forensic psychiatric examination is prescribed to determine the mental state of the suspect in the presence of data that raises doubts about his sanity. The mental state of a person, which is noted in the special literature, affects a whole complex of criminal-legal and procedural manifestations of the subject: the very fact of the crime, its nature, the circumstances of its commission.

Sobriety, as well as guilt and responsibility, is a central methodological category of law both from the point of view of its fundamental theoretical solution and from the point of view of practical value and applied significance for the observance of human rights and freedoms (Mikheev, 1998). The study of criminal proceedings on violent crimes established that the specified examination took place in 14% of cases.

If it is necessary to study the condition of the suspect (accused), which affects his consciousness and actions, and the moment of the commission of the crime, to find out various properties of the mental state or other individual psychological characteristics of the victim, suspect or witness during the pre-trial investigation, a judicial psychological examination.

The task of finding out whether a person has signs of mental retardation that are not related to a mental illness, and if so, how they manifest themselves; whether the person has signs of mental retardation or other mental characteristics caused by acquired somatic diseases; whether the person has properties, the presence of which could make it impossible or possible not to fully control his actions; could a person on the eve of crimes against public order and at their beginning have conflict experiences that affected his behavior and other things.

The subject of a complex forensic psychological and psychiatric examination is to establish the influence of the features of the mental state of a person on the quality of reflection and regulation of the sub-expert at the moment of interest to the investigator (court).

This type of examination can be prescribed on the basis of data on the person's: brain injuries, mental retardation, low intellectual development, personality disorders with a tendency to fantasize and suggestion, which causes the investigation and the court doubts about their ability to correctly perceive the circumstances that have significance for criminal proceedings, and to give correct testimony regarding these circumstances.

During a comprehensive examination - an expert psychiatrist establishes the presence or absence of neuropsychological disorders in the examined person, - an expert psychologist establishes - the ability of a person with the specified types of pathology to correctly perceive the circumstances that are important for criminal proceedings, and to give correct testimony about them , as well as correctly understand the nature and significance of committing criminal acts against her.

In view of the above, the tasks of a complex forensic psychological and psychiatric examination include the establishment of two main groups of circumstances that are of interest to investigators and judicial authorities: the nature of the mental state and the assessment of its influence on the behavior of suspects (accused), victims and witnesses.

According to the study of criminal proceedings, 44% of violent crimes were committed while intoxicated. That is why, as O. Ovcharenko aptly notes, forensic drug examinations are conducted in criminal proceedings of the specified category (Ovcharenko, 2007). In order to appoint such an examination, it is not necessary that the person was detained in a state of alcohol intoxication and that he was examined for the presence of a state of alcohol or drug intoxication.

Traceological examination solves diagnostic or identification tasks that arise in the process of investigating violent crimes. It is carried out with the aim of identifying the identity of the suspect (accused) by traces of hands, feet (shoes), as well as various instruments of crime used by him, by their traces. Individual criminals do not worry about the destruction of fingerprints at the scene, so positive results are given by dactyloscopic examination.

During trasological studies of human shoe traces, experts solve the questions about the size, type, species and purpose of the shoes that left a mark, about the mechanism of formation of shoe marks, establish individual physical defects of the person who left the mark, gait characteristics, his height and weight. In the presence of samples for a comparative study, the identification question about the person who left traces can be solved.

During the investigation of the method and instrument of violence (for example, causing bodily harm), traceological studies, which resolve the issue of the mechanism of formation of traces and the group affiliation of the instrument of crime, as well as ballistic examination and cold weapon

examination, may be prescribed. Modern capabilities of these examinations allow solving fundamentally new tasks, but the order of appointment and the list of typical questions do not have significant features.

Taking into account the investigative situation, the mechanism of the use of violence, the available evidence and the testimony of the victim, witnesses, suspect, the investigator during the appointment of such examinations must: find out the issue of the victim's self-inflicted injury with this firearm (cold weapon); establish the relative location of the victim and the weapon at the time of the shot (injury); to find out the distance of the shot and the marks on the clothes as a result of a shot from close range, etc.

The forensic examination of cold weapons in the investigation of crimes in Ilnitsa solves the following questions: is the object taken from the suspect a cold weapon; to which type of cold weapon does the knife belong; in what way (factory or home-made) the knife (dagger, palm knife, nunchucks, brass knuckles, mace) seized from the suspect was made; whether the item seized from this person is a blank for a cold weapon; whether the object submitted for research was made from a certain type of sports or combat weapon; was the knife seized from the suspect recyclable; whether these tools were used to make cold weapons.

Traces of the action of cold weapons on the human body and clothing are examined by a forensic medical examination, traces of its action on other objects are examined by a traceological examination using methods of object identification based on static (pressing, blows) and dynamic (sliding) traces.

Forensic ballistics examination is prescribed in the investigation of violent crimes in which firearms were used. When investigating violent crimes, as noted by K.D. Paul, the study of firearms should always be given special attention (Phol, 1985), because the study of weapons, the traces left after their use, contains data that are needed for the reconstruction of the mechanism of the criminal act, information about the identity of the criminal, etc.

This examination is carried out during the investigation of violent crimes also in those cases when it is necessary to find out whether the object seized from the suspect is a weapon; whether the victim was injured by this object.

It is appropriate to emphasize that when a weapon is discovered and before conducting an examination, it must be examined in detail in order to find traces that can themselves be objects of research (fingerprints, blood, hair, etc.) (Mikheev, 1998). After all, as noted above, traces of blood and hair can be the object of forensic biological examination of physical evidence.

Explosives examination in the investigation of violent crimes can decide: whether the detected substance is explosive, in what way it was manufactured or homemade, and from what components it is made; what is the origin of the investigated explosive device; adequacy of conditions for storage and transportation of explosive substances or explosive devices, etc.

In addition to ballistics and explosives examinations, other forensic examinations (handwriting, technical examination of documents, traceological examination), examination of materials and substances can be carried out in such proceedings.

The need to conduct a dactyloscopic examination arises in the case of finding handprints at the scene of the incident and solving identification tasks that arise when finding out the fact of the presence of a certain person at the scene of the incident, the mechanism of causing bodily injuries, checking the testimony of the victim, the suspect regarding the circumstances of causing bodily injuries.

For dactyloscopic research, experts are provided with handprints found at the scene, crime tools and other objects that may contain handprints, dactyloscopic maps for comparative research.

We consider it expedient to dwell separately on forensic examinations, which are less often prescribed in the investigation of violent crimes. Thus, during the appointment of a forensic examination of materials, substances and products, the investigator can establish the general generic or group affiliation of the presented objects.

Given that in the process of using violence, there is often a mutual transfer of microparticles and fibers from one contacting surface to another during a fight, damage to clothing, resistance by the victim, etc., and as a result of this research, we have the opportunity to establish the fact of the presence of a person at the scene of the crime, establish his involvement to the instrument of the crime and the victim, establishing the instrument of inflicting bodily harm.

Similar information can be established with the help of a forensic soil science examination in the presence of traces of soil on clothes or other objects. The main tasks of experts during a soil science examination are to identify microlayers (particles) of soil origin on carrier objects, to determine their nature, to establish a common generic (group) affiliation with the provided samples, to establish the origin of soil on carrier objects from a certain area of the area (another place events), as well as establishing the mechanism of formation of soil layers (Peculiarities of soil science examination, 2017).

The improvement and development of the capabilities of forensic examinations provides the possibility of identifying a person by his

biological traces. Odorological examination examines traces of human odor, the importance of which is similar to the importance of handprint research in solving violent crimes.

The advantage of scent trails is that it is difficult for a person to control or destroy trails with their scent, since it is not perceived by a person organoleptically. Conducting an odorological examination allows you to establish the presence or absence of odor traces on an object, which provides an opportunity to find out the situation at the scene of the incident, to check the versions in relation to specific persons and their actions, the circumstances of the event and its individual episodes, to identify objects that may have odor traces on them person, to establish the individual smell of a person, on objects thrown away by him at the time of detention, to identify the locations of participants in the event, to establish their number and roles, to check suspects for involvement in the commission of a crime (Alekseev *et al*., 2014).

It is worth paying attention to the regulation of forensic molecular genetic examination. In particular, it is advisable to prescribe the study of biological material using the capabilities of forensic genotyscopic examination in the following cases: the need to establish whether blood, saliva, semen, hair, organs, tissues or individual parts of the body belong to a specific person or exclude such belonging; establishing the gender of biological traces and objects; diagnostic typing for the purpose of subsequent identification with objects of crimes or accidents; investigation of the facts of infanticide, including that of a newborn child.

Establishing whether the remains or parts of a corpse are the remains of a certain person based on the study of biological samples of close relatives; detection of a connection between different crimes, if traces of biological material found at the scene of different crimes were left by the same person; comparison of the genetic profile of a biological object submitted for research with genetic data in a computer database for the organization of a search for a specific person, etc.

Forensic chemical examination is prescribed if there is a need to investigate the composition of a substance used by a criminal to commit a criminal offense with the help of powders, paints, acids.

We share the position of individual criminologists that when investigating violent crimes, in particular enforced disappearances (in addition to dactyloscopic examination), it is advisable to more actively use genetic identification examinations, the main task of which is to identify a specific person on the basis of genetic information contained in biological particles - pieces of skin, as well as in fluids – saliva, blood, sweat, and examination of telecommunication systems and means, which is connected with the need to study the information contained in the memory of mobile

phones, smartphones, in particular the SIM card (of the victim or suspect) (Sokyran and Voitovych, 2021).

The effectiveness of the disclosure and investigation of serial sexual-sadistic murders is related to the possibility of resorting to genotypic (genomic) studies and the involvement of relevant experts. In criminology and forensics, especially recently, attention is focused on the problems of forensic genetic identification, DNA (deoxyribonucleic acid) analysis, DNA identification (Kupiansky, 2016).

DNA research makes it possible to create a reliable evidence base in the investigation of violent crimes, overcoming opposition to their investigation. The method of DNA analysis allows identification of the subject at the level of individual-specific identity, rather than group equipment. Further improvement of genotyposcopic examination is also related to the development of the DNA analysis method for diagnosing the properties and conditions of a person based on his traces.

The DNA analysis method is effective and allows to identify a person in the shortest possible time, as well as with high accuracy, which contributes not only to shortening the time of conducting expert research, but also to establishing the identity of the criminal himself.

Phonoscopic examination is prescribed for the performance of diagnostic and identification tasks from the studied category of criminal proceedings. Before the phonoscopic examination, the following diagnostic questions may be asked: how many people participated in the conversation recorded on the investigated phonogram; what is the literal meaning of the text; what is the content of the illegible record on the presented phonogram; what was the surrounding environment at the time of recording the phonogram, etc.

It is important to emphasize that in order to identify a person, the expert, in addition to the phonorecord carrier, must be provided with carriers with samples for examination. These materials should contain words and phrases that reveal peculiarities or pathologies of the language, other deviations from the generally accepted norms of the literary language.

Also, information about the successful use of so-called non-traditional special knowledge and means of cognition, belonging to the field of genotyping, hypnology, psychophysiology, is increasingly common in forensic literature. Along with them, there is a searching «psychophysiological portrait» of the alleged criminal, forensic polygraphology, forensic hypnology, forensic drug psychotherapy, forensic odorology and others.

The given list of examinations during the investigation of crimes committed with the use of violence is not exhaustive. Their choice depends on the specific criminal offense, the investigative situation and the inner conviction of the investigator conducting the pre-trial investigation.

Conclusions

The problems considered and analyzed in the scientific article made it possible to formulate appropriate conclusions and determine the prospects for the use of special knowledge in the form of conducting an examination in the investigation of crimes committed with the use of violence.

Special knowledge, which is used during the investigation of crimes committed with the use of violence, contains relevant information about forensic means and methods of establishing, preserving, extracting and researching physical traces of the specified crimes and other physical evidence, which are used during expert, investigative or judicial activities, recorded on various carriers of this information.

Special knowledge during the investigation of violent criminal offenses is used in both procedural and non-procedural forms. We considered the use of special knowledge in a procedural form - within the framework of forensic examinations. The most typical forensic examinations during the investigation of crimes include: forensic medical examination, forensic biological examination, dactyloscopic examination, forensic traceological examination of footprints, forensic ballistic examination, cold weapon examination, forensic psychiatric examination. The theoretical and methodical foundations of such examinations need to be updated and adapted to the latest technology and best global experience.

During the pre-trial investigation of criminal offenses committed with the use of violence, the following may also be prescribed: forensic-chemical examination, forensic-odorological, soil science, molecular-genetic and other types of examinations, depending on the type of crime, the investigative situation and the available physical objects. Insufficient use of the possibilities of these examinations was found, which is explained primarily by an underestimation of their role and importance and insufficient awareness of the employees of investigative bodies with the achievements of expert practice.

A thorough analysis of the materials of criminal proceedings, interviews of investigators and experts, as well as the study of special literary sources in the aspect of the research topic, made it possible to identify the following problems in the theory and practice of the appointment, conduct and use of examinations: insufficient knowledge of authorized subjects of criminal proceedings, means and methods of detection and overcoming opposition to the investigation with the help of examinations; a clear insufficiency of available methodological and general theoretical literature on these problems.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 259-273
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Production of engineering products as an element of social growth in the global world: legal factor of development

DOI: https://doi.org/10.46398/cuestpol.4176.14

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Abstract

The purpose of the article is to justify the need to develop the production of engineering products as an element of social growth in the global world and to improve the legal environment as a basis for this development. The research methodology is based on empirical, analytical methods, legal means of prevention, regulation and resolution of business development problems. Competitive struggle stimulates the development of enterprises, the problem creates new opportunities for business and market development stimulates social growth. The defined development chain is an element of globalization. It confirms the expediency of improving the legal field of activity of Ukrainian enterprises developing machine-building products in the direction of promoting the progress of their enterprises, import substitution and popularization of Ukrainian products. In the conclusions, it is recommended to use differentiation as a promising method of bringing Ukrainian enterprises to new markets, reaching foreign consumers and establishing them as a priority supplier of high-quality machine-building products.

Keywords: internationalization; differentiation; globalization; legal acts; technical means and society.

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Recibido el 10/12/22 Aceptado el 15/01/23

Productos de ingeniería como elemento de crecimiento social en el mundo global: factor jurídico de su desarrollo

Resumen

El objeto del artículo es justificar la necesidad de desarrollar la producción de productos de ingeniería como elemento de crecimiento social en el mundo global y mejorar el ámbito jurídico como base de este desarrollo. La metodología de investigación se basa en métodos empíricos, analíticos, medios legales de prevención, regulación y resolución de problemas de desarrollo empresarial. La lucha competitiva estimula el desarrollo de las empresas, el problema crea nuevas oportunidades para los negocios y el desarrollo del mercado estimula el crecimiento social. La cadena de desarrollo definida es un elemento de la globalización. Se confirma la conveniencia de mejorar el campo legal de actividad de las empresas ucranianas que desarrollan productos de construcción de maquinaria en la dirección de promover el progreso de sus empresas, la sustitución de importaciones y la popularización de los productos ucranianos. En las conclusiones, se recomienda utilizar la diferenciación como un método prometedor para llevar a las empresas ucranianas a nuevos mercados, llegar a los consumidores extranjeros y establecerlos como un proveedor prioritario de productos de construcción de maquinaria de alta calidad.

Palabras clave: internacionalización; diferenciación; globalización; actos jurídicos; medios técnicos y sociedad.

Introduction

The beginning of the process of globalization, that is, worldwide social, economic, political, cultural, integration is connected in time with the transition of the economies of developed countries to the post-industrial phase of development.

For enterprises in those industries that produce technical means and for which, most often, production is multi-series, it is especially important to develop individual strategies for conquering the market, that is, consumer preferences. Productions with simple technologies are more flexible and can quickly adapt to new needs, and for the high-tech field of mechanical engineering, it is necessary to search for new modern methods of development.

It is a responsible link in management activity, it needs a scientific approach that harmonizes economic and social growth. Legal support for

the development of these enterprises is important. It is necessary to take part in the formation of laws, norms and development programs under the conditions of knowledge of the needs not only of producers, but also of society. To solve such a task, it is necessary to find or independently develop and implement global strategies of activity in the market of machine-technical products. The development of enterprises - producers encourages social growth. Improving the legal framework for their development is an urgent need.

1.Objectives

The purpose of the article is to justify the need to develop the production of mechanical and technical products as an element of social growth in the global world, and to improve the legal field as the basis of this development.

2. Materials and methods

Using general scientific methods of analysis and synthesis, complexity, empirical research, expert comparison, the stages of development of the machine-building complex of Ukraine, the field of agricultural machine-building, were investigated. The obtained knowledge allows us to draw conclusions about the existence of a number of problems in the development of enterprises and promising solutions. (Nikitenko *et al.*, 2023) As methods of positive influence on development, it is advisable to adopt the following: a method of differentiating technical products taking into account the specifics of demand, a method of ensuring the effect of its uniqueness, additional value for the consumer, a method of ensuring a combination of value for the consumer and utility for the producer.

The methodology of social growth is formed due to the selection and combination of individual methods of influencing this process. In addition to direct methods of provision, there are indirect ones. Such methods are more complex and require concentration of efforts not directly on the object, but on factors that indirectly affect the object. In the global world, it is the indirect methods of influencing the level of social growth that form a larger share of influencing factors. Such factors, in particular, include those that influence the development of the machine-technical products market. These products ensure the production of means of production and consumer goods.

The positive results of the production process are confirmed by the successful sale of products. The formation of methodological principles for the organization of the sale of mechanical goods requires a perfect

knowledge of technical characteristics, the use of differentiation as a method of meeting the needs of buyers with different requirements for product quality, which is also a factor of social growth.

The negative processes of the development of machine-building enterprises take place against the background of the absence of legal barriers for the factors that prompted them. This fact requires the application of the method of adjusting the legal basis of the enterprise's activity. Changes and additions to the legal acts of this area should be based on a deep study of the principles and circumstances of the activity, which is the task of practitioners and scientists.

The legal acts in this area are:

- Law of Ukraine "On stimulating the development of domestic engineering for the agro-industrial complex" (dated February 7, 2002 No. 3023-III);
- Decree of the President of Ukraine "On measures to develop the domestic machinery market for the agro-industrial complex and increase its production volumes" dated November 3, 2001 No. 1039/2001;
- Resolution No. 1158 "On Approval of the State Target Program for the Development of Ukrainian Villages (September 19, 2007, the Cabinet of Ministers of Ukraine".

Changes and additions to these and other legal acts were also adopted. But in recent years, the task of providing the village with equipment and import substitution has not yet been fulfilled. According to the aspirations of the drafters of the new legal acts, their approval should stimulate an increase in the volume of sales of domestic equipment for the agro-industrial complex from 3.6 to 8.2 billion hryvnias. Their adoption does not require additional financial costs from the State Budget of Ukraine.

3. Results and discussion

The exceptional value of the machine-building complex of any country lies in the fact that it provides tools for material production and the service sector. Technical products are the basis of production. The machine-building complex is the basis for the development of almost all branches of production. Mechanical engineering is complex and structurally differentiated from branches of industry (Nekhai *et al*, 2011; 2021; 2022). Researcher of socio-economic geography Josip Giletsky, Roman Slivka, Mark Bogovych noted that together with metalworking, it includes up to 200 different sub-sectors and industries.

They can be grouped by the time of their origin, old, new and emerging industries can be distinguished. It can be grouped by purpose (with a selection of general, transport mechanical engineering, electronics and electrical engineering, as well as agricultural, construction and road mechanical engineering, instrument engineering, etc.), according to the features of technological and spatial orientation... In the era of scientific research and development, world mechanical engineering as a whole became much more science-intensive. In advanced countries, it accounts for more than 2/3 of all costs for research and design work in industrial production. The transition from universal to more highly specialized enterprises also became a general trend (Giletsky *et al.*, 2005).

The process of globalization affected both legal, economic, political and cultural integration, as well as social development. It happened at the intersection of the industrial and information eras. Let's analyze how globalization has affected the activities of enterprises producing mechanical and technical products.

Globalization affected the production of mechanical and technical goods already at the beginning of the 20th century. Emphasis in the development of the production of machine-technical products was placed on agricultural and transport engineering. It should be noted that even in the past, agricultural machine building was a leading sub-branch of machine building, which was affected by the demand for machines due to the lack of labor in the agricultural steppes, as well as the availability of raw materials (supplied by metal centers) and fuel.

Before the First World War, there were 138 medium and large agricultural machine-building plants in Ukraine, which produced about 40% of all machine-building in Ukraine. Agricultural machine building was concentrated in Bila Tserkva, Kharkiv, Odesa, Yelysavetgrad (Kropyvnytskyi), Oleksandrivskyi, and Berdyansk.

The owners of factories for its production were mainly foreigners. And yet, agricultural machine building did not cover the country's demand, and more than 40% of machines were imported from abroad, mainly from Germany (Giletsky *et al.,* 2005). That is, the process of globalization touched this industry quite a long time ago. Obviously, this industry provided jobs, and its development was an impetus to increase the number of educated people, to the development of society.

Let us present the view of economic globalization researchers Susan Douglas and Samuel Craig on the main trends of globalization. "Such trends lead to the fact that in many industries, competition does not take place on the national or even regional market, but on an international scale. As a result, in order to compete effectively, companies must develop global marketing strategies...

Differences in the relative cost of labor, energy and other resources lead to countries having different technologies, and this also affects the definition of business... Defining the company's driving force means identifying the key aspects of the strategies on which attention will be focused. However, this does not necessarily imply disdain for other aspects. Concentrating major efforts on technology or product offerings does not mean that the ability to meet market needs or identify key target segments can be ignored. Rather, it allows you to determine priorities when allocating management efforts and when evaluating new projects (Douglas and Craig, 1985).

Researcher Researcher David Buisson notes:

> Trade in standardized goods is the largest business in the world, and every year its volume continues to grow. 70% of the 125 most important sectors of the world economy receive more than half of their export revenues from the sale of primary products. The ever-changing situation, ever-increasing competition and the increase in the number of large multinational companies affect the nature of global product markets, while the role of marketing as one of the aspects of business activity is increasing (Baker, 2002: 577).

The author points to competition as a force that affects the development of enterprises, but one should not forget that it can lead to the disappearance of an enterprise, and sometimes an industry.

Such a threat exists, obviously, for many branches of the economy of Ukraine. For example, for the country's agricultural machinery industry, a situation has arisen when foreign-made machinery enters the country's market in large quantities. The purchasing power of domestic agricultural producers is low, so the market offers used foreign machinery.

At the same time, domestic factories for the production of agricultural machinery, components and repair kits for it produce products that are quite affordable in terms of price indicators, but improper sales organization is noted and, as a result, preferences on the side of foreign models.

Jean-Jacques Lambin points out the driving forces behind competitiveness management in an industry:

> A firm's ability to gain a competitive advantage in its base market depends not only on the direct competition it faces, but also on other forces such as potential market entrants, substitute goods, buyers and suppliers. The first two forces are threats, and the other two are indirect, depending on their ability to dictate their demands. The company's profit potential in the commodity market is determined by the complex influence of all five forces (Lambin, 2006: 303).

With this statement, Jean-Jacques Lambin indicates that the development of enterprises under the conditions of differentiation of production solves such social issues as providing consumers with more unique goods, those that have a greater value for consumption, and needs are satisfied most fully. In addition, the degree of awareness of novelties increases, which generates new requests.

The withdrawal of the machine-building complex of Ukraine from the crisis requires, in particular, the development of a national program for the development of agricultural machine-building, which provides support at the legislative level for the production of technological complexes of machines and equipment for agriculture, food and processing industry, bringing the production of new types of final products and parts to the level of ensuring domestic needs of farmers by 70%.

Without effective legislative and financial support, powerful plans for the development of the agricultural machinery industry cannot be achieved. An investment program in this industry with the involvement of foreign capital can provide an opportunity for the development of enterprises. The development goals must be consistent with the legal framework, so it is necessary to focus on its improvement and bringing it closer to reality.

Thus, the authors of scientific research and development on the development of the machine-technical products market are united in the fact that they consider it an important element of social growth in the global world.

The state of the modern world economy determines the situation when increasing production volumes is no longer synonymous with success in business. These circumstances became an incentive for a large number of companies to improve the efficiency of existence, change their strategy in the market and move from the principle of "produce as much as possible" to the principle of "maximally satisfying the client". The "seller-buyer" relationship has also changed significantly, the emphasis has shifted to the "buyer" (client).

The rule "they will buy everything we make" stopped working, and the term "customer-oriented company" appeared. The fierce struggle for customers continues, which requires flexibility, new ideas, products and services, quick access to new markets, cost reduction, etc. (Strategic directions of the development of agriculture of ukraine for the period until, 2020). In this way, the strategic directions of the development of agriculture and agricultural engineering in Ukraine were determined.

Thus, the main factors of development and transition to market economic conditions for enterprises that produce technical means are the need for means of production and competition. Social challenges dictate the need to develop this market. Enterprises that produce standardized goods primarily became participants in globalization.

We will analyze the factors and stages of development of enterprises in the field of mechanical engineering and its sub-sector (agricultural mechanical engineering), as an element of social growth in the global world (table 1).

In such conditions, the struggle for a buyer is fierce for enterprises in those industries that produce technical means of production.

In the market of such goods, the «seller-buyer» ratio was in favor of the buyer. And the process of globalization of markets has contributed to this – goods that are a significant competition for domestic producers enter the national markets. If the national industry is strong, it will overcome the competition. If it is weak, the prerequisites for its collapse may arise due to the gradual exit from the competitive struggle of individual domestic enterprises.

Already now, the process of globalization has affected the development of various branches of the Ukrainian economy in a certain way. The enterprises of some entered foreign markets and got the opportunity to distribute their products more profitably than in the domestic market, the enterprises of others, on the contrary, suffered a significant defeat, which was manifested in a decrease in sales figures, and, as a consequence, in loss of profits, reduction of jobs, loss of personnel, which was manifested by a decrease in the level of social growth of the population.

These negative processes took place against the background of the absence of legal barriers for the factors that prompted them.

Globalization has affected the field of mechanical engineering for agriculture. The situation with the production of agricultural machinery is ambiguous: many enterprises have sharply reduced production in conditions of economic instability, and some are gradually modernizing and re-equipping.

Thus, the Kaliniv factory (Vinnytsia region) recently produced new planters with the help of Germany (the planned capacity is 3 thousand planters per year, which fully meets the needs of Ukraine). Small enterprises producing modern grain harvesters, which correspond to Western analogues, operate in Kharkiv, Berdyansk, and Kherson. Machine-building enterprises of Melitopol expand the range of hydraulics, mechanisms and components for agricultural machinery and conquer new world markets.

It is quite clear that agricultural engineering must adapt to the interests and needs of farmers in full accordance with the plans for the development of the agricultural sector. There are 370 enterprises operating in domestic machine building for the agro-industrial complex, of which 120 are specialized. Almost 70,000 workers work at the enterprises and organizations of the industry, more than 4,000 names of machines necessary for the execution of technological processes in agro-industrial production are manufactured.

The capacities of enterprises in the industry allow production of products worth 10.0 billion hryvnias. At the same time, agricultural machinery is

constantly being imported into Ukraine, which significantly narrows the domestic machinery market for domestic machine-building enterprises for the agro-industrial complex.

Table No. 01: Evolutionary factors (internationalization, globalization) of the development of the machine-technical products market.

Period	Accents of activity	Factors
The first half of the 19th century	The appearance of the first enterprises for serial production of means of production (mainly tools) for agriculture	The need for means of production to replace manual labor and intensify the production of agricultural products
The second half of the 19th - the beginning of the 20th century (internationalization of the world economy)	Expansion of production due to the production of machines and equipment for sugar factories and oil mills	The need for funds for enterprises processing agricultural raw materials
The beginning of the 20th century - the beginning of the First World War (internationalization of the world economy)	The emphasis in the development of mechanical engineering was on agricultural and transport mechanical engineering. Agricultural mechanical engineering is becoming a leading sub-branch of mechanical engineering	Growing demand for machines due to the lack of labor in the agricultural steppes, as well as the availability of raw materials and fuel
The First World War - the beginning of the 50s (transnationalization as the next stage on the way to globalization).	The beginning of the globalization process is connected in time with the transition of the economies of developed countries to the post-industrial phase of development. In Ukraine, 138 medium and large agricultural engineering factories produced about 40% of the country's entire engineering	Growing demand for agricultural machinery. Agricultural machine building did not cover the country's demand, and more than 40% of machines were imported from abroad, mainly from Germany
The 80s - the beginning of the 2000s (globalization of the world economy)	The difference in the relative cost of labor, energy and other resources has led to the development of the latest technologies for the production of agricultural machinery. Increasing the volume of production of agricultural machinery is no longer synonymous with success in business	The need to develop a strategy for market activity and to move from the principle of «produce as much as possible» to the principle of "maximum satisfaction of the need"

Modernity (globalization of the world economy)	To compete effectively, engineering companies must develop global marketing strategies. It is important to work out individual strategies for winning consumer preferences. There is an element of social growth in this.	The need to develop methods of influence on the market in order to cause the emergence of a need and the formation of a consumer segment
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The 2010s -2022s	To compete effectively, engineering companies must develop global marketing strategies. It is important to work out individual strategies for winning consumer preferences. There is an element of social growth in this.	The need to develop methods of influence on the market in order to cause the emergence of a need and the formation of a consumer segment

Source: (Giletsky *et al.,* 2005).

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Further stagnation of machine-building and equipping the agricultural sector with foreign machinery will lead to complete dependence on its supply and will create a direct threat to the food security of the State, since the countries producing machinery will be able to dictate the nomenclature and volume of production of Ukrainian products to the agricultural sector of Ukraine (The system of material and technical support in Ukraine and the formation of the means of production market, 2019). In order to avoid this, it is necessary to develop our own mechanical engineering for the agro-industrial complex and, in the conditions of the global financial crisis, to support the domestic manufacturer by limiting the import of machinery for the agro-industrial complex into Ukraine.

The purpose of the adjustment of the national legislation is to limit the import of foreign machinery into Ukraine, both new and used, and to prohibit the use of funds provided to agricultural producers by the State budget under all budget programs as aid, subsidies and support for the purchase of foreign machinery production.

There is no doubt that in the era of globalization, the driving force behind almost all processes taking place in the economy is competition. Thanks to the management of this process, the process of transition from one permanent state to another takes place.

It was she who gave rise to a whole series of bankruptcies of enterprises during the transition to the market. Industries have disappeared in some countries. Most often, this was explained by the severance of economic ties with enterprises located abroad. Not everyone managed to recreate past relationships or not as quickly as they would have liked. Changes in the world and in individual countries took place at different speeds. Some connections did not renew and were not replaced by others.

For the economies and industries of the countries of the post-Soviet space, globalization processes are an impetus for development, but also a significant test. Those economic structures that have established an effective management system taking into account market requirements and focusing on the needs of society managed to survive the competition.

Thus, A. Chernyavskyi characterizes the impact of globalization on development as follows:

> The most favorable economic results from globalization are obtained by industrially developed states. Due to trade, investment, access to external sources of resources, developed countries as a result of globalization have the opportunity to constantly replace low-skilled labor, using its inflow from other countries. Globalization poses the greatest threat to developing countries, which experience a significant lack of qualified personnel, economic infrastructure, institutions, and economically determined programs for the realization of available opportunities (Chernyavsky, 2000: 37).

But, in our opinion, one should not completely agree with such a harsh assessment of the author. The need for qualified personnel, economic infrastructure, institutions, and economically determined programs for the realization of available opportunities entail the need for jobs and solve the problems of employment of the population, which raises the social level.

Taking into account the peculiarities of the machine-building industry product, it should be pointed out that the organization of the promotion of machine-technical products should begin at the production stage with efforts in the direction of differentiation.

Jean-Jacques Lambin noted:

> Pointing out different ways of winning in the competition, the author emphasizes the special power of differentiation, which is very important for industries that produce means of production and for which victory in the competition has not yet acquired certain defined forms: In order for the strategy of differentiation to lead for a positive result, the following conditions must be met:
>
> - differentiation should lead to the emergence of something unique, and not to a simple price reduction;
> - the element of uniqueness must represent value for buyers;
> - this value may reflect increased efficiency (more complete satisfaction) or reduced costs;

- the process of differentiation must be permanent so that competitors cannot reproduce it in the near future;
- the price premium that buyers are willing to pay must exceed the inflated costs incurred by the firm in the process of creating and maintaining an element of differentiation;
- finally, in the case when the element of differentiation is not too obvious and not familiar to the market, the firm must develop a certain system of signals with the help of which the consumer can learn about the appearance of a new element (Lambin, 2006, p.650).

Differentiation can direct machine-building enterprises to new markets, help to reach foreign consumers, and establish itself as a priority supplier of high-quality engineering products. This chain of development is an element of globalization. Thus, competition encourages development, the problem creates new opportunities, and market development - social growth in the global world.

Comparing all the specified conditions with the circumstances of the mechanical engineering industry, whose products are goods of industrial purpose and standardized, we can agree that these conditions are acceptable for the studied industry. Differentiation is necessary for the products of the engineering industry. The specificity of the method of differentiation of mechanical engineering products is that it is focused on the final consumer, who is himself a manufacturer (manufacturing enterprises).

It should be implemented in the form of quality improvement, price optimization, service provision, and consulting. Staying competitive in the era of globalization of engineering markets means updating the range. This means constant efforts to improve the organization of production management and the need to support activities at the level of legal regulation of economic relations.

Conclusions

The machine-building complex is the basis for the development of other branches of production. Factors and stages of development of enterprises that produce mechanical and technical products, in particular, mechanical engineering for agriculture and legal support for their development, are analyzed.

For the enterprises of the countries of the post-Soviet space, globalization processes are a test and, at the same time, an impetus for the realization of available opportunities. Competitive struggle encourages development,

a problem creates new business opportunities, and market development - social growth. Such a chain of development is recognized as an element of globalization. The statements of the authors of scientific studies give reasons to believe that the production of machine-technical products is becoming an important element of social growth in the global world.

It is recommended to use differentiation as a promising method of directing Ukrainian enterprises to new markets, reaching foreign consumers and establishing themselves as a priority supplier of high-quality engineering products.

Legal acts regarding the activities of agricultural engineering enterprises are characterized as not perfect and partly irrelevant.

The expediency of improving the legal field of activity of Ukrainian enterprises-manufacturers of mechanical and technical products in the direction of promoting the development of their enterprises, import substitution and popularization of Ukrainian products is substantiated.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 274-291
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Perspectives of civilizational political development of world regions in the context of current challenges and opportunities

DOI: https://doi.org/10.46398/cuestpol.4176.15

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Abstract

The aim was to investigate the theoretical and practical aspects of civilization in the context of the challenges of modern global development, to analyze a new model of civilization, within which the basic problems of civilization and a solution to the consequences of development proposed by the civilizational process are outlined. The theme is the development of civilization of the world regions and the formation of a new strategy of the NATO Alliance. The methodology consists in the use of the synergetic method, agile methodology, political modeling, forecasting, which help to see the challenges and opportunities of the global development of modern civilization in a new way. As a result, a distinction was made between the concepts of civilization as a sociocultural phenomenon and culture as a measure of human development, because civilization is a set of political conditions that determines the development of a person and a society. The analysis of the problems of civilizational development of the world regions in the context of challenges and opportunities, the objective processes of modern development and the formation of a new concept of civilizational protection of the international society was carried out.

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Recibido el 25/10/22 Aceptado el 28/12/22

Keywords: civilization; global development; civilizational processes; historical challenges; civilizational model in crisis.

Perspectivas de desarrollo político civilizatorio de las regiones del mundo en el contexto de los desafíos y oportunidades actuales

Resumen

El objetivo fue investigar los aspectos teóricos y prácticos de la civilización en el contexto de los desafíos del desarrollo global moderno, analizar un nuevo modelo de civilización, dentro del cual se esbozann los problemas básicos de la civilización y una solución a las consecuencias del desarrollo que propone el proceso civilizatorio. El tema es el desarrollo de la civilización de las regiones del mundo y la formación de una nueva estrategia de la Alianza de la OTAN. La metodología consiste en el uso del método sinérgico, la metodología ágil, el modelado político, la previsión, que ayudan a ver los desafíos y oportunidades del desarrollo global de la civilización moderna de una manera nueva. Como resultado se hizo una distinción entre los conceptos de civilización como fenómeno sociocultural y, cultura como medida del desarrollo humano, debido a que la civilización es un conjunto de condiciones politicas que determina el desarrollo de una persona y de una sociedad. Se realizó el análisis de los problemas del desarrollo civilizatorio de las regiones del mundo en el contexto de los desafíos y oportunidades, los procesos objetivos del desarrollo moderno y la formación de un nuevo concepto de protección civilizatoria de la sociedad internacional.

Palabras clave: civilización; desarrollo global; procesos civilizatorios; desafíos historicos; modelo de civilización en crisis.

Introduction

The relevance of the study of civilization in the context of the challenges of modern global development is taking place in the environment of the increasing influence of global factors on the challenges of modern civilizational development related to the COVID-19 pandemic crisis, contradictory global processes, and the new reformatting of the global world. Even J. Vico in his work "Fundamentals of a new science of the general nature of nations" (Vico, 1994) tried to explain the objective law of historical change, to substantiate the idea of the unity of world history,

to find the things in common and the things that are repeated in the social development of different peoples and countries.

Throughout the history of the development of the social and philosophical thought, taking into account the civilizational context, there were many followers who focused on the description of the known histories of civilizations, or "cultural-historical types", which allowed to identify the patterns of emergence, development, decline and disappearance of civilizations and cultures. It should be noted that Spengler counted 8 socio-historical groups (Spengler, 1993), Gobineau considered the Aryans - aristocratic white sub-race (Indo-Europeans) - as the center of all civilizations, Toynbee focuses on 21 civilizations (Toynbee, 1995), M. Danilevsky mentions 13 (Danilevsky, 1991).

Civilization environment is a complex and quite broad social, cultural, economic phenomenon represented in modern philosophical, political science thought, international economic and political relations. In terms of the modern geocultural and geopolitical picture of the world, the most acceptable is the division into 8 civilizational branches, namely 1. North Atlantic region of the world. 2. the Arab-Islamic region of the world. 3. Asia-Pacific region of the world. 4. Orthodox-Slavic region of the world. 5. Hindu-Indian region of the world. 6. Shinto-Japanese civilization. 7. Latin American civilization. 8. African region. The allocation of these civilizational branches remains relevant to this day.

For a detailed study of civilization processes, let us analyze the term "civilization " in the context of the challenges of modern global development.

The concept of civilization comes from the Latin word "civis" "citizen". According to most modern studies, civilization means the next stage of culture after barbarism, which creates the most important precondition for culture. Thus, "civilized" and "cultural" are perceived as concepts of the same order, but civilization and culture are not synonyms (the system of modern civilization, characteristic of developed countries of Western Europe, the USA and Japan, is the same, although cultures in all countries are different). In other cases, this term is used to denote a known level of society development, its material and spiritual culture.

As the basis for the allocation of the form of civilization are taken features of the region or continent (civilization of the ancient Mediterranean, European civilization, Eastern civilization, etc.) They to a greater or lesser extent reflect the real characteristics that express the commonality of cultural and political destinies, historical conditions, but it should be noted that the geographical approach can not always convey the presence in this region of different historical types, levels of the development of socio-cultural communities.

Another meaning is that civilizations are understood as autonomous, unique cultures that go through known cycles of development. This is how Danilevsky (1991), Toynbee (1995) and Huntington (1994)use this concept. They believed that culture is one of the main characteristics of civilization and even defines civilization. Of course, culture has a great influence on the formation of the spiritual world of a person, on art, literature, psychology, on social life. It should not be denied that there is a reverse influence of civilization on the formation of culture and religion. Moreover, it is not so much culture and religion that shape civilization, but civilization itself adapts it to its spiritual and material needs, forms an intercivilizational dialogue (Afanasyeva *et al*., 2017).

According to Spengler, civilization is a set of technical and mechanical achievements of a person, culture as a sphere of organic life, which is reduced to the level of civilization and together with it moves towards its destruction. In modern Western literature, the idea of material and technical factors absolutization, the allocation of human civilization according to the level of technical and economic development is carried out.

Civilization is the degree of the development, which includes the human transformed nature and means of transformation, a man. It is a commonality of people characterized by a certain set of values (technologies, skills, traditions), a system of general prohibitions, similarity (but not equivalence) of spiritual worlds. The development of civilization is accompanied by the growth of diversity of organization of life, but civilization has never been and will never be unified, despite the technological community that unites humanity.

Civilization emerges due to the special function of technology, which creates, generates and constructs an adequate regulatory environment in which it lives and develops. Now it is customary to distinguish between traditional and technogenic civilizations. Naturally, this division is relative, but nevertheless it makes sense, because it carries certain information and can be used as a starting point for research.

Traditional civilizations are usually called those civilizations where the way of life is oriented by slow changes in the sphere of production, preservation of cultural traditions, reproduction of social structures and lifestyles that have often been formed for many centuries - customs, habits, relationships between people that are sustainable. The modern period of society development is determined by the progress of technogenic (digital) civilization, which actively conquered all new social spaces.

This type of civilized development was formed in the European region, which is called Western civilization. But it is implemented in different versions both in the West and in the East, so the concept of "technogenic civilization" has been used, since its most important feature is accelerated scientific and technological progress.

Technical, and then scientific and technological revolutions make the technogenic civilization an extremely dynamic society, often causing a radical change in social relations - forms of human communication - over the course of several generations. The deep values of technogenic civilization were formed historically. Their background was the achievements of the culture of antiquity and the European Middle Ages, which were then developed during the Reformation and the Enlightenment and determined the system of value priorities of technogenic culture. Man was understood as an active being in active relation to the world.

The idea of transforming the world and subjugation of nature by man was the main one in the culture of technogenic civilization at all stages of its history, up to our time. Transforming activity is considered here as the main purpose of a man. An important component in the system of values of technogenic civilization is a special value of scientific rationality, scientific and technical view of the world, which creates confidence that man is able, controlling external circumstances, to rationally, scientifically arrange nature and social life.

The object of research includes a set of methods, principles, approaches to the analysis of civilizational problems of human existence and society, immersed in a contradictory civilizational society. It is necessary to draw special attention of scientists, politicians, experts to the analysis of contradictory global processes related to overcoming the problems of civilizational development at the level of global reformatting of the world and the formation of a new strategic concept of the NATO Alliance to protect international society.

1. Analysis of the Literature Sources

We rely on the classic studies of Danilevsky, Toynbee, Huntington, who believed that culture is one of the main characteristics of civilization and even defines civilization. Of course, culture has a great influence on the formation of the spiritual world of man, on art, literature, psychology, social life. It should be noted that O. Spengler counted 8 socio-historical formations of civilizations (Spengler, 1993), J. Gobineau considered the Aryans - aristocratic white subrace (Indo-Europeans) as the center of all civilizations, A. Toynbee focuses on 21 civilizations (Toynbee, 1995), M. Danilevsky mentions 13 civilizations (Danilevsky, 1991). The article by Hussein (2013) analyzes the peculiarities of the philosophy of history concept of J. Vico regarding the emergence and development of human societies and institutions.

In the context of modern sources, we analyze the works of modern representatives of philosophical thought L. Afanasyeva, E. Muzya, K.

Kolev, R. Oleksenko (2017) to analyze intercultural dialogue in the context of Ukraine's unification; the work of V. Voronkova, V. Nikitenko, R. Andriukaitene to identify the philosophical foundations of geopolitical reformatting of the world in the context of modern challenges of globalization.

The research of V. Voronkova, O. Punchchenko, M. Azhazha to identify the problems of globalization and global governance in the Fourth Industrial Revolution (INDUSTRY 4.0) played a key role in the analysis of such a complex problem as civilization. The analysis of the socio-dynamics of the globalizing world in its civilizational dimension, carried out by Punchenko *et al.* (2018), played a fundamental role for us. We should also highlight the work of Oleksenko (2011) "Policy of Ensuring Ukraine's Competitiveness in the World Food Market in the Context of Globalization: Trends and Prospects".

Undoubtedly, a great role was played by the analysis of the search for new forms of personal expression in the era of postmodernism, carried out by Kyrychenko *et al* (2021). The interaction of the digital person and society in the context of the political philosophy is represented by the work of O. Buhaychuk, V. Nikitenko, V. Voroknova, R. Andriukaitene, M. Malysh.

In general, it was interesting to trace the comparative analysis of civilization in the context of the challenges of modern global development, to analyze the new model of civilization, which outlines the basic problems of civilization and proposes solutions to the consequences of the civilization process in the works of both classics of philosophical thought and modern philosophers. The modern period of society development is determined by the progress of technogenic (digital) civilization, which actively conquered all new social and cultural spaces.

2. Materials and Methods

Today, many specialists - philosophers, sociologists, historians, ethnologists, psychologists - are engaged in the problems of civilizations, their features. The civilizational approach to the challenges of modern civilizational development is considered as opposed to the formational one. But there is no clear, generally accepted definition of civilization.

There are many different studies, but there is no general picture of the development of civilizations, as this process is complex and contradictory. And at the same time, the need to understand the peculiarities of the genesis of civilizations and the birth of the phenomenon of modern society within their framework is becoming an increasingly urgent problem in modern conditions, as today a choice is made between modern and pre-modern forms of civilization.

From the point of evolution, the distinction of civilizations plays an important role in comprehending the enormous amount of information that the historical process represents, so the historical method or approach will be the main one.

The profound values of technogenic civilization were formed historically. Their preconditions were the achievements of the antiquity and European Middle Ages culture, which were then developed during the Reformation and the Enlightenment and determined the system of value priorities of anthropogenic culture.

The humanistic approach allowed to analyze the ideals of progress, when a person was understood as an active being in an active relationship to the world. The idea of transforming the world and subordination of nature by man was the main one in the culture of technogenic civilization at all stages of its history, up to our time.

Transformative activity is considered here as the main purpose of a man (Rybalchenko *et al*., 2021). Moreover, the activity-based ideal of man's relationship to nature extends to the sphere of social relations. The ideals of technogenic civilization are the ability of an individual to join all kinds of social communities and corporations.

Classification of civilizations is only a certain perspective in which the history of human development is being studied. Today, the problems and prospects of modern civilization acquire a special significance, as a result of the contradictions and problems of the global order, which are becoming increasingly acute and a new reformatting of the world.

Therefore, the methods and approaches that will help to reveal this contradictory state of civilization are the cross-cultural method, which helps to compare civilizations, highlight their differences, highlight the things that unite civilizational branches, and highlight the unconditional priority of universal interests and values (Kyrychenko *et al*., 2021).

In order to conduct a comprehensive study of civilization in the context of the challenges of modern global development, it is necessary to form a new model of civilization, based on the anthropological method, which opens a new approach to understanding civilization, an anthropological view of the existing space of society and man in the conditions of the "new reality", and to identify its crisis factors.

Also an important approach is the existential one, aimed at identifying the human being existence in certain coordinates of civilization, which allows to analyze the existentials of living in conditions of crisis and uncertainty.

An important role was played by the synergetic method (analysis of entropy, bifurcation points, choice of attractors), the Agile method as a

method of flexibility and adaptation of certain countries and regions to the environment, the method of nonlinearity, in the context of taking into account a new model of civilization, which overcomes deviations from equilibrium, openness, homeostaticity and adjusts to self-stabilization, self-regulation, self-management.

3. Results and Discussions

3.1. Characteristics of civilization branches of the world and the problem field of their existence

1.1. Asia-Pacific civilization is a large, traditionally sustainable and rapidly developing part of the world. China can be considered a state that leads almost all processes in the region. The population of China is very large and has already exceeded one billion. As for the geopolitical plans of China itself, the goal is to create a "Great China", that is, to further expand its influence and capabilities at the level of economy, politics, culture.

The implementation of integration processes is carried out through various structures and methods of general diplomacy, but the small number of regional organizations does not allow to become an equal partner for Western regional cooperation. The ideological justification of Chinese statehood, which is based on communist ideas, diversified by Confucian philosophy, praising the hierarchy, makes other countries in the Asia-Pacific region perceive China as an imperial country and express either positive or neutral assessment towards it.

As for China's plans for the nearest future, it is the creation of a new geopolitical and geocultural space of its own, which should be implemented through the following points of the state's development program: alliance with some underdeveloped in the economic and geocultural context states to create an anti-hegemonic alliance to jointly overcome extreme poverty; growth of integration processes in the region and the possibility of using the Siberian natural complex.

The countries of the Asia-Pacific region are influenced not only by Japan and its ally the United States, which even have their military base there, but also by India and its neighbours. This pressure on the Asia-Pacific region is characterized by both social, cultural and economic orientation. The "cornerstone" of the region is the Korean problem.

It creates the most significant contradictions and conflicts in the region and is the largest geopolitical source of hostility. In addition to the Korean issue, there is also the Indonesian instability, as religious and national contradictions occupy a leading position in foreign policy. China plays

the role of a catalyst in the issues of ethnicity, religion and culture, being a nation-state that cares about ensuring Ukraine's competitiveness in the world market in the context of globalization (Oleksenko, 2011).

1.2. A special geocultural and geopolitical zone is the Hindu-Indian civilization, which includes India, Indochina and a number of island states. This zone is special because in geopolitical language it is called "Rimland". This civilization sphere is a coastal zone that equally receives impulses from the Land and the Sea. This zone is quite dynamic in terms of its development, as it is a border zone. The undisputed leader of the region is India. The country has its own religion, which it spreads to neighboring countries. Leadership in terms of economic, socio-cultural, political, geographical and religious assessments makes the country quite attractive not only in material but also in spiritual (religious and cultural) terms.

Recently, India has been considered even as an alternative to China. Of course, the official Beijing understands this and pursues the tactics of close cooperation with Pakistan, which has territorial conflicts with India (meaning the unresolved issue of the provinces of Jammu and Kashmir).

In this case, from the point of view of geoculture, a civilizational conflict is manifested according to (Huntington, 1994: 40): "The clash of civilizations will become a dominant factor in world politics. The dividing lines between civilizations are also the lines of future fronts" (i.e., Beijing - Delhi - Islamabad relations). In this region, there is not only conflict (Pakistan - India, China - India), but also organized strategic cooperation against India (Pakistan - China). Sri Lanka (Ceylon) and Nepal have a special geo-cultural significance. Both countries are resort areas of a fairly high level, which are attractive to tourists.

In addition, Sri Lanka is one of the largest suppliers of tea in the world, and Nepal, tightly compressed by India and China, has created its own, rather mystical religion and culture and carries an important historical mission (Nikitenko *et al.*, 2021).

1.3. The Arab-Islamic region of the world is perhaps the most complex and controversial geopolitical field. From the point of view of geopolitical science, the Arab-Islamic civilization zone is a predominantly tellurocratic region. The constant stress in the region and the spread of the conflict is a direct consequence of the presence of numerous players in the territory, which have quite influential geopolitical power and significance.

The possibility of creating a single geopolitical field is rejected due to numerous religious and ethnic contradictions, which is quite beneficial for other civilizational branches. Other geopolitical entities use this political fragmentation and geocultural enmity within the region for constant expansion in the region. The African complexity of international relations, caused by constant disputes between tribes, forces the Arab countries of North Africa to participate in conflicts.

In the region there is a noticeable tendency to Islamocentric integration, which is born from the ideas of pan-Islamism. Islamocentric integration is the basis for many political parties and virtually all military formations in the region. It is believed that there are four centers of geopolitical gravity in the region, namely the influence of Turkey, Egypt, Iran, Saudi Arabia. Although Turkey does not belong to the Arab-Islamic region, its influence on the countries of this civilization branch is great.

The fact is that Turkey builds its expansion on the basis of the ideas of Pan-Turkism - a close ethnic relationship with the Turkic peoples living in the territories that are areas of interest of other civilizations, for example - Orthodox (meaning the territories of Azerbaijanis, Gagauz and Crimean Tatars).

That is, we are talking about the fact that the zone of Turkey's interests is also the zone of interests of many other countries, as well as the countries of the Arab-Islamic region. As for Egypt, the leading role here is played by a fairly favorable geopolitical position on both sides of the Suez Canal, which explains the rapid development of the country's economy. This prospect is very beneficial for European countries.

It is important to note the fact that the country is in the process of integration with Syria and Lebanon, and as a result, Egypt will become the center of gravity of the Arab world. The rapid development of Islamocentrism began with the liberation of the region from pro-Western and socialist forces. It was Iran that led the Islamocentric processes. The official religion of Saudi Arabia is Wahhabism, which represents orthodox Islam. It was the export of Wahhabism that determined the zone of influence of this state. The Arab-Islamic region is rich in natural resources, which makes it attractive for military invasion and conquest by other countries and civilizations.

Geopolitically beneficial decisions for the region are made by interstate structures. The ethno-cultural potential of the Middle East countries is a guarantee of avoiding demographic problems that are now becoming more acute in the countries of the South. Migration of the population of the Arab-Islamic region to other countries allows to introduce the Muslim element into the cultural field almost without assimilating it. This is the basic argument for the spread of expansion processes in the countries of Africa, located to the South of Algeria and Sudan, which are not Muslim.

1.4. European civilization today aims at integration due to the division of the region into two parts during the so-called Cold War. Europe is much weaker than the USA also in terms of weapons, so consolidation and unification into the European Union is a priority for European countries. The leading role in the European Union is played by the Franco-German core, which has many contradictions inside.

The areas of geopolitical interests of the countries of the European Union do not coincide, so the integration processes are significantly delayed. At the moment there are unified state authorities, but there are serious problems with the adoption of a single concept of the constitution of the EU countries. There is also a need for a new defence strategy that would be independent of the US and NATO. France and Germany claim leadership in the European integration process.

1.5 Latin America is one of the largest regions of the world. More than a hundred different peoples and tribes live on its territory, and a large share is occupied by the population emerging from mixed marriages. The lands of the Latin American region have always been attractive to colonial invaders: the British, Spanish and Portuguese.

The complex ethnic and national landscape contributes to the development of a large number of cultures and religions, and the peculiarities of interaction at the supranational level allow us to talk about the complexity of regional integration. S. Huntington called the Latin American region of potential civilizations, which can become civilizations only if a number of social and cultural trends are observed.

But already now we can talk about a complex multi-vector phenomenon called Latin centrism, which is caused by the growth of Latin American regional identity, the rejection of the model of Western culture, the growth of trade relations. In terms of geopolitical science, most Latin American countries have continental orientation. Another economic resource that is very attractive for developed countries is the cheap labor force of poor areas of the region. The situation in the region is complicated by the fact that some countries are in the process of national liberation and separatist movements, which hinders stability in the area (Voronkova *et al.*, 2020).

1.6. The undisputed leader of the Shinto-Japanese geocultural region is Japan. The islands are located in an area where earthquakes and typhoons often occur, and so the inhabitants of the islands are accustomed to be constantly on guard due to climatic features. Despite the natural elements, the Shinto-Japanese culture has always reflected the desire to harmonize the relationship between Man and Nature through the ability to see the beauty of the world around.

Shinto-Japanese civilization is a unique original phenomenon not only in the context of world culture, but also among other Eastern cultures. It dates back to the 10-11th centuries. A characteristic geo-cultural feature was the fact that Japan was practically isolated from the rest of the world and was inaccessible to foreigners during the 17-19 centuries (except Holland and China).

Japan itself, the leader of the region, is located on the islands of the Pacific Ocean. Despite the natural elements, Japanese culture has always

reflected the desire to harmonize the relationship between Man and Nature through the ability to see the beauty of the world around. Shinto-Japanese civilization was formed as a result of complex and different in time ethnic contacts. Shinto-Japanese culture, unlike Indian or Chinese culture, was just emerging at the turn of the Middle Ages, so it is characterized by increased dynamism and special sensitivity to the perception of foreign influence. Shinto-Japanese civilization has the richest culture and history. Its unique architecture, painting, literature and other arts have significantly influenced the world geoculture, geopolitics, digital man and society (Buhaychuk *et al.*, 2021).

Many exclusively Japanese traditions and customs are gradually "capturing" other countries of the world; the spread of "Japanese minimalism" design; the ever-increasing number of Japanese restaurants, the takeover of world show business by Japanese directors, the emergence of more and more Japanese literature and other geocultural expansion, which clearly demonstrates the widespread achievements of Shinto-Japanese civilization.

One of the geocultural features of the Shinto-Japanese culture should be considered that it has not lost its originality under the influence of other civilizations. The Shinto-Japanese culture received significant geocultural influence due to its geographical location, natural conditions, proximity to China and India, which brought Buddhism, Confucianism and writing to Japan.

1.7. The African region is divided into parts according to the geographical factor. North Africa is a geocultural sub-region with countries of rather large size, the largest of which are Sudan and Algeria. The Mediterranean zone with a special climate, extremely comfortable for human existence is the extreme north of the continent, which is a narrow strip along the coast with amazing flora and fauna.

The Canaries, Madeira, Ethiopia and Eritrea are also sometimes referred to as the North African geopolitical bloc. But the majority of the territory is the uninhabited Sahara, which is a "geopolitical desert" whose only inhabitants are Tuaregs and Berbers. Other ancient cultures existed further south, in Sudan and Ethiopia. In the context of geo-cultural topics, it is worth mentioning that Ethiopia became one of the first Christian countries on earth in the IV century A.D.

The beginning of the twentieth century turned North Africa into European colonies and protectorates. France, Great Britain, Spain and Italy took possession of the North African country rich in raw materials and cheap labor, bringing their culture. It should be noted that Africa was probably the cradle of mankind according to some archaeological finds, the age of which is determined as more than two million years.

1.8. Orthodox Slavic civilization is one of the most challenged today by the Russian-Ukrainian war, an invasion that began in the morning of 24 February when Russian President Vladimir Putin announced a "special military operation "to "demilitarize "and "denazify "Ukraine. In his address, Putin espoused irredentist views, disputed Ukraine's right to statehood, and falsely claimed that Ukraine was run by neo-Nazis persecuting the ethnic Russian minority.

Within minutes, rockets, missiles and airstrikes struck across Ukraine, including the capital Kyiv, followed by a major ground invasion from multiple directions. President of Ukraine Volodymyr Zelenskyy imposed martial law and general mobilization. Russian attacks were initially launched on the northern front from Belarus towards Kyiv, the northeastern front towards Kharkiv, the southern front from Crimea and the southeastern front from Luhansk and Donetsk.

Russia's advance towards Kyiv halted in March, and by April Russian troops had retreated from the northern front. On the southern and southeastern fronts, after a blockade, Russia captured Kherson in March and then Mariupol in May. On April 19, Russia resumed its attack on Donbas, with Luhansk region fully captured by July 3. Russian forces continued to bomb both military and civilian targets far from the front line.

In August, Ukrainian forces launched a counterattack in the south and in September in the northeast, successfully recapturing most of the Kharkiv region. Soon after, Russia announced the illegal annexation of four partially occupied Ukrainian regions. In a southern counterattack, Ukraine retook the city of Kherson in November. The invasion drew widespread international opposition. The UN General Assembly adopted a resolution condemning the invasion and demanding the full withdrawal of Russian troops. The International Court of Justice ordered Russia to suspend military operations, and the Council of Europe expelled Russia.

Many countries have imposed sanctions on Russia as well as its ally Belarus, affecting the Russian and global economy, and have provided Ukraine with humanitarian and military aid totaling over $80 billion from 40 countries as of August 2022. More than 1000 companies withdrew from Russia and Belarus in response to the invasion. The International Criminal Court has opened an investigation into crimes against humanity in Ukraine since 2013, including war crimes during the 2022 invasion.

3.2. New strategic concept of international society as a factor of civilizational development

The new concept of civilization 2022 is a creative and interdisciplinary concept that combines the European Green Deal with living space and experience, mind and soul. Beautiful are those places, practices and

experiences that enrich, inspire art and culture, respond to needs beyond functionality. Sustainable, in harmony with nature, the environment and our planet, inclusive development encourages dialogue across cultures, disciplines, gender and age.

This part of the concept is also available in English on the website of the Geopolitical Studies Group. Today, it is the missiles falling on Kyiv, the massacre over Bucha, the bloody shelling of a maternity hospital in Mariupol, the use of war as a political tool, in short, that has transformed Euro-Atlantic security in the most profound way, making it the keynote of the work that will be dedicated to the meeting of the Alliance's Heads of State and Government.

For Spain, the Summit, which opens in Madrid on 29 and 30 June, is an important milestone in our membership of NATO, as it coincides with 40th anniversary of membership. Forty years during which Spain has been a loyal and committed Ally, for which membership in the Alliance has been the driving force behind the material modernisation and doctrinal changes of our armed forces, based on interoperability and the joint deployment of resources and capabilities with Spain, being one of the main contributors to Alliance missions and operations.

Today, the use of war as a political tool has profoundly changed Euro-Atlantic security and has made it the central theme of the work that will occupy the next meeting of the Heads of State and Government of the Alliance. From this point of view, the concept should achieve four main objectives: 1) to develop a firm response to the Russian threat; 2) to respond to threats emanating from the southern flank; 3) to demonstrate unequivocal support for the accession of Finland and Sweden; 5) to create an image of unity and cohesion among the Allies in the context of the current challenges of globalization (Voronkova and Punchenko, 2021).

This should be reflected in the new strategic concept to be adopted by the Alliance. Among the issues that the Alliance will need to address is the definition of a deterrence and defence posture, which has gained prominence, with a focus on the eastern flank. This was an important issue before 24 February, given the aggressive posture of the Russian Federation following the invasion of Crimea and the conflict in Donbas in 2014, but observations on the ground that the Russian threat has become a reality clearly make it necessary to increase deployments to secure NATO's borders.

For more than 70 years, the Alliance has worked on various options to deter the threat on this flank. It is therefore part of its DNA and the Alliance has the concept and the capabilities to adapt accordingly.

From Spain, NATO Allies have also demonstrated their commitment to contribute to the Alliance's deterrence in the East, to whose security Allies are now contributing through two main missions: the Baltic Air Policing

with the deployment of eight F-18s in the Baltic Air Policing operation, and the Enhanced Forward Presence mission in Latvia, where more than 500 troops, in addition to armoured vehicles and battle tanks, are currently deployed. This is a clear demonstration of the concept of European security as an indivisible whole, from the Baltic to the Mediterranean Sea. It is the unambiguous idea of European security that requires attention to threats on other fronts, especially on the southern flank.

The undisputed priority of the eastern flank is and must be compatible with the Alliance's need to maintain a "360-degree approach" to counter threats. Today, the Mediterranean and the Sahel are facing a multidimensional crisis that directly affects the security of the continent. NATO Allies perceive European security as an indivisible whole, from the Baltic Sea to the Mediterranean.

The regions are becoming the epicentre of jihadist terrorist activity, fuelled by the humanitarian crisis, exacerbated by the food crisis due to problems with grain supplies to Ukraine and rising prices for basic foodstuffs. Together with the deterioration of the political situation and democratic standards in the Sahel, as well as the growing Russian presence in the region, governments are being forced to strengthen their commitment to stability and prosperity on their southern flank.

The southern dimension is also particularly susceptible to the use of migration and energy as a means of leverage, a phenomenon similar to that already seen on the eastern flank. NATO is therefore paying particular attention to its ability to respond to hybrid threats, including by strengthening cyber security.

Conclusions

The issues that concern NATO today clearly show that their relevance goes beyond the usual meeting of the Alliance's Heads of State and Government. Civilization has a responsibility to its citizens and partners not only to defend the Euro-Atlantic space, but also to model an international society based on rules that must resist actors, state or not, who use violence to achieve their goals.

At this critical moment in the Alliance's history, the responsibility to live up to the commitments of the Washington Treaty in the service of a democratic and secure future encourages nations, as the heart of civilisation, to further strengthen the unity that has made NATO the most successful military alliance in history. NATO is there for deterrence, defence and crisis management. The Alliance must be able to effectively transfer its support to partners who need it, and to enable partners to contribute to NATO's security.

The international impact of the challenge posed by Russia's attack on NATO's most important partner in the Alliance's eastern neighbourhood also raises questions about the future of NATO's partnerships in the new security context. In the immediate neighbourhood, support for partners such as Georgia, Moldova or Bosnia and Herzegovina, and the Alliance's Open-Door policy are tools to help structure the future of the relationship.

On the southern flank, frameworks such as the Mediterranean Dialogue, which is particularly important for Spain, or the Istanbul Cooperation Initiative should be reinvigorated. This should be reflected in NATO's Strategic Concept. The Concept describes the purpose and nature of the organization, its core security and defence tasks, and the challenges and opportunities it faces. It also defines the elements of the Alliance's approach to security and provides guidance for its political and military adaptation.

Its development generates one of the most important debates that can take place in the Alliance, to which an important component of strategic communication and deterrence is added, as strategic concepts are made public once they are adopted. Adding to this debate on the Strategic Concept is the issue of NATO enlargement. The Strategic Concept is the document that defines the Alliance's strategy.

It explains what NATO is and why it is needed, identifies its core security tasks, and describes the challenges and opportunities it faces in a changing security environment. It defines the Alliance's approach to security and provides guidance for its political and military adaptation. The Strategic Concept provides the Alliance with the means to respond to today's security threats and challenges and guides its future political and military development so that it is prepared to meet the threats and challenges of tomorrow.

The Strategic Concept has been updated several times to reflect changes in the global security environment and to ensure that NATO can continue to fulfil its core mission and deliver on its core tasks. The Alliance is thus part of a process of continuous adaptation and evolution.

The Strategic Concept 2022 confirms that NATO's raison d'être is to ensure the collective defence of its Allies through a comprehensive approach, and it identifies three fundamental tasks for the Organization: deterrence and defence, crisis prevention and management, and cooperative security.

Over the years, the Alliance and the world as a whole have undergone an evolution that NATO's founders could hardly have imagined; an evolution that NATO has taken into account in each of the strategic documents it has produced to defend international society.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 292-310
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Fighting crime through crime analysis: The experience of using innovative technologies in European Union countries

DOI: https://doi.org/10.46398/cuestpol.4176.16

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Abstract

The aim of this article was to study innovative technologies and tools in the context of the introduction of crime analysis tools used in the countries of the European Union EU, to the Ukrainian practice. The research involved the following methods: statistical analysis, induction and deduction, classification and comparison. The study described the legally enshrined powers of the Ukrainian police with respect to information and analytical activities. Current trends in the number of criminal offenses committed in Ukraine under separate articles were determined, and these trends were compared before and after the adoption of the Law of Ukraine "On National Police". The introduction of the latest means of criminal analysis into Ukrainian practice was also studied. The conclusions established that the technologies used by EU countries can increase the effectiveness of law enforcement agencies in Ukraine, provided that certain adaptation measures are implemented. Moreover, the results obtained during the research can be used by law enforcement agencies to improve and optimize crime analysis.

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Recibido el 28/11/22 Aceptado el 12/01/23

Keywords: criminal analysis; innovative technologies; tool platforms; analytical tools; crime fighting.

La lucha contra la delincuencia mediante el análisis de la delincuencia: la experiencia del uso de tecnologías innovadoras en los países de la Unión Europea

Resumen

El objetivo de este artículo fue estudiar tecnologías y herramientas innovadoras en el contexto de la introducción de las herramientas de análisis de delitos utilizadas en los países de la Unión Europea UE, a la práctica ucraniana. La investigación involucró los siguientes métodos: análisis estadístico, inducción y deducción, clasificación y comparación. En el estudio se describieron los poderes legalmente consagrados de la policía ucraniana con respecto a las actividades de información y análisis. Se determinaron las tendencias actuales en el número de delitos penales cometidos en Ucrania en virtud de artículos separados, y se compararon dichas tendencias antes y después de la aprobación de la Ley de Ucrania «Sobre la Policía Nacional». También se estudió la introducción de los últimos medios de análisis criminal en la práctica ucraniana. En las conclusiones se estableció que las tecnologías utilizadas por los países de la UE pueden aumentar la eficacia de los organismos encargados de hacer cumplir la ley en Ucrania, siempre que se apliquen determinadas medidas de adaptación. Por lo demás, los resultados obtenidos durante la investigación pueden ser utilizados por los organismos encargados de hacer cumplir la ley para mejorar y optimizar el análisis del delito.

Palabras clave: análisis criminal; tecnologías innovadoras; plataformas de herramientas; herramientas analíticas; lucha contra la delincuencia.

Introduction

The adoption of the Law of Ukraine "On the National Police" (Verkhovna Rada of Ukraine, 2022a) became a powerful impetus for restructuring law enforcement agencies. One of the main goals of the transformations triggered by the adoption of this Law is improve the effectiveness of the police through the use of European experience and practice. The main vectors for transformations are the use of the latest information technologies, as

well as analytical tools in the fight against various types of crime (Knyazev, 2018; Hayward and Maas, 2021; Mastrobuoni, 2020).

The transformations outlined above are characteristic of the introduction of the Intelligence Led Policing (ILP) model — an analytics-based model of policing (OSCE, 2017). This model involves pre-emptive actions by using certain analytical tools, therefore it is a necessary alternative to the existing way of policing, which is based on responding to incidents that have already occurred (Tishchenko and Belik, 2019; Burcher and Whelan, 2019; Lewandowski *et al*., 2018).

An analytical tool is supposed to mean the methods, certain technical means or software used for carrying out the necessary analytical operations (Strukov *et al*., 2021). The arrangement and study of such tools contributes to the expansion of the tools available to law enforcement agencies in terms of predicting, preventing and detecting crimes.

This is especially relevant in view of the various crisis occurrence and the increasing crime rate (Bossong and Bothe, 2018; Schmid, 2018; Shaw, 2019). Besides, the need to study and use the latest tools of crime analytics is determined by the globalization processes and integration of the EU experience into Ukrainian practice, including the activities of law enforcement agencies (Lykhova, 2019; Frantsuz, 2020) with the aim to increase their effectiveness and compliance with European standards.

In view of the foregoing, the aim of this research is to study and arrange innovative technologies and tools in the context of the introduction and adaptation of crime analytics tools used in EU countries into Ukrainian practice.

The aim involved a number of the following research objectives:

- describe the main powers of the police in the field of information and analytical support, as well as legislative aspects regarding the use of technical devices, technical means and specialized software by the police in Ukraine;
- study statistics on crimes in Ukraine and their dynamics;
- identify and describe the latest analytical tools used in criminal analysis to investigate crimes;
- outline the features of some tool systems used in the EU countries regarding the criminal analysis conducted by law enforcement agencies;
- study the practice of introducing the latest tools of criminal analysis and their adaptation to Ukrainian realities.

1. Literature review

Knyazev (2018) defines intelligence (or criminal) analytics as the process of processing information, including its collection, assessment, analysis, etc., regarding suspects, criminals or their groups (organization). The main advantage of crime analytics is enabling law enforcement agencies to act proactively, that is, providing their ability to prevent planned crimes, and not only to investigate committed crimes.

The researchers study a number of models of predictive policing, in particular, the ILP model, which is successfully used in some EU countries and the USA. This model is based on analytics and involves the application of international standards, as well as methods of intellectual analysis in order to prevent and detect crimes (Strukov *et al*., 2021).

Vidović (2022) expands the definition of the ILP model, noting that this model is based on proactive actions and focuses on the regular collection and assessment of information through qualitative analysis, which is transformed into the strategic and operational analysis products, which form the ground for decision-making by law enforcement agencies.

Korniienko *et al*. (2021) provide the following definition of ILP: it is an organizational model and management philosophy in which criminal analysis and criminal intelligence are key tools to achieve the goal by applying an objective and effective decision-making mechanism to counter and prevent crime through strategic management and effective functioning of the law enforcement agencies, as well as methods aimed at neutralizing crimes that are particularly dangerous for society. Sullivan *et al*. (2020) indicate that ILP is highly popular because it provides a framework for efficient use of limited resources.

Tishchenko (2019) notes that criminal analysis plays the key role in the ILP model, so it involves the use of the latest information technologies and tools for data collection, assessment and analysis. Information processing results in the transformation of disparate data sets into effective analytical products that contribute to informed decision-making by law enforcement agencies.

A number of studies deal with various tools of criminal analysis developed on the basis of the ILP and similar models. Mediná *et al*. (2018) identified the features of a number of tools, where Maltego was the first and one of the most popular. This tool makes it easier to search and obtain information about individuals and organizations that can be found in a variety of open and public sources.

Simmler *et al*. (2022) distinguish IBM i2 Analyst's Notebook tool as an additional advanced technology for data analysis used by some police departments in Switzerland. Federico and Thompson (2019) write on the

function of Palantir Gotham in view of the purposes of conducting criminal analysis by special agents and investigative analysts in the criminal investigations of the US Internal Revenue Service.

In contrast to the studies mentioned above, Castets-Renard (2021) casts doubts about the effectiveness of using the latest tools of crime analytics. The researcher focuses on the shortcomings in the use of particular platforms.

The literature review determines the need for a detailed survey of the features of various tools that support crime analytics, as well as to determine its effectiveness based on the analysis of actual data regarding the change in the crime rates.

2. Methods and materials

2.1. Research design

The research is comprehensive, this is why it is divided into several interrelated and coordinated stages. The first stage of the research involved establishing the main powers of the police in the field of information and analytical support by analysing the legislative framework, namely the Law of Ukraine "On the National Police". The legislative aspects regarding the use of technical devices, technical means and specialized software by the police in Ukraine are outlined.

The second stage of the study describes statistics on criminal offences in Ukraine and their dynamics. The period from 2013 to 2020 and the following articles of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2022b) were covered: Murder, Illegal confinement or abduction of a person, Trafficking in human beings, Theft, Robbery, Gangsterism, Rape, Smuggling, Gambling business, Sham business, Obstruction of legitimate business activity, Misappropriation, Evasion of taxes, VAT evasion, Fraudulent bankruptcy, Legalization (laundering) of criminally obtained money and other property, Violation of law on budget system of Ukraine, Financial fraud, Illegal privatization of public or communal property.

The change in the number of crimes before and after 2015 (the year when the Law of Ukraine "On the National Police" was adopted) is compared. The position of Ukraine and its neighbouring countries in the ranking of countries by the crime rate provided on Numbeo was determined.

The third stage provided for the classification and brief description of tools of crime analysis through the literature survey. The most common analytical tools used in crime analysis for the investigation of crimes are described.

The fourth stage contains a description of the features of some tool systems used in the EU countries regarding the activities of law enforcement agencies in the field of crime analytics. IBM i2 Analyst's Notebook, Maltego, Palantir Gotham and police systems were considered. Besides, the practice of introducing the latest means of crime analysis in Ukraine, in particular the RICAS system, was studied, as well as the possibilities of adapting European systems to Ukrainian realities.

2.2. Information background

The information background of the research is academic periodicals of Ukraine and other countries, legislative acts, in particular the Law of Ukraine "On the National Police" (Verkhovna Rada of Ukraine, 2022a), the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2022b), data on the ranking of countries according to the Crime Index, which are publicly available on Numbeo, and information from the official sites of IBM, Maltego, Palantir, UNICRI and RICAS.

2.3. Research methods

The following scientific methods were used during the study:

- statistical analysis — to study the dynamics of the number of criminal offences for the period from 2013 to 2020 under individual articles of the Criminal Code of Ukraine;
- induction and deduction — to establish the relationship between the crime rate and the adoption of the Law of Ukraine "On the National Police";
- ranking — in the course of studying the positions of different countries in the Numbeo ranking for the Crime Index;
- comparison — to compare different platforms that offer tools for conducting crime analysis.

3. Results

3.1. The main powers of the police in the field of information and analytical support: legislative aspects of the use of technical devices, technical means and specialized software by the police in Ukraine

With the adoption of the Law of Ukraine "On the National Police", the structure of the country's law enforcement agencies began its transformation in accordance with European standards and principles. The main feature

of the transformations is the orientation of policing to the prediction of offences and their early prevention through the use of the latest technologies and tools, in particular, crime analytics tools.

Article 25 of the above-mentioned Law determines the powers of the police to carry out information and analytical activities. In a generalized form, the police carry out the following measures within the scope of such activities: creation and use of registers and databases of public authorities, carrying out work related to the search and analysis of necessary information, interaction with other public authorities regarding the exchange of information, provision of data on conscripts, persons subject to the draft and reservists. Besides, the police can create their own registers and databases (Verkhovna Rada of Ukraine, 2022a).

The Law "On the National Police" also provides a list of devices, technical means, as well as software, which can be used by the police in order to perform their duties established by the law. Figure 1 provides a list of these tools.

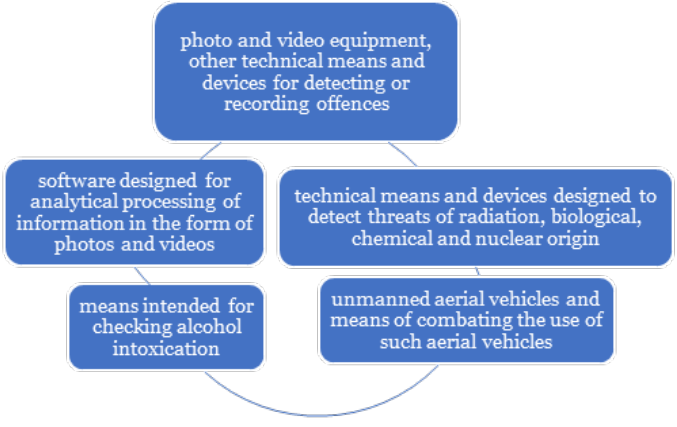

Figure 1. Devices, technical means and software that can be used by the police in order to perform their duties (About the National Police, 2022).

Statistical and analytical information regarding the measures taken to prevent and combat crimes must be made public on relevant web portals by the heads of territorial police agencies for the purpose of public control over policing.

3.2. Statistical data and dynamics of the number of crimes committed in Ukraine

In view of the legislative aspects outlined above regarding the information and analytical activities of the Ukrainian police, it can be concluded that the efficiency of law enforcement agencies should increase with the adoption of the Law "On the National Police", in particular through the use of innovative analytical tools. Therefore, it is interesting to study the dynamics of the number of crimes committed in Ukraine under separate criminal articles (Verkhovna Rada of Ukraine, 2022b) before and after the adoption of the Law (Figure 2).

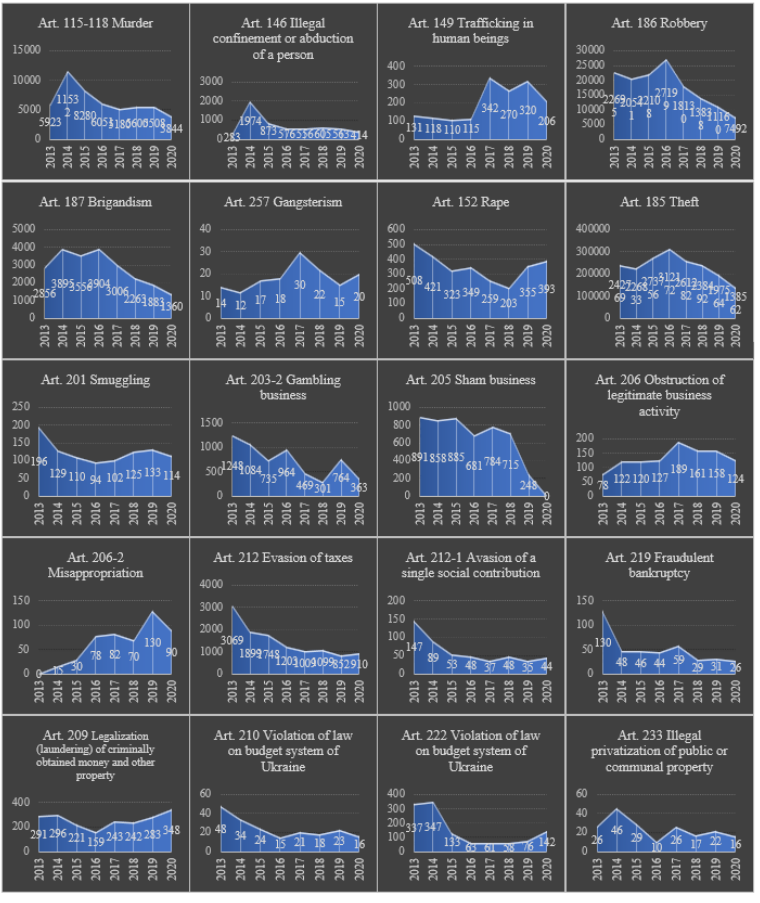

Figure 2. Dynamics of the number of crimes committed in Ukraine (SLOVO I DILO, 2021).

Analysing the information presented in Figure 2, it can be noted that the following crimes are the most common in Ukraine: theft, robbery, brigandism, murder, tax evasion, illegal confinement or abduction of a person. After 2015-2016, there is mostly a tendency towards the reduction in the number of such offences, which may indirectly indicate the effectiveness of the introduction of the latest information technologies and means of combating crime.

According to Numbeo (2021), Ukraine ranks 54th (out of 135 countries) in the world according to the Crime Index. In Europe, Ukraine is in the top three most dangerous countries (out of 41 for which the Index is defined): it ranks third after Belarus and France (Table 1).

Table 1. Ranking of European countries according to the Crime Index (the first 15 countries with the highest crime rates) (Numbeo, 2021).

Rank	Country	Crime Index	Safety Index
1	Belarus	60.27	39.73
2	France	49.20	50.80
3	Ukraine	48.28	51.72
4	Sweden	47.20	52.80
5	Moldova	46.56	53.44
6	United Kingdom	45.26	54.74
7	Ireland	45.02	54.98
8	Italy	44.37	55.63
9	Belgium	44.17	55.83
10	Greece	44.14	55.86
11	Bosnia And Herzegovina	43.01	56.99
12	Albania	41.64	58.36
13	Montenegro	41.61	58.39
14	Russia	40.13	59.87
15	Malta	38.93	61.07

Ukraine's neighbours in the mentioned ranking are such EU countries as France and Sweden, however, the result — the third country in Europe in terms of crime rate — cannot be satisfactory. Therefore, the public authorities of Ukraine need to strengthen their efforts to prevent and prevent criminal activity. A positive effect in this regard, as was determined

earlier through the analysis of statistics, may be the further improvement of the legislative framework regarding the activities of the National Police of Ukraine. Besides, it is necessary to organize and stimulate the use of a wider range of information and analytical tools by law enforcement agencies.

3.3. Analytical tools used in crime analysis to investigate crimes

Crime analysts use a wide range of analytical tools in their practice, which involve the use of certain technical means, special methods or software products in order to process information about the commission of crimes. In the most general form, the classification of instrumental means of criminal analysis includes the following elements: methodologies and techniques of crime analysis (network analysis, ANACAPA, SOCTA); software tools for general use (Microsoft Excel, MatCAD, MatLAB, StatGraph, Statistica); traditional information search systems (Liga Zakon, Google, Information Portal of the National Police of Ukraine); specialized information and analytical systems (IBM i2 Analyst's Notebook, Palantir Gotham, HOLMS2, RICAS, Maltego, Crime Center (Shotspotter), Command Central Aware Motorola, SmartCOP, ePOOLICE) (Burdin, 2019; Strukov *et al.*, 2021).

The most common analytical tools are the following:

- Analytical assessment of the crime scheme — the analysis of the steps taken by criminals during the commission of a crime. Such analysis includes data on dates and times of incidents, associated persons and organizations, their movements, etc.;
- drawing up an association matrix — helps to compare and determine the relationships between several factors, as well as to exclude factors that do not have relationships with others;
- tracking of goods traffic – reflects the process of organizing the movement of certain prohibited items, for example, drugs;
- monitoring of communications — analysis of information that can be obtained by tapping telephone conversations, correspondence of criminals in various messengers, via e-mail, etc.;
- analytical assessment of the crime structure — may include cartographic analysis, analysis of series of incidents and other directions;
- analysis of criminal profiles — such profiles may contain mechanisms of committing crimes, skills, tools used by criminals, etc.;
- demographic analysis — the assessment of social changes affecting the crime rate, for example, the analysis of unemployment trends;
- event stream analysis —visualization of a number of certain events and the relationships between them is used during this analysis;

- the use of financial analysis in forensics — involves the use of a wide range of financial analysis tools in order to detect suspicious actions and offences;
- hypothesis testing — in the context of research, consists in using graphic means to determine whether all elements of the crime have been taken into account in the hypothesis advanced by the analyst;
- analysis of ties between criminals and suspected persons — consists in a visual representation of the relationships between the specified persons; other analytical tools (analysis of market profiles, networks, results, risks, assessment of operational capabilities, etc.) (Strukov *et al.,* 2021).

The above-mentioned tools are part of the functional of specialized tool platforms for crime analysis. The listed tools can be used on the platforms in whole or in part (the possibilities of using the tools vary depending on the platform used). The next section provides an overview of the most popular tool platforms that can be used in EU countries and, with certain adaptations, in Ukraine as well.

3.4. Tool systems of EU countries in the field of crime analytics. The practice of introducing the latest means of criminal analysis in Ukraine and the adaptation of European systems to Ukrainian realities

In many developed countries, in particular, the EU and the USA, the means of criminal analysis are widely used by law enforcement agencies, being mandatory for crime prevention activities. Special tool platforms adapted to the recording systems of a specific country are being developed to solve the tasks of law enforcement agencies in these countries. There are also a number of platforms that take into account international standards, in particular within the previously mentioned ILP model. They belong to the specialized information and analytical systems outlined in the above classification. The special capabilities of the main ones are discussed below.

IBM i2 Analyst's Notebook – this tool enables to transform complex sets of both structured and unstructured information into high-quality operational information by means of visual analysis. The advantages of the tool are a clear and convenient interface, the possibility of analysing social networks, as well as presenting the results of the analysis in the form of visualizations. The IBM i2 Analyst's Notebook exists for more than two decades, and during that time the technology has spread around the world: it is currently used by more than two thousand organizations to combat crime and terrorism (IBM, 2022).

Maltego is an open-source graphical link analysis tool that collects and visualizes information for investigative purposes. Maltego enables performing three main functions:

1. collect information — information can be collected from declustered sources and viewed in the form of a graph, which can contain up to 1 million objects. It is possible to access about 60 sources of information in Maltego Transform Hub. It is also possible to use one's own, commercial or public sources and perform transformations;
2. combine information — the ability to automatically combine information on the graph and determine the types of objects;
3. visualize connections — access to different layouts, application of object weights, possibility to add annotations and export graphics (Maltego, 2022).

Palantir Gotham – the system enables searching for the necessary objects through a single portal, without referring to different systems, because information has been collected by Gotham for more than ten years from complex data. This information is intended for use by defence agencies, intelligence agencies, organizations that help with natural disasters, and other users. Data are aggregated in almost real-time, helping to accelerate decision-making when urgency matters (Palantir, 2022).

ePOOLICE – a project financed by EU and European countries. As a result of its implementation, a prototype system for early detection and prevention of threats from organized criminal groups was proposed. The key features of the developed prototype are:

- information management in an uncertain environment;
- the ability to work with the central data storage;
- simultaneous processing of different file types;
- simplifying complex information by creating clear tables and data visualizations (UNICRI, 2022; Strukov *et al.*, 2021).

In the context of the introduction and use of these analytical systems in Ukrainian practice, it should be noted that all of them require adaptation to local realities, in particular, the specifics of the legislative framework. RICAS - Realtime Intelligence Crime Analytics System — can serve as an example of a purely Ukrainian project to create an intelligent crime analysis system. This system combines leading methods of crime analysis in real time, thus improving the effectiveness of crime detection — both close in the tracks and those that have been committed before (Ricas, 2022). The system enables performing the types of analysis shown in Figure 3.

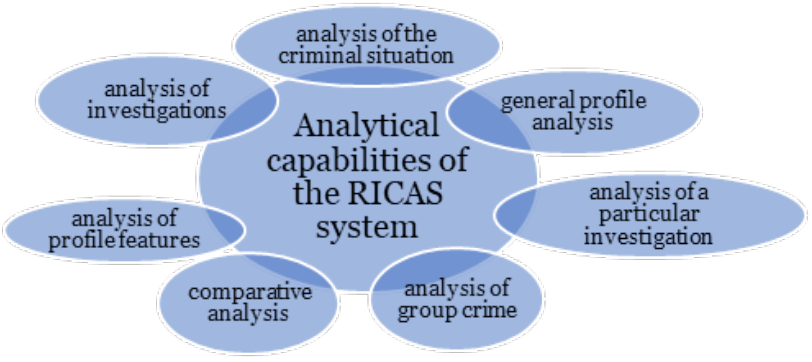

Figure 3. Analytical capabilities of the RICAS intelligent criminal analysis system (Ricas, 2022).

Such steps undertaken by Ukraine as the introduction of its own platforms for conducting criminal analysis testify to the readiness and ability of the country to change the traditional way of conducting cases to a new, more effective one. These actions bring Ukraine closer to compliance with the high requirements that exist in the EU countries for the system of law enforcement agencies, and contribute to the integration process. However, improving the effectiveness of the law enforcement agencies — through the use of the latest crime analytics tools among other things — contributes to improving safety and well-being of Ukrainian citizens.

4. Discussion

The conducted research proves the effectiveness of introducing current means of crime analytics when predicting, preventing and detecting crimes. This necessitates the use of such tools in Ukrainian practice, in particular, through research and adaptation of European experience to Ukrainian realities.

The research results are supported by the findings of researchers who studied aspects of crime analytics. Knyazev (2018) notes that the constant complication of the schemes and structure of criminal organizations requires effective actions from law enforcement agencies in response to this development. An experienced crime analysis using the crime analytics tools is of great importance for the success of such actions, which contribute to the understanding of criminal algorithms.

Tishchenko (2019) outlined similar views in the work, stating that crime analysis using the ILP model in the context of rapid transformation of crime should significantly increase the crime detection rates. Vidović (2022) notes that the spread of transnational crime and terrorism determine the urgent need for the introduction of ILP. As in this article, the researcher confirms the effectiveness of the implementation of the ILP model with crime reduction statistics, but in a different region (Serbia).

In their work, Korniienko *et al.* (2021) compare different policing models. In addition to the ILP, the researchers describe the features of the CompStat model (which is focused on crime, while the ILP is focused on identifying threats), a socially oriented model (aimed at building trust and strengthening communication between the police and the public).

However, this article focuses mostly on the ILP model, because, in the author's opinion, this model is the most widespread and effective, which is confirmed by the study of Sullivan *et al.* (2020), who define the ILP and POP (Problem-Oriented Policing) models as the two most popular policing models. The researcher notes that the latter was developed at the end of the 70's and aimed to move from purely reactionary policing to pattern analysis and recognition, community involvement and goal setting. ILP is based directly on POP.

Strukov *et al.* (2021) broadly outline current analytical tools and platforms for crime analysis. The researchers, revealed the features of such platforms in detail, and determined the analytical tools included in their functional. However, unlike this study, the work does not draw a parallel between the introduction of certain improvements in the field of crime analytics and their impact on the crime rate trends.

A number of studies also focused on the specifics of particular platforms for crime analysis. The features of the Maltego system studied in this article are quite vividly covered in the work of Mediná *et al.* (2018). In addition to general characteristics of the platform, the researchers indicted the types of data that can be entered into the system, namely: domain, username, URL, e-mail, image, DNS, IP, location, phrase, etc. Entering one of these types of data is followed by a transformation, which results in obtaining information related to the entered request, even in the form of another data type. By entering an e-mail, you can get an account in a certain social network. Their study focuses primarily on improving cyber security, while this paper covers a wider range of crimes.

Simmler *et al.* (2022) distinguished the IBM i2 Analyst's Notebook system as an advanced technology used by some Swiss police departments. It is noted that in practice this system is primarily used for the analysis of numerous digital evidence. The study of these researchers shows that the use of advanced technologies, in particular tool platforms, is an option,

not a strict requirement, even in some developed countries. However, considering that Switzerland ranks 130th out of 135 countries represented in the Crime Index ranking (Numbeo, 2021), that is, it is one of the safest countries in the world, the issue of improving the fight against crime in this country is probably not so acute as in Ukraine. Based on the results of this article, it is appropriate to recommend Ukraine to stimulate the use of analytical platforms in the activities of law enforcement agencies.

Federico and Thompson (2019) detail the capabilities of the Palantir Gotham platform and note the following features not mentioned in this article: lead generation, fraud detection, tax fraud detection, money laundering and asset forfeiture investigations. This and other mentioned works considered the platforms used for the purposes of crime analysis mostly as tools that facilitate and optimize the work of law enforcement agencies.

However, not all researchers have similar views. For example, Castets-Renard (2021) expresses an opinion that is opposite to the findings presented in this article. The researcher notes that the perception of intellectual police as a means to eradicate crime may be wrong. This is explained by a number of problems related to inefficiency, risk of discrimination and lack of transparency of actions.

Therefore, the conclusions drawn I this research have both supporters and opponents among researchers. This is why further research should focus on determining the risks and disadvantages of using the studied platforms that offer crime analysis tools, and comparing them with the identified advantages.

Conclusions

The transformation of criminal organizations, the emergence of new crime schemes and the growth of crime rates in general, in particular transnational crime and terrorism, determine the need to search for new combating methods. The study considered the use of the latest crime analysis tools to combat crime, which, among other things, contributes not only to the effectiveness of responding to committed crimes, but also creates opportunities for their prevention.

The article outlined the powers of the police in the field of information and analytical support and legislative aspects regarding the use of technical devices, technical means and specialized software. The statistics of crimes committed in Ukraine for 2013 to 2020 are provided by separate criminal articles. The most often violated articles of the Criminal Code were identified. It was also determined that the number of crimes under

these articles decreased after the adoption of the Law of Ukraine "On the National Police". In turn, one of the priorities of the new police is the use of the latest crime analysis tools, so trend changes can indirectly indicate the effectiveness of the use of the latest crime analysis tools by law enforcement agencies.

Besides, the article reviews the analytical tools used in crime analysis to investigate crimes, as well as the crime analysis tool systems of the EU countries. The following tool platforms used in EU countries were considered: IBM i2 Analyst's Notebook, Maltego, Palantir Gotham and ePOOLICE. The practice of introducing the latest means of crime analysis in Ukraine is outlined, in particular the features of the RICAS system, as well as the possibility of adapting European systems in Ukraine.

Further research should focus on determining the risks and disadvantages of using particular platforms that offer crime analysis tools, and comparing them with the identified advantages.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 311-335
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Institutional systems of public administration of personal security

DOI: https://doi.org/10.46398/cuestpol.4176.17

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Abstract

The issue of ensuring personal security has always been the focus of researchers around the world in the face of continuous manifestations of crises. That is why the aim of this article was to clarify the constituent elements of institutional systems of public administration of personal security, to define the methods and tools of public administration, as well as their main orientations. The research involved the following scientific methods: analysis and synthesis, economic and statistical analysis, classification methods, correlation analysis. As a result of the research, the main strategies and tools of public administration of personal safety were established. The process of institutionalization of sustainable development and its role in ensuring personal safety was delineated. The extent to which Ukraine has achieved each of the seventeen sustainable development goals was determined, as well as the number of tasks and measures introduced by the government to achieve each of the goals. The conclusions highlight the need to emphasize, in terms of public policy, the problem of personal security and to separate it from other types of security.

Keywords: institutional system; personal security; public administration; sustainable development; cybersecurity.

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Recibido el 15/11/22 Aceptado el 21/12/22

Sistemas Institucionales de Administración Pública de Seguridad Personal

Resumen

El tema de garantizar la seguridad personal siempre ha sido el foco de los investigadores de todo el mundo ante las continuas manifestaciones de crisis. Es por ello que el objetivo de este artículo fue esclarecer los elementos constitutivos de los sistemas institucionales de administración pública de seguridad personal, definir los métodos y herramientas de la administración pública, así como sus principales orientaciones. La investigación involucró los siguientes métodos científicos: análisis y síntesis, análisis económico y estadístico, métodos de clasificación, análisis de correlación. Como resultado de la investigación se establecieron las principales estrategias y herramientas de la administración pública de la seguridad personal. Se delineó el proceso de institucionalización del desarrollo sostenible y su papel en la garantía de la seguridad personal. Se determinó hasta qué punto Ucrania ha logrado cada uno de los diecisiete objetivos de desarrollo sostenible, así como la cantidad de tareas y medidas introducidas por el gobierno para lograr cada uno de los objetivos. En las conclusiones se destaca la necesidad de enfatizar, en términos de políticas públicas, en el problema de la seguridad personal y de separarlo de otros tipos de seguridad.

Palabras clave: sistema institucional; seguridad personal; administración pública; desarrollo sostenible; ciberseguridad.

Introduction

The people's life has always been accompanied by numerous risks and dangers. Certain risks had different degrees of manifestation at each stage of human development, but the picture of the world underwent particularly significant changes with the advent of scientific and technical progress and the deepening of globalization processes.

On the one hand, such processes as the digital transformation of the economy (Popelo *et al.*, 2021; Małkowska *et al.*,2021; Nambisan *et al.*, 2019), penetration of innovative technologies into all spheres of life (Teece, 2018; Fukuda, 2020), internationalization, exchange of experience and values between representatives of different peoples (Jones *et al.*, 2021; Eduardsen and Marinova, 2020), the transition of countries to the sustainable development principles (Dantas *et al.*, 2021; Polasky *et al.*, 2019; Biermann *et al.*, 2022), provide an opportunity to reduce existing risks. Innovations

in medicine make the lives of people with disabilities more comfortable, to overcome diseases, the treatment of which was previously ineffective (Valdez *et al*., 2021; Pesapane *et al*., 2018; Dzobo *et al*., 2018).

Distance education provides the opportunity to study from home (Sadeghi, 2019), various tracking systems help to track the location of people, goods, transport (Hao *et al*., 2018; Brunetti *et al*., 2018), video surveillance systems contribute to guaranteeing the safety of housing and work space (Chen *et al*., 2019), cashless settlements increase the safety and transparency of transferring and receiving money (Kang, 2018; Pazarbasioglu *et al*., 2020). These and other advantages of the era of globalization are essential and valuable achievements of mankind.

However, the modern environment is characterized by numerous risks, often associated with globalization processes. The main ones include the exacerbation of military conflicts, epidemics, natural disasters, terrorism, crime, environmental degradation and climate change, man-made accidents, etc. All these factors reduce the level of security of both society as a whole and each individual, which is also defined as "personal security". Personal security is a state in which the vital interests of an individual are protected in all spheres of life (Zelenyy, 2020).

Tsymbal (2021) provide the most widespread classifications of the types of personal protection in the context of their compliance with vital interests of people. The first classification includes the following types of personal security: vital, physiophysiological, mental, genetic, reproductive, intellectual. The second classification includes the following types: economic, informational, medical, legal.

The issues of personal protection are especially relevant in view of such global-scale events as the COVID-19 pandemic in 2020 (Babore *et al*., 2020), the military encroachment of the Russian Federation upon the sovereign territory of Ukraine in 2022 (Borin *et al*., 2022), as well as aggravation of other conflicts in the world. In this time, guaranteeing personal security largely depends on the sustainable institutional system that is able to ensure the exercise of human rights and freedoms even in the crisis environment.

Tsymbal (2021) focuses on institutional processes as a personal security interpretation parameter. He distinguishes the regulatory, organizational and self-organizational elements of the institutional environment as the main ones. These elements are closely related and interact with each other.

The organizational structure of the institutional environment is represented by public authorities that exercise legislative control over the security, exercise managerial influence, and ensure law and order. In turn, self-organization of civil society results in the formation of certain values, and the need to protect them leads to the establishment of the relevant institutions.

The personal values may include: legal order in the country, equality before the law, sustainable development of the economy, culture and spirituality, preservation of the national traditions during the integration into the world community, a sense of protection by the strong state. In the other study, the researcher with his co-authors details the composition of the instruments of public administration of personal security, which include a number of state strategies (Tsymbal and Kryukov, 2021).

Besides, in a separate study the researcher distinguishes the following systems of guaranteeing social security: the system of education, science and culture, healthcare system, the system of physical culture, sports, tourism, youth, social insurance system and different types of social security, in particular, pension system, crime control system, social protection system, etc. (Tsymbal, 2022).

The foregoing is the ground for determining the aim of the research, which is to clarify the components and subsystems of the institutional systems of public administration of personal security, determining the methods and instruments of public administration, as well as its main directions.

The aim involved the following objectives:

- study the strategies ad instruments of public administration of personal security;
- outline the stages of institutionalization of sustainable development and its role in ensuring personal security;
- determine the extent of achieving sustainable development goals and innovations in the context of institutional support for personal security;
- identify the cyber security level and its significance for guaranteeing personal security.

1. Literature review

Most researchers do not consider personal security separately, mostly focusing on national security issues. Personal security is often considered in the context of social security. Tsymbal (2022) defines social security as a state in which vital interests of an individual, social group or social community are protected against any threats that may violate it.

The social security objects include an individual, social group and social community.

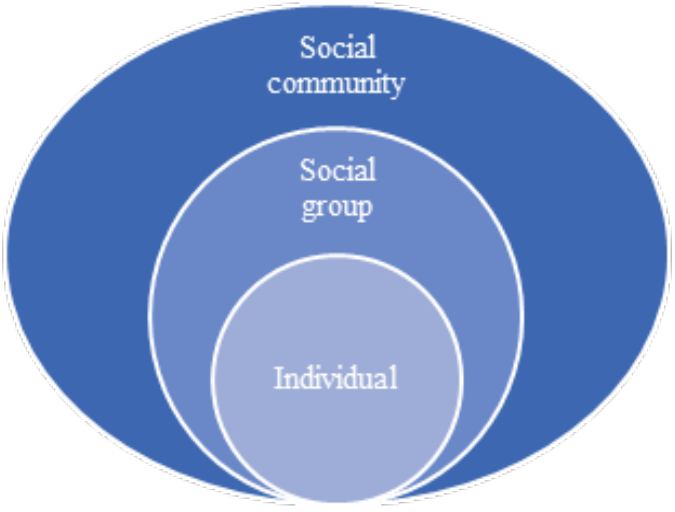

Figure 1. Social security objects (prepared by the authors based on Tsymbal (2022).

Zelenyy (2020) identifies the main barriers to building secure social system, which aims at guaranteeing personal security. Such barriers may include: lack of transparency of government's actions, violation of rights and freedoms of people, the actions of certain political figures, inadequate development of humanitarian technologies. The researcher also focuses on the problem of ensuring cybersecurity.

Tsymbal (2022) also outlines the main threats in the social sector, which include: a small proportion of well-provided citizens and the majority of poor people in the society; growing proportion of people living below the poverty line; unemployment; aggravation of health, reduced life span and birth rates; degradation of moral and creative potential of people, etc.

The researchers often consider certain directions of guaranteeing personal security. The research into the informational security and cyber security has been urged in view of the penetration of digital technologies into all spheres of human life. Sarker *et al.* (2020) distinguishes the following incidents that often occur in the field of cyber security because of increased dependence of digitalization and the Internet of Things: unauthorized access to the information, malware attacks, zero-day attack, data leakage, a denial-of-service attack, phishing, etc.

Lezzi *et al.* (2018) and Corallo *et al.* (2020) outline the issue of cyber security in the context of implementation of Industry 4.0 and mostly focus on business security. However, this field is also closely related to personal security, as cyberattacks against the organization have a direct impact on its founders and employees, while the costs of business related to the elimination of harm caused by the cyberattacks adversely affect the employees' salary and well-being. Lezzi *et al.* (2018) provide a comprehensive definition of cyber security – this is a protection of IT equipment, software and data stored in the systems against data theft or damage.

Some studies describe the new direction in guaranteeing cyber security – social cybersecurity. Carley (2020) notes that the emergence of new direction is related to the growing number of cybercrimes on different online platforms, where people spread information about themselves and can view/collect information about other people. Social cyber security crimes involve getting some benefits in bad faith not only for individuals, but also for their groups.

In many studies, personal security is considered in the context of sustainable development goals. In fact, all sustainable development goals are aimed at guaranteeing personal security of individuals as representatives of modern generation and their descendants. Therefore, personal security in a particular country directly depends on achieving each particular sustainable development goals.

Sustainable development are aimed at ensuring different security directions. Gil *et al.* (2019) and Tanumihardjo *et al.* (2020) consider the problems of guaranteeing food security, Sachs *et al.* (2019) emphasize the importance of green investment in guaranteeing energy security, Osaulenko *et al.* (2020) and Gryshova *et al.* (2020) outline the issue of guaranteeing economic security, Simpson and Jewitt (2019) focus on resource security, while Kharazishvili *et al.* (2020) study social security aspects. All the above-mentioned studies cover the problems of different types of security in the context of sustainable development concept. Guaranteeing those types of security is a prerequisite for achieving the proper level of personal security.

The literature review established that such concepts as national security, social security and other types of security are widely covered in the existing literature. The coverage of guaranteeing personal security is extremely incomplete, fragmented, it is mostly considered as a component of other types of security. In the author's opinion, the high individualism of the modern society in most countries determines views on the necessary aspects of security. Therefore, personal security should be considered not only in the context of preserving the values of society, but also as an opportunity for each individual to preserve his/her own values.

2. Methods and materials

2.1. Research procedure

The research includes several mutually coordinated stages determined by its complex nature. The first stage of the study involved determining the main strategies and tools of public administration of personal security. The main legislative strategies and acts related to ensuring security in the fields of education, science, health care, preservation and restoration of the environment, defence, employment, etc. were considered.

The process of institutionalization of sustainable development and its role in ensuring personal security are outlined by indicating the main stages of institutionalization at the world, national, regional and micro levels.

The second stage determines the extent of achievement of the sustainable development and innovation goals in the context of institutional support for personal security. The extent to which Ukraine has achieved each of the seventeen sustainable development goals is determined, as well as the number of tasks and measures introduced by the government to achieve each of the goals. A correlation analysis was conducted between the extent of achievement of sustainable development goals and the number of measures and tasks implemented in relation to each of them.

Besides, the aspects of innovative development of Ukraine, its place among the countries of the world in terms of the level of innovation are determined. The highest indicators related to innovative development in Ukraine, and those requiring close attention in order to improve them were determined.

The third stage dealt with Ukraine' cyber security ranking. The directions that require strengthening the government's cyber security policy were determined. The importance of guaranteeing cyber security in increasing personal security is revealed.

2.2. Information background

Academic periodicals of Ukraine and other countries, as well as government strategies and legislative acts of Ukraine were used as the information background of the research, in particular:

- On the Decision of the National Security and Defence Council of Ukraine of 25 March 2021 "On the Military Security Strategy of Ukraine" No. 121/2021 of 25 March 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 14 May 2021 "On the Human Development Strategy" No. 225 of 2 June 2021.

- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 16 July 2021 "On Stimulating the Exploration, Extraction and concentration of Minerals that are of Strategic Importance for the Sustainable Development of the economy and the State's Defence Capability" No. 306/2021 of July 23, 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 18 June 2021 "On the Development Strategy of the Defence Industry Enterprises of Ukraine" No. 372/2021 of August 20, 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 11 August 2021 "On the Economic Security Strategy of Ukraine 2025" No. 347/2021 of 11 August 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 14 May 2021 "On the Cyber Security Strategy of Ukraine" No. 447/2021 of 26 August 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 30 July 2021 "On the Strategy of Ukraine's Foreign Policy" No. 448/2021 of 26 August 2021.
- Decree of the President of Ukraine "On the National Strategy for Promoting Civil Society Development in Ukraine for 2021-2026" No. 487/2021 of 27 September 2021.
- Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 15 October 2021 "On the Biosecurity and Biological Defence Strategy" No. 668/2021 of 17 December 2021, etc. Tsymbal and Kryukov (2021).
- The research is also based on information that is publicly available on the official websites of WIPO and the National Cyber Security Index. Besides, data from official reports were used: Sustainable Development Report, 2021 and Sustainable Development Goals of Ukraine, 2021.

2.3. Research methods

The research involved the following well-known scientific methods:

- analysis and synthesis for the study of the legislative framework of Ukraine regarding the provision of personal security;

- economic and statistical analysis to determine Ukraine's achievement of each of the sustainable development goals;
- ranking methods to determine the place of Ukraine in the world rankings, such as the Global Innovation Index and the National Cyber Security Index;
- correlation analysis to determine the relationship between the achievement of the sustainable development goals and the number of implemented measures and fulfilled tasks.

3. Results

3.1. Strategies and tools of public administration of personal security. Institutionalization of sustainable development and its role in guaranteeing personal security

At the institutional level, the administration of personal security is carried out by government bodies through the legally established strategies as the primary tools. Figure 2 shows the main strategies related to personal security. As Figure 2 shows, these strategies touch upon almost all the main aspects of both national security and personal security: the country's defence capability, education, science, health care, social protection, digital development, environmental protection, economic growth, as well as sustainable development issues.

The strategies necessary for guaranteeing personal security	On the Decision of the National Security and Defence Council of Ukraine of 25 March 2021 "On the Military Security Strategy of Ukraine" No. 121/2021 of 25 March 2021;
	Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 14 May 2021 "On the Human Development Strategy" No. 225 of 2 June 2021;
	Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 16 July 2021 "On Stimulating the Exploration, Extraction and Concentration of Minerals that are of Strategic Importance for the Sustainable Development of the economy and the State's Defence Capability" No. 306/2021 of July 23, 2021;
	Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 18 June 2021 "On the Development Strategy of the Defence Industry Enterprises of Ukraine" No. 372/2021 of August 20, 2021;
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	Decree of the President of Ukraine "On the Decision of the National Security and Defence Council of Ukraine of 15 October 2021 "On the Biosecurity and Biological Defence Strategy" No. 668/2021 of 17 December 2021, etc.

Figure 2. The main government strategies for guaranteeing personal security. Source: Tsymbal and Kryukov (2021)

There are 20 Ministries in Ukraine that shape government policy in their areas of responsibility and control other executive bodies. The proper level of personal security at the institutional level primarily depends on their activity. According to the priority areas of guaranteeing personal security determined in the course of the literature survey, special attention in this study was paid to the directions of government policy in relation to achieving the sustainable development goals and guaranteeing cybersecurity.

Figure 3 presents institutionalization of sustainable development at different system levels.

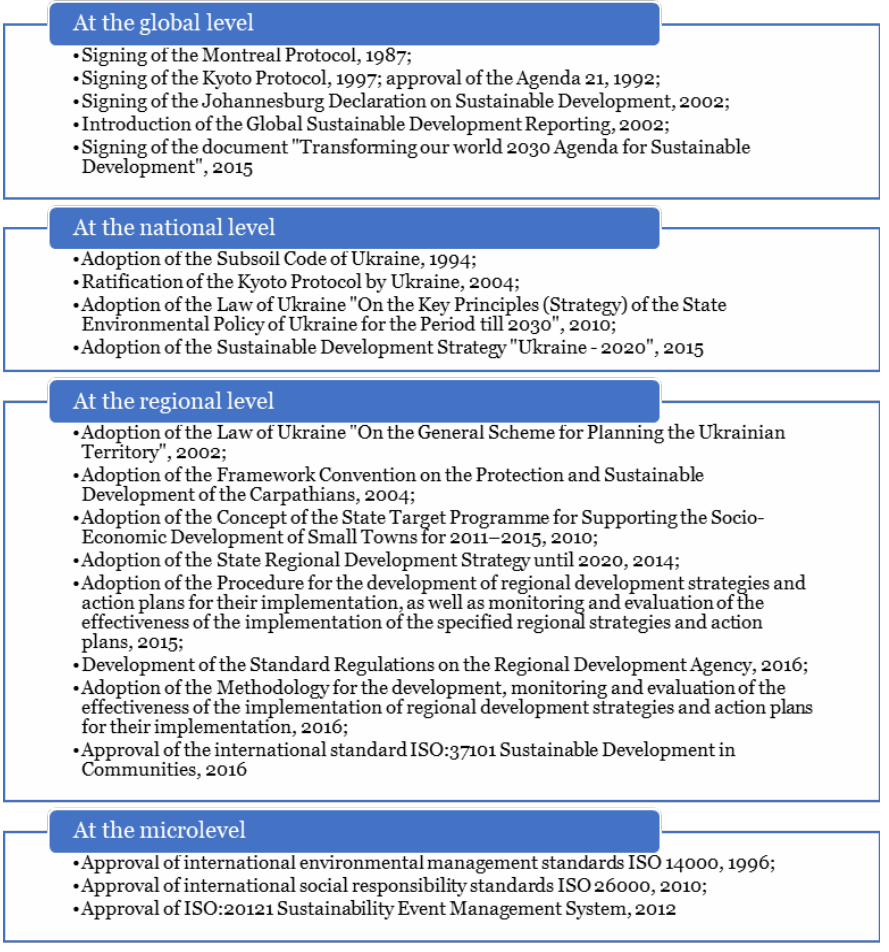

Figure 3. Institutionalization of sustainable development at different system levels. Source: Semenenko and Halhash (2019)

As Figure 3 illustrates, the sustainable development principles permeate all levels of the institutional system — from the global to the micro level — in order to meet the needs of current and future generations, while the primary need is security. Therefore, consideration of the extent of achievement of the sustainable development goals by Ukraine in the context of the study of institutional systems of public administration of personal security is substantiated and relevant.

3.2. The extent of achievement of the sustainable development and innovation goals in the context of institutional provision of personal security

The concept of sustainable development contains the main goals, the achievement of which should ensure both the social security of the country's citizens and the security of the individual. It takes care of the interests of society as a whole, and its individual tasks relate to individual goals, for example, the state's creation of conditions in which self-realization of the potential of the economically active part of the population will be possible (goal 8, task 8.6).

In 2021, Ukraine ranked 36th in terms of achieving sustainable development goals. In general, this is a fairly high result, but a more complete picture is obtained when considering the extent of achievement of each individual goal (Figure 4).

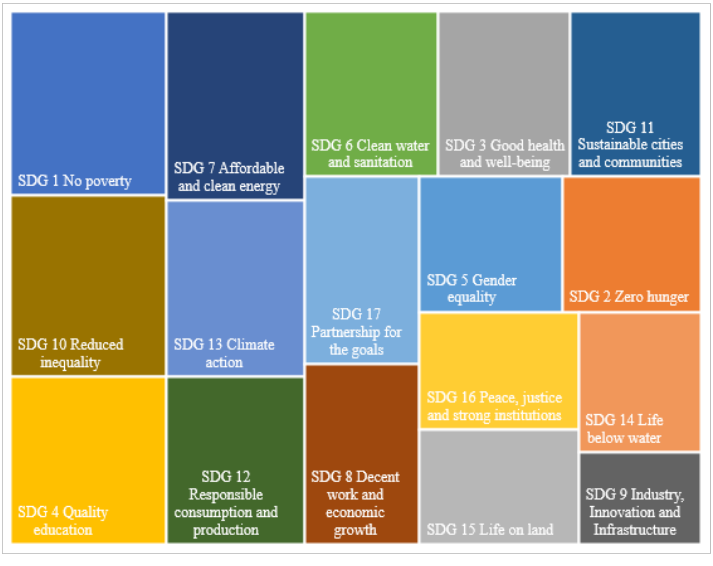

Figure 4. Achievement of sustainable development goals by Ukraine in 2021. Source: Sustainable Development Report (2021)

In Figure 4, the area of the rectangles containing the sustainable development goals is equal to the extent of their achievement by Ukraine. Only the first goal was 100% achieved: poverty reduction. The following goals had the lowest scores: Zero hunger, Peace, Justice and strong institutions, Life on land, Life below water, Industry, innovation and infrastructure.

In 2019, the Ministry of Economy of Ukraine and other bodies determined the extent of implementation of sustainable development goals in the regulatory and legal acts of Ukraine. When considering regulatory legal acts and government strategies as tools of public administration of personal security, it is interesting to determine the effectiveness of their application. Figure 5 shows the number of tasks and measures aimed at achieving sustainable development goals and objectives at the time of the assessment.

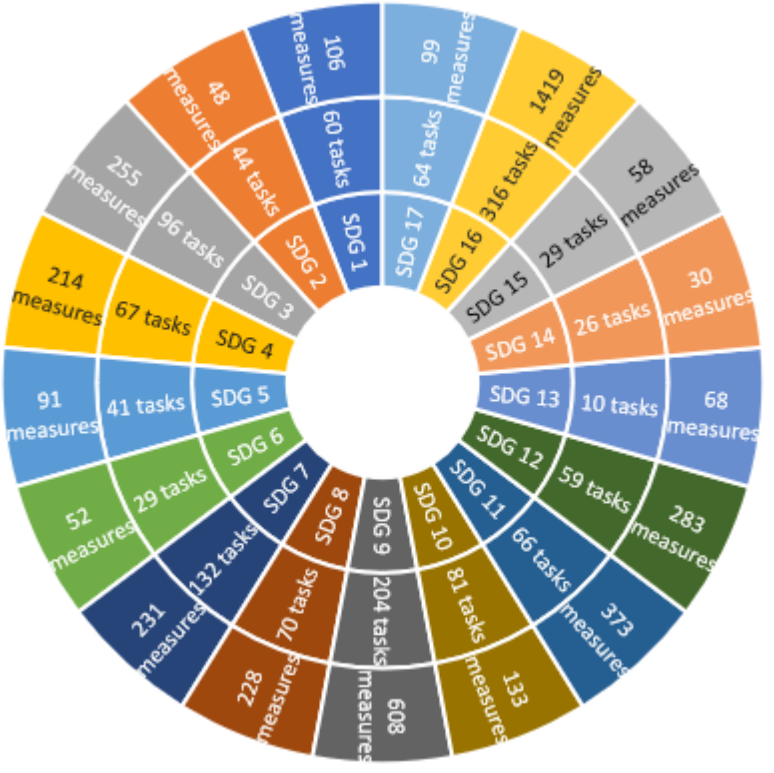

Figure 5. Introduction of sustainable development goals into legislative documents Source: Voluntary National Review (2021)

Such an assessment testifies only to quantitative indicators regarding the implemented measures and tasks. However, conducting a correlation analysis between the number of undertaken tasks and implemented measures and the extent of achievement of certain sustainable development goals can give more indicative results (Table 1, Figure 6).

Table 1. Value of correlations between the number of implemented measures and undertaken tasks and the extent of achievement of sustainable development goals.

	Tasks	Measures
SDG performance	-0.295986	-0.317962

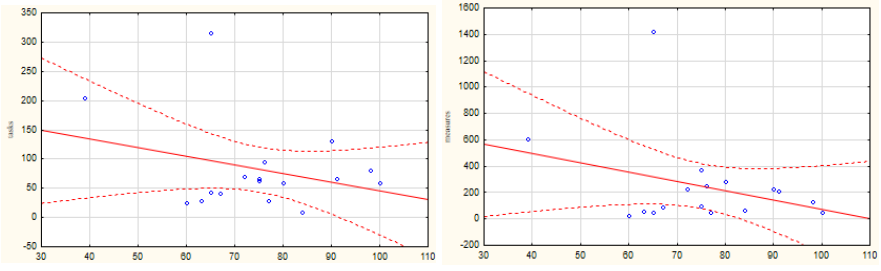

Figure 6. Scatter plots (from left to right – tasks, measures).

It can be concluded based on Table 1 and Figure 6 that the correlation between the extent of achievement of sustainable development goals and: 1) the number of undertaken tasks is negative and low; 2) the number of implemented measures is negative and medium. In Figure 4, the number of implemented measures and undertaken tasks to achieve Goal 16 (Peace, justice and strong institutions) stands out most significantly from the total mass, but the extent of achievement of this goal is one of the lowest.

Therefore, it can be argued that a large number of measures implemented by the state are not yet a guarantee of quick fulfilment of goals, and therefore of achieving an appropriate level of personal security. First of all, the effectiveness of such measures, as well as other external and internal factors, are important.

The level of innovation in the country is closely related to the concept of sustainable development. Among other things, innovative technologies play a big role in guaranteeing personal security in almost all areas (medicine, education, communication, payment system, teleworking, etc.).

The overall level of innovation in a country can be assessed using the Global Innovation Index, which contains approximately eighty indicators that cover the assessment of the political environment, education, infrastructure, knowledge creation, etc. This Index includes the seven main "pillars" presented in Figure 7. The figure also shows the actual figure of the Global Innovation Index in 2021.

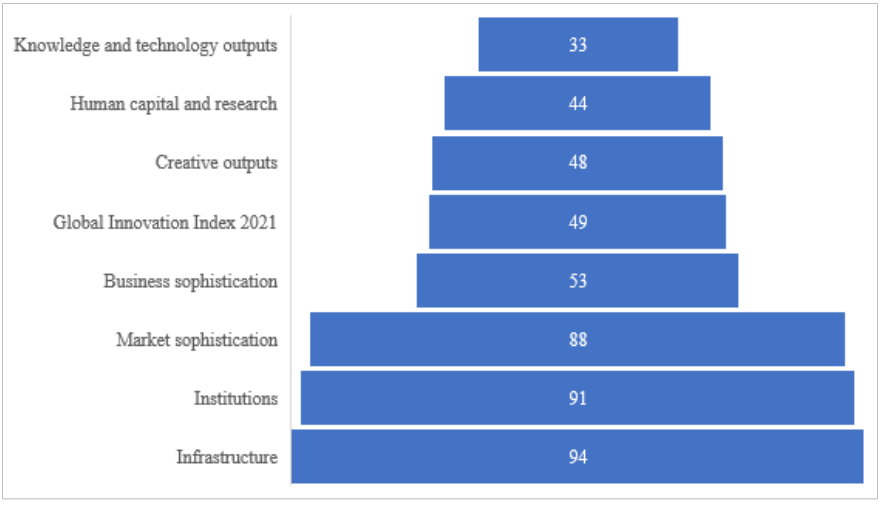

Figure 7. Ranks of key "pillars" of the Global Innovation Index for Ukraine

Source: WIPO (2021)

Note: The most preferred rank is "1"

The data presented in Figure 7 give grounds to state that the strongest points of Ukraine in the context of the introduction of innovations are Knowledge and technology outputs (33), Human capital and research (44), as well as Creative outputs (48). The weakest areas are the Market sophistication (88), Institutions (91) and Infrastructure (94).

The analysis of the extent of achievement of the sustainable development goals and the ranks of the key "pillars" of the Global Innovation Index determined that the institutions of Ukraine are the weak point in this context. The goal "Peace, justice and strong institutions" is in the last four in terms of achieving the sustainable development goals, and Institutions are one of the two weakest "pillars" of the Global Innovation Index. These facts have a direct impact on the ability of the institutional systems of Ukraine to guarantee personal security in all its aspects.

3.3. The cyber security level and its importance for personal security

As mentioned above, cyber security is one of the important areas of personal security today. At the current stage of development, almost all information about a person can be found on the Internet: people make purchases, make calculations, pay for utilities and other services through online applications, communication is carried out mostly through social networks.

A person's location can be tracked using geolocation data, and documents are stored on special online platforms. These capabilities can be used both to the benefit of the individual in order to make the everyday affairs more convenient, and to the detriment in case of personal data capture by the attackers. Therefore, the issue of ensuring cyber security in the context of increasing personal security is very acute.

Table 2 shows the value of the National Cyber Security Index (NCSI) for the thirty leading countries in terms of this Index.

Table 2. National Cyber Security Index (NCSI).

Rank	Country	National Cyber Security Index	Digital Development Level	Difference
1.	Greece	96.10	64.47	31.63
2.	Lithuania	93.51	68.61	24.90
3.	Belgium	93.51	75.34	18.17
4.	Estonia	93.51	76.51	17.00
5.	Czech Republic	92.21	69.86	22.35
6.	Germany	90.91	81.43	9.48
7.	Romania	89.61	60.67	28.94
8.	Portugal	89.61	68.25	21.36
9.	Spain	88.31	73.92	14.39
10.	Poland	87.01	66.61	20.40
11.	Finland	85.71	79.64	6.07
12.	Saudi Arabia	84.42	63.46	20.96
13.	France	84.42	78.59	5.83
14.	Sweden	84.42	82.84	1.58
15.	Denmark	84.42	84.17	0.25

16.	Croatia	83.12	65.34	17.78
17.	Slovakia	83.12	66.53	16.59
18.	Netherlands	83.12	83.48	-0.36
19.	Serbia	80.52	59.85	20.67
20.	Malaysia	79.22	62.53	16.69
21.	Italy	79.22	68.33	10.89
22.	United Kingdom	77.92	81.55	-3.63
23.	Switzerland	76.62	83.80	-7.18
24.	Ukraine	75.32	55.95	19.37
25.	Latvia	75.32	67.38	7.94
26.	Bulgaria	74.03	62.39	11.64
27.	Russian Federation	71.43	64.22	7.21
28.	Singapore	71.43	80.26	-8.83
29.	Morocco	70.13	46.88	23.25
30.	Ireland	70.13	76.23	-6.10

Source: National Cyber Security Index (NCSI) (2022).

It should be noted that Ukraine occupies a fairly high position in the cyber security ranking — 24, right behind such countries as Italy, the United Kingdom of Great Britain and Switzerland. At the same time, such highly developed countries as, for example, Canada and the USA, occupy much lower positions — 31 and 41, respectively. However, it will be more informative to consider the individual components of this ranking for Ukraine (Figure 8).

Figure 8. Components of the National Cyber Security Index for Ukraine

Source: National Cyber Security Index (NCSI) (2022).

As Figure 8 shows, most of Ukraine's indicators completely or almost completely correspond to the maximum values. The greatest dangers are concentrated in the field of Military cyber operations, Cyber crisis management, Protection of digital services and Contribution to global cyber security. It should be noted that such an important component of the indicator for any person as the Protection of personal data fully corresponds to the highest possible value.

Among other things, this indicates a high level of personal security in relation to individual's values in the information sector. Therefore, it can be concluded that, in general, the institutional policy of Ukraine in the field of cyber security is highly effective, with the exception of certain areas that require special focus.

All of the above mostly describes guaranteeing personal security of Ukrainian citizens in the normal conditions, that is, before the military invasion of the Russian Federation on the sovereign territory of Ukraine.

However, this external factor, actually uncontrolled by the Ukrainian institutional system, makes significant adjustments to the level of personal security in the current conditions. The death of people caused by enemy shelling, the occupation of territories, the destruction of infrastructure (in particular, about half of the energy capacities were actually destroyed), the loss of jobs, the impossibility of normal education, etc. — these realities require reconsidering the usual aspects of guaranteeing personal security.

However, even in such conditions, the institutional system of Ukraine continues to work for the benefit of the people: internally displaced persons receive social benefits, electricity in the regions affected by shelling is restored as quickly as possible, evacuation and rescue services work in the affected regions, and utility services work with high efficiency.

Of course, the introduced martial law implies certain restrictions, in particular, this applies to restrictions on people's constitutional rights. The following articles of the Constitution of Ukraine fall under the restrictions: 31-34, 38, 39, 41-44, 53. The government also calls for more efficient energy consumption, savings, and asks to treat planned and unplanned shutdowns with understanding. These and other restrictions may generate certain inconveniences, but ultimately benefit the state, citizens and ensure both social and personal security.

4. Discussion

The conducted analysis gives grounds for the conclusion that before the military invasion of Ukraine, the problems related to the inadequate level of personal security were mostly associated with an insufficiently high level of institutional development. This is explained by the fact that the institutional system of Ukraine is still being established. In many territories, institutions at the regional level are extremely poorly developed, and their powers are not adequately funded. The lack of clearly defined functions of individual institutions can also be attributed to the shortcomings. The implemented measures and undertaken tasks do not always bring the expected result, and the existing potential of the country is not fully realized. All this reduces the actual level of personal security.

In the wartime, the concept of personal security undergoes particularly noticeable changes. Institutional systems for its guarantee are facing the most difficult ordeals, however, the war in Ukraine in a certain sense became a trigger for revealing the potential of the country's institutional system. The war proved that the institutional system of Ukraine is capable of protecting the interests and safety of its citizens whenever possible.

Comparing the results obtained in the course of the study with the conclusions of other researchers, the consistency with the work of Tsymbal (2021) can be noted. The researcher notes that the personal security culture is the most important element of the security culture as a whole. At the same time, personal security is a prerequisite for building an institutional environment for guaranteeing security.

Some studies also examine the need to ensure personal cyber security in view of the globalization processes. Zelenyy (2020) emphasizes that cyber security is primarily a state characterized by the security of the vital interests of individuals, society and the state in the information space.

As noted in the study, cyberattacks can threaten personal security because of their impact on organizations whose work involves the use of Internet technologies. This is proved in the study conducted by Corallo *et al.* (2020), who include the following in the consequences of cyberattacks: disruption of the company's infrastructure as a whole, denial of service to networks and personal computers, theft of information, in particular the information which constitutes a trade secret or is the object of an employee's intellectual property, violation of security standards and causing pollution, as well as the occurrence of various situations that may threaten the lives of employees. Lezzi *et al.* (2018) note that despite 75% of experts making cyber security a priority, only 16% say their company is capable of guaranteeing an adequate level of cyber security.

To improve cyber security, Sarker *et al.* (2020) proposes a multi-level machine learning-based framework for smart cyber security services, consisting of the following elements: security data collection, security data preparation, machine learning-based security modelling, incremental learning, and dynamism.

The work of Carley (2020) revealed a new direction in cyber security, which is defined as "social cyber security". Its goals are to understand and predict the behaviour of people in the information environment, as well as to build a social cyber infrastructure that will preserve the key characteristics of society in cyberspace. Research by Gil *et al.* (2019), Tanumihardjo *et al.* (2020), Sachs *et al.* (2019), Osaulenko *et al.* (2020), Gryshova *et al.* (2020), Simpson and Jewitt (2019), Kharazishvili *et al.* (2020) cover the aspects of guaranteeing cyber security in separate areas (food, energy, economic, resource and social security).

These studies on cyber security differ from the author's article in terms of particular recommendations for improving cyber security in the areas under research. This study identifies key areas specifically for Ukraine, which should be improved as part of the measured implemented to guarantee national cyber security, in particular, personal security. However, further research should focus on the aspects of guaranteeing personal security in

separate areas — for example, the study of food security is relevant in view of the global trends of population growth and the escalation of crises.

Conclusions

The conducted research emphasizes the need to urge the problem of personal security and separate it from other types of security. It was established in the course of the analysis that the main tools of public management of personal security are government strategies and legislative acts related to ensuring safety in the fields of education, science, health care, preservation and restoration of the environment, defence, employment, etc.

It was determined that at the current stage of development, the level of personal security largely depends on the implementation of the goals of sustainable development in legislative documents. However, the measures implemented and the tasks undertaken to ensure the achievement of the sustainable development goals are not always effective, which determines the need to improve the government's work in this area.

Besides, the need for innovation development is outlined as one of the key methods of increasing the level of personal security in the current conditions. It was determined that the insufficient level of achievement of both the sustainable development and innovative development goals is largely connected with the insufficiently effective work of Ukrainian institutions. However, the high level of cyber security in Ukraine should be noted, which significantly affects the level of personal security in view of the widespread use of information technologies in all spheres of life.

It is also necessary to add that the institutional system of Ukraine manifests itself at a high level in terms of guaranteeing personal security in the highly uncertain context associated with the military invasion of the Russian Federation of the sovereign territory of Ukraine. This is expressed in the support of internally displaced persons, people in the affected regions, provision of utility services, restoration of electricity supply in the shortest possible time, etc.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 336-346
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Legal regulation of public administration of education and science

DOI: https://doi.org/10.46398/cuestpol.4176.18

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Abstract

The object of the research is the peculiarities of public administration of education and science in foreign countries, in particular, the experience of three European countries ranked in the top ten according to the results of the international survey PISA-2018: Estonia, Finland and Poland. The main content is considered the experience of building a system of educational management on democratic basis, in cooperation between government bodies and society. It is determined that education in the studied countries is one of the priorities of the state and society. The methodological basis of the research consists of comparative legal and systemic analysis, formal legal method, method of interpretation, hermeneutic method and methods of analysis and synthesis. Similar approaches to administration and financing were identified in the conclusions. A trend characteristic of all countries is clarified: the state guarantees free education, including science, and at the same time ensures equal access to quality education and science. Also, the optimal mechanisms of economic support of education, science and the main sources of financing specific to each country were defined.

Keywords: legal regulation; public administration; education and science; international comparative experience; legal support.

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Recibido el 12/12/22 Aceptado el 15/01/23

Regulación legal de la administración pública de educación y ciencia

Resumen

El objeto de la investigación son las peculiaridades de la administración pública de la educación y la ciencia en países extranjeros, en particular, la experiencia de tres países europeos clasificados entre los diez primeros según los resultados de la encuesta internacional PISA-2018: Estonia, Finlandia y Polonia. El contenido principal se considera la experiencia de construir un sistema de gestión educativa sobre bases democráticas, en cooperación entre los órganos de gobierno y la sociedad. Se determina que la educación en los países estudiados es una de las prioridades del Estado y la sociedad. La base metodológica de la investigación consiste en análisis jurídicos y sistémicos comparativos, método jurídico formal, método de interpretación, método hermenéutico y métodos de análisis y síntesis. En las conclusiones se identificaron enfoques similares de administración y financiación. Se aclara una tendencia característica de todos los países: el Estado garantiza la educación gratuita, incluida la ciencia y, al mismo tiempo, asegura el acceso igualitario a la educación y la ciencia de calidad. También, se definieron los mecanismos óptimos de respaldo económico de la educación, la ciencia y las principales fuentes de financiación propias de cada país.

Palabras clave: regulación legal; administración pública; educación y ciencia; experiencia internacional comparada; respaldo legal.

Introduction

Modern reforms that our society is undergoing are aimed at ensuring stability and economic development. Among the main reforms is decentralization, which will contribute to effective administration in the field of education and science by local self-government, as well as the improvement of the quality of education at all levels, and the adaptation of the education system to modern requirements.

The study of trends and peculiarities of education development, as well as the improvement of the education management system in other countries, is important for the reform of education in Ukraine, and provides an opportunity for forecasting, determining possible risks, and effective management of education at the local level. The experience of foreign countries that successfully solve problems in education and its management becomes particularly relevant in the process of implementing reforms.

1. Literature review

The issue of world experience in decentralizing education management at the local level, as well as ensuring the organization of participation of citizens in solving local matters was covered in works of domestic and foreign scholars such as T. Ivanova, V. V. Kravchenko and others (Kravchenko, 2007). However, the issue of education and science management in foreign countries remains not sufficiently studied.

In a developed civil society, power is dependent on citizens, because the public has influence on the planning of the work of government bodies and decision-making (Villasmil Espinoza *et al.*, 2022). At the same time, authorities are establishing a close relationship with the public, monitor public opinion, and ensure timely public awareness of their activities (Kravchenko, 2007). In the education management system, the influence of the community is felt the most.

Based on the results of the PISA-2018 international survey, Estonia, Finland and Poland ranked among the top 10 countries with the best performance (Schleicher, 2018). They are among the few European countries that received such high ratings. Estonia is a country of the former Soviet Union, which joined the European Union in 2004. Finland's experience is the basis for the educational reform of the "New Ukrainian School".

It is one of the OECD countries that has managed to minimize the difference between rural and urban schools (Schleicher, 2018). Poland is a strategic partner of Ukraine, similar in administrative and territorial structure. Let us focus on some aspects in the field of education in these countries, in particular, on the powers of the local self-government authorities in the field of education; basic approaches to financing pre-school and general secondary education institutions; and the participation of the public in the management of education at the local level.

2. Materials and methods

The study is based on the works of foreign and Ukrainian scholars about methodological approaches to understanding the public administration of education and science in foreign countries, etc.

With the help of the epistemological method, the public administration of education and science in foreign countries was established; thanks to the logical and semantic method, the conceptual framework was deepened; and the essence of the public administration of education and science in foreign countries was determined. Thanks to the existing methods of law, we managed to analyze the public administration of education and science

in foreign countries, etc.

3. Results and discussion

Estonia. The management of education in Estonia is decentralized, that is the distribution of powers between the state, local authorities and the school is clearly defined. The local government, municipality/ town are primarily responsible for the availability of general education (from preschool to general secondary education), for compulsory school attendance by students, maintenance of preschool institutions and schools.

Local authorities are the founders of municipal schools, whose main powers include: planning educational development programs within the framework of their administrative jurisdiction and their implementation; creating, reorganizing and closing municipal educational institutions and ensuring their economic support and financing; appointing/dismissing heads of educational institutions under their jurisdiction; transportation for students and teachers; providing medical care and nutrition for children at schools; registration of persons with special needs and organizing training for them (Tylchyk *et al*., 2022).

The state guarantees free general secondary education. For this purpose, funds are allocated from the state budget in the form of an educational subvention for both municipal and private educational institutions. These expenses are used for the salaries of teachers and heads of educational institutions, as well as for the improvement of their qualifications, for textbooks and teaching aids, student nutrition.

To a large extent, the calculation of the educational subvention is influenced by the number per class. In addition, the state finances the costs associated with the establishment of boarding schools.

The remaining expenses of schools are covered by the school governing body (that is, usually a local government or, with private schools, a private legal entity). Municipal schools are financed from local budgets (communal services, cleaning of schools, work of social workers and psychologists, repair of premises, etc.). The ratio of expenditures from the state budget and local budgets for general secondary education account for 42 % and 58 %, respectively (Matviichuk *et al*., 2022).

In order to replenish the local budget of local self-government bodies, founders of educational institutions may provide additional paid services (gym/pool subscription), as well as rent out premises (gyms, swimming pools, etc.) after the scheduled time (Tytysh, 2016). Educational institutions may receive charitable contributions or financial assistance.

To save money, most municipalities have solved the issues of transportation, cleaning and food by attracting outsourcing companies: for example, local governments conclude a contract for the transportation of students to an educational institution with a local company that transports passengers at a certain time, with buses traveling along a certain route. Thus, local self-government bodies do not face the issue of maintaining buses, hiring drivers and paying for their work (Tytysh, 2016).

In Estonian schools, there are pedagogical councils of teachers that are authorized to decide on issues related to teaching and upbringing at school. A permanent body that provides support in the activity of an educational institution and provides proposals to local self-government bodies to resolve issues related to a preschool institution or school is a board of trustees of an educational institution.

This council consists of representatives of the educational institution administration, pedagogical council, student council, parents, graduates of the educational institution. The head of the educational institution is accountable to the board of trustees. The activity of the board of trustees is determined by the charter of the educational institution (Kobrusieva *et al.*, 2021).

Schools also have student self-government bodies, that is student councils that have the right to independently decide and organize issues of school life. A representative of the student council participates in the activities of the pedagogical council.

The board of trustees, student council, pedagogical council, invited experts together with the management of the school develop and approve a school development plan (for a minimum of 3 years), where the goals and recommendations for school development are defined (Leheza *et al., 2022).*

A special feature of the Estonian educational system is the web-based national ENIS (Estonian Education Information System) register, which collects data on the Estonian educational system. The Estonian Education Information System contains information about educational institutions, students, teachers (their salaries as well), curricula, rights to study and documents certifying education.

Finland. At the municipal level, the main task of the authorities (municipalities or joint municipal authorities) is to ensure an opportunity for all children of preschool and school age, including children with special needs, to learn according to their abilities. Pre-school education (one year before school) and basic education (9 years of education) are mandatory.

Municipalities are empowered: to allocate funding for education; to form the learning content through local curricula (within the framework of the national basic curriculum); to select staff; to ensure practical learning

conditions, efficiency and quality of education; to provide transportation for students; to manage educational institutions; to provide learning in two languages (if necessary, in Swedish); to organize and conduct a competitive selection of heads of educational institutions.

Municipalities are responsible for the organization ofeducational support and education for children with special needs according to their specific situation (Law of *Finland*, 2022).

In addition to organizing the educational process, each local government is generally responsible for student welfare services, which include: free school meals; free health care in the school; free dental care; free services of social workers and school psychologists. Local authorities have no legislative obligations to organize general secondary education and vocational education and training, but they are required to contribute to their financing.

Finnish municipalities can delegate part of their powers to educational institutions, in particular, the selection of the staff and management of the school budget; determination of teaching methods, teaching materials and textbooks (Law of Finland, 2022). The financial autonomy of schools varies from one municipality to another. The municipal department of education decides the level of autonomy of schools that may have a budget.

In Finland, each municipality is required to provide basic services: medical, social, and educational (pre-school and basic education). Funding for basic services is distributed between the state and municipalities. The share of funding is divided approximately as follows: 75 % is for a municipality, and 25 % is for the state.

The state covers the costs of school meals and the transportation for students, as well as medical services. Municipalities receive part of the funds from the state, but the largest source of income is tax revenues, since municipalities have the right to collect taxes. State funding is not allocated purposefully.

Therefore, municipalities have full autonomy in deciding on the distribution of costs between different basic services, such as medical, social and educational. The calculation of necessary expenses for basic education in Finland is carried out using the formula, which includeskey indicators: the cost of education per student; the number of residents of the municipality aged 6 and 15 years old.

The remoteness of location of the municipality, demographic factors (population density, age range, incidence of disease of the population in each district) are also taken into account. Funding for private education is determined according to the same criteria as public education (Halaburda *et al.*, 2021).

The Finnish government program "Right to learning is an equal start to learning paths for 2020-2022" covers preschool and basic education, which includes projects that will improve the quality of education and equality in access to education. The program aims at reducing differences in learning outcomes related to children's social and economic background, gender, and immigration (Law of Finland, 2022).

Poland. The lowest level of administrative division is gmina. The powers of gminas include: the creation and management of community kindergartens, primary schools; the maintenance of buildings of pre-school and primary education institutions; the organization of student transportation; the appointment to the position of a head of an educational institution under the jurisdiction of a local government.

It should be noted that the primary school in Poland is an 8-year school divided into two stages: the first stage provides for studying in grades 1-3, and the second stage for studying in grades 4-8. The pedagogical supervision of these educational institutions is the responsibility of their leaders. The gmina, like the county, may establish and manage public teacher training centers and institutes, as well as educational resource centers, within the limits of its powers (Tytysh, 2016). The county is responsible for the last three years of study in secondary schools, vocational and special schools.

In the Polish educational system, the responsibility for the management of a school or institution is assigned to one person, namely to the head of the school (institution). General secondary education is financed mainly (91 %) from the state budget (EU law, 2022). Funds for education received by gminas come from several sources: educational subventions, targeted subsidies to local government authorities, gmina's own profits, as well as through EU funds. The largest part of this amount is an educational subvention, which has no direct purpose.

This takes into account the number of students in Polish schools and uses the so-called "Standart A", that is the amount of costs for teaching one student in a big city. However, the overall distribution of subventions depends on about 40 indicators: whether the school is rural or urban, whether representatives of national minorities study there or not, whether there are children with special needs or not, the level of teachers' qualifications (if there are more teachers in an educational institution who are highly qualified, it is assumed that local government authorities spend more on teacher remuneration (EU law, 2022).

There is a certain similarity of powers in the field of education at the level of the territorial community in Estonia, Finland and Poland. All local self-government bodies are obliged to provide pre-school, primary and basic education; organize transportation and meals for students; keep records of children of preschool and school age; maintain buildings of educational

institutions, provide material and technical resources; establish, liquidate or reorganize educational institutions; appoint heads of educational institutions that have gone through the competitive selection process.

In Estonia, local government bodies are required to monitor children's attendance at educational institutions. In Finland, local self-government bodies are responsible for staffing educational institutions (or they can delegate powers to the head of the institution), forming the educational content, as well as providing medical and dental care in educational institutions (Fazlagic, 2003).

In order to save money at the local level, contracts are concluded with outsourcing companies for the performance of certain powers (transportation, cleaning, food). The approach of Polish communities to the maintenance of small schools and the provision of access to additional services as in Estonia and Poland, is worth of attention (OECD, 2018).

The public is actively involved in the management of education. In order to attract young people to management and develop their civic engagement, the legislation defines the rights of students to create student self-government bodies and outlines the main provisions of their activities. The inherent feature for all countries is the activity of school and pedagogical councils, boards of trustees and parents' councils.

A positive example is the activity of parents in foreign countries who are not indifferent to the life of the school and are ready to participate in solving various problems at the local level. It is worth noting that local self-government bodies are required to cooperate with the public in matters of education management.

According to formal indicators, Ukraine has similar approaches to education management at the local level: the powers of local self-government bodies do not differ significantly from those of local self-government bodies of Estonia, Finland and Poland, that is local self-government bodies at the level of the territorial community are engaged in preschool, primary and basic education (Leheza *et al.*, 2022).

Conclusions

Thus, the experience of the European Union countries, which were included in the top 10 best countries according to the PISA-2108 international survey showing the best performance (Estonia, Poland, Finland) for the administration of education and science based on such indicators as management, financing, public involvement in the process of managing education and science, was analyzed.

This approach made it possible to identify the main approaches to the administration of education and science at the local level that can be implemented in Ukraine, namely: involvement of local self-government bodies in the selection of teaching staff; financial autonomy of educational institutions; replenishment of the school budget through the provision of additional paid services; reducing education costs by attracting outsourcing companies; motivating highly qualified teachers to work in rural educational establishments; creation of a national register that would contain a comprehensive about educational institutions; maintenance by communities of underfilled educational institutions.

Promising areas for further research is the study of the experience of education management at the local level in Asian countries, which top all rankings in international studies of the quality of education and science.

A significant number of PISA member countries implement special measures to maintain educational institutions with unfavourable learning conditions. Thus, the practice of additional financing of such projects or motivating teachers with the highest level of qualification to work in such institutions is common.

There are also similarities in funding approaches. Education is financed from both state and local budgets, and the principle of "money follows a child" is observed, which creates a competitive environment among educational institutions. The difference consists in the ratio and size of expenditures on education, competence of local self-government bodies and educational institutions regarding the distribution of funds for education. Education expenditures from the state budget have different types: educational subventions (Estonia, Poland) and targeted subsidies, transfers and grants.

In Estonia and Poland, teachers are paid from educational subventions. Calculations of expenses for education, in particular educational subventions, must include the number of students per class. In addition, there are equalization coefficients, which are aimed at ensuring that regardless of the place of residence, social origin, financial ability of parents, etc., children have equal access to quality education. Private educational institutions also receive state funding.

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Cuestiones Políticas Vol. 41. Nº 73 (2023): 347-355
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Features of understanding social relations in modern law: theoretical, administrative, civil legal regulation

DOI: https://doi.org/10.46398/cuestpol.4176.19

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Abstract

The purpose of the research was to redefine the concept of social relations from the point of view of its theoretical, administrative and civil aspects of legal regulation, considering, for this purpose, various scientific contributions. The main content is based on the meaning of the concepts of "public relations" and "social relations" as political and legal entities with different paradigmatic essence. The methodological basis of the research was constituted by the comparative-legal and systemic analysis, the formal-legal method, the method of interpretation, hermeneutics and the methods of analysis and synthesis. By way of conclusion the authors have established that the term "public relations" characterizes relations between people, which provide for the unconditional priority of the economy over other spheres of society (political, ideological, cultural), material and symbolic spaces where there is no place for a person with his values, rights and freedoms. At least, the latter do not acquire due regulatory support.

Keywords: administrative public relations; legal regulation; civil relations; legal theory; modern law.

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Recibido el 22/11/22 Aceptado el 12/01/23

Características de la comprensión de las relaciones sociales en el derecho moderno: regulación teórica, administrativa, civil jurídica

Resumen

El propósito de la investigación fue redefinir el concepto de relaciones sociales desde el punto de vista de sus aspectos teóricos, administrativos y civil de la regulación jurídica, considerando, para ello, diversos aportes científicos. En el Contenido principal se fundamenta el sentido de los conceptos de "relaciones públicas" y "relaciones sociales" como entidades políticas y jurídicas con distinta esencia paradigmática. La base metodológica de la investigación estuvo constituida por el análisis comparativo-jurídico y sistémico, el método formal-jurídico, el método de interpretación, la hermenéutica y los métodos de análisis y síntesis. A modo de conclusión los autores han establecido que el término "relaciones públicas" caracteriza las relaciones entre personas, que prevén la prioridad incondicional de la economía sobre otras esferas de la sociedad (política, ideológica, cultural), espacios material y simbólico donde no hay lugar para una persona con sus valores, derechos y libertades. Al menos, estos últimos no adquieren el debido respaldo regulatorio.

Palabras clave: relaciones públicas administrativas; regulación jurídica; relaciones civiles; teoría jurídica; derecho moderno.

Introduction

In the last decade, many works have appeared in the scientific literature devoted to the philosophical and sociological analysis of the problems of the theory and history of the development of public relations. These studies allow a deeper understanding of the consistent patterns of the historical process, more accurately predict the future course of social processes. Such studies need further development of the categorical framework, where the central place is occupied by the concept of public relations.

In recent years, much attention has been paid to the analysis of the content of this category in the domestic scientific literature. Many aspects of this problem are reflected in the publications of the authors, however, some significant issues - and among them the issue of defining public relations – are still the subject of discussion and, as noted in the press, need to be further developed. This article attempts to highlight the most general characteristics of public relations that are needed to define this concept.

1. Literature review

The term "public relations" in scientific literature, in particular philosophical literature, is defined as "various connections that arise between the subjects of social interaction and characterize a society or community in which these subjects belong as an integrity" (Andrushchenko, 2006).

It is usually believed that this concept, being developed mainly by representatives of the Marxist intellectual tradition, is associated with the problems of social objectification- desobjectivation, social exclusion, social fetishism, social production, base and superstructure, social classes and social antagonisms (Andrushchenko, 2006).

Public relations are diverse and can be classified according to their objects, subjects and the nature of the relationship between them. So, the subjective basis for the identification of public relations is the social communities of people, and the objective basis is the ownership of the means of production.

It is known that the emergence and development of human society are considered a social form of the movement of matter, in contrast to mechanical, physical, chemical and biological, therefore, social relations and processes are understood, first of all, as all relations and processes, public life as a whole. In this sense, the classics of the Marxist intellectual tradition defined public phenomena as social, noting their differences from natural phenomena. On the other hand, they clearly and unambiguously noted the "personality" of social relations that develop between people of different formations.

Public relations were divided, as it is known, into two groups: material and ideological. Economic relations as different by nature connections between people in the process of production, exchange, distribution and consumption developed "regardless" of the will and consciousness of a person, represented the defining basis of public relations.

The varieties of public relations that were predetermined by material conditions included class and national relations, as well as everyday relations, family relations, etc., which had their own, relatively independent object, to study which they were aimed at: interclass – about a different form of ownership; interethnic – about the commonality of economic life, territory, language, culture; everyday – about ties in the non-productive sphere, family, marriage relations, family ties, etc. At the same time, political affairs were considered the highest level of development of public relations.

Politics, as already noted, was seen as a concentrated expression of the economy, its generalization and completion. Political relations arise, exist

and develop as issues of taking, retention and use of state power in the interests of realizing the economic and social interests of the ruling class. At the same time, one of the most important signs of political relations was considered to be a consciously organized nature, possible only if there were political organizations of the ruling class, the interaction of certain political ideas and organizations expressing the interests of this class.

The leading role was assigned to the socialist ideology, the mastery of which formed the only correct worldview. The ideological component of public relations assumed the introduction of socialist ideology into the mass consciousness and the provision of appropriate (class) education, which is rightly regarded as inciting enmity and class hatred.

So, the purpose of the article is to define the theoretical, administrative, civil-legal aspects of regulating public relations.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding public relations from the point of view of legal theory, administrative law, civil law, etc.

Through the use of the gnoseological method, the essence of public relations was clarified from the point of view of the legal theory, administrative law, civil law, etc., thanks to the logical-semantic method, the conceptual framework was deepened, the essence of the theoretical, administrative, civil-legal aspects of regulating public relations from the point of view of legal theory, administrative law, civil law, etc. Thanks to the existing methods of law, we were able to analyze the essence of public relations from the point of view of legal theory, administrative law, civil law, etc.

3. Results and discussion

O. Skakun defines the legal regulation of public relations as being carried out by civil society and the state with the help of the entirety of legal means of streamlining public relations, their consolidation, protection and development (Skakun, 2003).

The priority of general public interests is emphasized by M. Kelman and O. Murashyn (Kelman and Murashyn, 2006).

“Public relations” as a scientific term is a purely formational concept, the origin of which is associated with the Marxist intellectual tradition, the birth of which dates back to the middle of the XIX century. The long and

short of it is that the starting foundations of public relations are economic relations as priority (basic), which determines the nature of political and ideological relations as superstructural, secondary (Liutikov *et al*., 2021).

The essence of public relations can only be understood by considering production relations as starting, fundamental, defining, above which the superstructure rises – political, legal, moral, philosophical and other views, as well as political and other institutions and organizations (Villasmil Espinoza *et al*., 2022).

A feature of public relations is that their subjects are not all communities of people, but only those that arose objectively in the process of historical development: 1) socio-class communities (classes, intraclass and interclass social strata and groups); 2) ethno-national formations (tribes, nationalities, nations); 3) socio-demographic groups (family, men, women, youth, persons of retirement age, etc.); 4) socio-professional groups (workers, peasants, entrepreneurs, specialists, employees, etc.); 5) socio-territorial communities (population of separate administrative-territorial units, regions, residents of separate cities and villages, urban and rural population). It is obvious that there is no proper place for a person, his/her rights and freedoms, value and social priorities in this system of coordinates provision (Tylchyk *et al*., 2022).

Also, public relations do not provide for the consideration of the individual as a full-fledged subject of social interaction: a human as a biosocial being with his/her interests, needs, freedoms and values fell out of the context of their definition, understanding and interpretation, since priority was given to public interests, public property, public organizations and single political party (of course, the communist one) as the highest form of organization of the ruling class. The personality as a subject of public relations was considered only as a representative and bearer of the interests of a social group (classes, nation, collective, etc.) (Matviichuk *et al.,* 2022).

The definitions of the essence of public relations, which are provided in the domestic scientific and educational literature, is a continuation of the Marxist intellectual tradition, which seems to be quite appropriate, provided that the monograph or textbook, teaching aids are prepared in accordance with the canons of the above tradition. However, in such cases there should be a clear distinction, given the multi-paradigm nature of scientific knowledge, intellectual traditions in their formational and civilizational dimensions, understanding of their fundamental irreducibility to one another (Leheza *et al*., 2022).

Orientation of law to the regulation of public relations significantly impoverishes the regulatory potential of law, since the priority of the general (class) interest over the individual, the common good – over the personal, socio-public – over the civil is realized. Civic virtues are regarded

as secondary, and often even sacrificed to public interests as supposedly unconditionally priority and determining.

It is no coincidence that domestic scientists, considering the essence of social relations, rightly emphasize the importance of their correlation with social theories alternative to Marxism, in particular, social norms (E. Durkheim), social systems (T. Parsons), social action (M. Weber), social interaction and social role (G. H. Mead), social exchange (G. C. Homans) (Andrushchenko, 2006).

The formation and development of non-linear intellectual traditions are associated, as it is known, with human-centrism, respect for the dignity of a human, ensuring his/her rights and freedoms as starting and determining points in the process of functioning of society. Structural functionalism as a scientific paradigm arose as the personification of the natural human right to a decent life. It is significant that the variants of natural law theory in different periods of history acquired a characteristic meaning and ideological orientation.

Separate provisions of natural law theory date back to V-IV century B.C.E.: the philosophers of Ancient Greece in a dialogue form developed the ideas of character, essence, rooting of law in the objective and subjective nature of things, in the eternal order of the universe with its subordination to the flow of time and the immutability of human nature. It is still relevant to raise the question of law as a result of a "voluntary agreement" between the citizens of Athens (Kobrusieva *et al.,* 2021).

Socrates, Plato and Aristotle denied the sophists' understanding of law as an "artificial invention of people": written laws do not exclude eternal, unwritten legal truths, as well as laws "imbedded in the hearts of people by the divine mind itself". The eternal, unshakable divine order determines not only the essence of human relationships, but also the universe. For example, Aristotle saw two main parts in law: natural and conditional.

The natural component of law consists in its equal significance in all social strata, being independent of the degree of its recognition or non-recognition. While a conditional law, being originally formed by a human as "indifferent", in the case of determining its social priority, this indifference overcomes (Rabinovych, 2001).

The natural legal tradition underwent a significant evolution in the era of the Middle Ages, the Enlightenment and the Modern Age, developing the postulates of eternity and the immutability of human nature, the divine and natural origin of law, which was reflected in the intellectual activity of the great thinkers of the past: H. Grotius and B. Spinoza (Holland), T. Hobbes and J. Locke (England), J-J. Rousseau and P. Holbach (France) (Petryshyn, 2002).

Recently, the natural legal tradition has been developing as a starting, defining intellectual theoretical and methodological platform for the humanization of law, its approximation to civilized standards of freedom, social justice, guarantees of human and civil rights and freedoms. In Ukraine, this direction of law is implemented, in particular, as a process of approximation (adaptation and harmonization) to the legal standards of the member states of the European Union (Kopeichykov, 2002).

The above proves, in our opinion, the priority of natural law, which, being related to the legal norm, legal law, the supremacy of law, affirms the validity of the statement "Human is the measure of all things" (Heraclitus), the truth of which could not overcome the living procession of History with its ups and downs, gains and losses, challenges and dangers (Halaburda *et al*., 2021Leheza, 2022).

Conclusions

Therefore, it can be argued that public/social relations determine the nature of society, ethno-national groups and communities of people, an individual, determine his/her place in the political and legal space, guarantee rights and freedoms. The space of communication forms and ensures the realization of a person's capabilities, ensuring his/her rights and freedoms, satisfying his/her needs, fulfilling his/her aspirations and hopes, translating ideals into the practice of everyday life.

At the same time, special tasks are assigned to legal science as a means and mechanism for regulating public/social relations, legal socialization of a human, ensuring his/her rights and freedoms and, most importantly, his/her formation as a person, a citizen of the country, as a full-fledged representative of civil society.

In the scientific literature, the terms "public" and "social" are used both to refer to the same phenomena, events and processes (lack of identification), and various social phenomena. In other cases, the social is identified with the public. As a rule, this takes place in two cases: in the case of comprehending the entirety of phenomena and processes that exist in a particular society, as well as in cases of emphasis on the differences that distinguish social phenomena and processes from natural, technical, technological and informational.

This approach, which can be defined as a broad one, understands social relations as economic, political, and ideological phenomena and processes, while public relations are determined as social ones.

This circumstance gave rise to some authors to consider social relations as synthetic, generalizing the interaction of material and ideological social

relations. However, in our opinion, social relations do not just reflect the most important signs of human interaction, but are primarily are the result of the direct influence of civil society, which is being formed in Ukraine, and consist primarily in ensuring human and civil rights and freedoms, the implementation of universal human values as unconditional priorities of the process of social change.

Outside of the human-centric orientation as determining in terms of determining the nature (type) of relations, relations between people do not acquire a social character, which allows them to be characterized as public, where, as already noted, relations concerning mode of production, the nature of distribution, exchange and consumption of material good are priority.

In other cases, the concept of "social" is interpreted narrower than "public", is considered only a part or a constituent of the latter. Under such conditions, social relations stand out as allegedly special in the system of public relations, are considered on a par with economic, political, ideological forms of human interaction. This approach rather unifies the essence of social relations than demonstrates their difference, the fundamental irreducibility of one social phenomenon to another.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 356-366
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Usurpation of power under current conditions: political and legal concept

DOI: https://doi.org/10.46398/cuestpol.4176.20

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Abstract

The purpose of the research was to determine the approaches to understand the emergence of the concept of "usurpation of power". Accordingly, its political and legal nature as a phenomenon is analyzed and the investigation of its influence on the branches of public power is carried out. In addition, the current discussion is examined and the views of some scientists on this issue are criticized and, at the same time, relevant proposals are made. The methodological basis of the research was constituted by the comparative-legal and systemic analysis, the formal-legal method, the hermeneutic method and the methods of analysis and synthesis. As a conclusion it has been established that the development of the rule of law and civil society in Ukraine requires, first of all, ontological integration of the modern and current concept of the rule of law in public institutions and society, along with the observance of legal norms in all spheres of public life and; especially, it demands the prevention of conditions that determine the usurpation of power by civil society, judicial and law enforcement bodies to prevent signs of usurpation of power in public authorities.

Keywords: branches of public power; usurpation of power; corruption of public authorities; local government authorities; contemporary political theory.

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Recibido el 23/12/22 Aceptado el 26/01/23

Usurpación del poder en las condiciones actuales: concepto político y jurídico

Resumen

El propósito de la investigación fue la determinación de los enfoques para comprender el surgimiento del concepto de "usurpación del poder". En consecuencia, se analiza su naturaleza política y jurídica como fenómeno y se realiza la investigación de su influencia en las ramas del poder público. Además, se examina la discusión actual y se critican los puntos de vista de algunos científicos sobre este tema y, al mismo tiempo, se hacen las propuestas pertinentes. La base metodológica de la investigación estuvo constituida por el análisis comparativo-jurídico y sistémico, el método formal-jurídico, el método hermenéutico y los métodos de análisis y síntesis. Como conclusión se ha establecido que el desarrollo del Estado de derecho y la sociedad civil en Ucrania requiere, en primer lugar, de la integración ontológica del concepto moderno y actual de Estado de derecho en las instituciones públicas y en la sociedad, junto a la observancia de las normas legales en todas las esferas de la vida pública y; especialmente, demanda la prevención de las condiciones que determinan la usurpación del poder por parte de la sociedad civil, los organismos judiciales y de aplicación de la ley para prevenir signos de usurpación del poder en las autoridades públicas.

Palabras clave: ramas del poder público; usurpación de poder; corrupción de los poderes públicos; autoridades del gobierno local; teoría política contemporánea.

Introduction

The usurpation of power as a political and legal concept has existed for a very long time. Since the beginning of the division of society into classes, many problematic issues of regulating relations between themselves have arisen. Some classes seized power and exploited others. From the experience of centuries, it is known that any person who has power is inclined to abuse it and goes in this direction until he/she achieves his/her goal.

Power completely passed to one person – the leader, and this leadership continued for a long time, spreading its influence to others. In such conditions, the concept arose from late usurpation – "possession", means seizing, (retention). All empires, kingdoms, states with dictatorial regimes, without exception, were and are an example of such usurpation of power. In this research, it is necessary to show the dialectics of the essence and the phenomenon of this concept. Justifying the impossibility of usurpation by separate branches of power, one sees such a possibility of its usurpation by

only one person, which can only be the guarantor of the Constitution, that is, the President of Ukraine. All other officials cannot usurp power, due to the specifics of their activities.

A misunderstanding of the very nature of usurpation can lead to different proposals by scientists to criminalize such action by supplementing the Criminal Code of Ukraine with the corresponding norm. The existence of such a norm and its substantiation in the Criminal Code of Ukraine will lead to misinterpretations of this concept, namely, the norm will be "dead", since it is impossible to prosecute the President of Ukraine due to the complex mechanism of his impeachment and the lack of social conditionality of criminal liability for the usurpation of power. This would be contrary to the principle of expediency and the principle of inevitability of responsibility.

1. Literature review

The works of some domestic and foreign scientists is devoted to the research of the usurpation of power. At the same time, these works are superficial and do not fully reflect the political and legal nature of this concept. There are discussions, polemics, scientists' points of view on this important issue are analyzed, but there is no common understanding and approach to it. The issue itself is extremely difficult, because, in our opinion, there is more political than legal matter in it. To solve this important issue, there should be a systematic approach to research, and then, on the basis of its result, it is possible to develop a unified strategy to combat the usurpation of power.

Myslyvyi V.A. believes that the observance of the democratic principles of the principle of separation of powers, and, consequently, its social value, should be facilitated by the provision of criminal legal protection of these branches of state power, and, consequently, the prevention of manifestations of its usurpation (Myslyvyi, 2017).

In our opinion, such a position does not adequately reflect the very nature of the concept of usurpation. It levels its origins and does not provide an opportunity to more deeply explore and fully understand this phenomenon. In fact, this problem is much more complicated than it might seem at first glance. A logical question arises, what actually constitutes usurpation? The term "usurpation" is a political and legal concept that has deep historical roots.

It is obviously related to the law violation. In various sources, the term "usurpation" (from lat. usurpatio – possession) means the seizing (retention) of power by force, committed in the law violation, or the misappropriation of power or the seizure of power.

As Myslyvyi notes, political practice and historical and legal experience show that the usurpation of power is understood as both violent actions and the established strategy of non-violent seizure of state power by high-ranking officials, heads of military structures, leaders of separatist movements and terrorist groups, etc. (Myslyvyi, 2017).

The urgency of the research topic lies in the fact that in-depth research of such political and legal concept as the usurpation of power will provide the possibility to obtain as much information and relevant knowledge as possible in order to develop a common understanding of it.

This will lead to further theoretical developments to prevent the usurpation of power and to make specific proposals. The existing scientific developments differ in their views and positions on this important theoretical and practical issue. Further developments and scientific researches will make it possible to more specifically detail the concept of the usurpation of power and develop a single and correct mechanism for combating this phenomenon.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding public relations from the point of view of legal theory, administrative law, civil law, etc.

Through the use of the gnoseological method, the essence of public relations was clarified from the point of view of the legal theory, administrative law, civil law, etc., thanks to the logical-semantic method, the conceptual framework was deepened, the essence of the theoretical, administrative, civil-legal aspects of regulating public relations from the point of view of legal theory, administrative law, civil law, etc. Thanks to the existing methods of law, we were able to analyze the essence of public relations from the point of view of legal theory, administrative law, civil law, etc.

3. Results and discussion

The development of the rule-of-law state and civil society in Ukraine requires, first of all, the establishment of the rule of law in the state and society, the observance of legal norms in all spheres of state and public life. This task is especially important in the application of legislation on criminal liability, which entails the most severe means of state coercion, the most severe measures of state punishment. The law requires that everyone who committed a crime to be brought to criminal liability and that no innocent person be punished (Article 2 of the Criminal Procedure Code of Ukraine).

Responsibility for guilt, for the guilty infliction of socially dangerous damage is the main basis and foundation of criminal liability. Only the person guilty of a crime can be prosecuted. No one can be found guilty of committing a crime, as well as subjected to punishment until his/her guilt is proved legally and established by a guilty verdict of the court (part 2 of Article 2 of the Criminal Code of Ukraine) (Vorobei, 1999: 87).

This corresponds to the principle of the rule of law, which means that the declared legislative provisions guaranteeing the protection of the most important public relations in the state must be provided with appropriate criminal legal means. Most of the declared constitutional provisions for the development of Ukraine as a rule-of-law state have the appropriate provision (Tylchyk *et al*., 2022).

The theory and practice of state formation consistently implement the idea of the conceptual significance of the provisions of the constitution of Ukraine regarding the principles and tasks of the legislation on criminal liability, its institutions and norms, which are reliable tools for ensuring constitutional guarantees.

The Criminal Code of Ukraine ensures the protection of the constitutional order and state power of Ukraine, its sovereignty and independence (Articles 1,109 of the Criminal Code of Ukraine). Establishing the conformity of the criminal law with the constitution of Ukraine should be based on constitutional provisions relating not only to the sphere of public protected law, but to all constitutional prescriptions taken in a systemic unity (Baulin, 2014).

Constitutional guarantees should be provided with criminal law protection, given their importance, because the practice of state formation in the context of reform processes requires the completeness and consistency of such an approach (Marchenko *et al*., 2022).

The analysis of scientific research devoted to counteracting crimes against the constitutional order and state power testifies to their general nature in relation to the criminal law protection of the foundations of the national security of Ukraine.

The number of crimes committed in Ukraine against the foundations of Ukraine's national security is rather insignificant compared to the total number of crimes (Bantyshev, 2014). In today's realities, the problem of criminal law protection of the foundations of the national security of Ukraine and the functioning of the state power itself is of particular relevance and attention.

According to the Constitution of Ukraine, the separation of state power in Ukraine into legislative, executive and judicial powers means the implementation of their powers through power structures within the established limits and in accordance with the law.

The principle of separation of powers is applied in most countries of the world, where there is a constant struggle between the separation of powers and the legal status in the system of public authorities. As you can see, there are many views and disagreements on the theory of separation of powers (Villasmil Espinoza *et al*., 2022).

However, if actions aimed at the violent overthrow of the constitutional order or the seizure of state power are, as a rule, obvious in their social danger and illegality, non-violent usurpation of power, as, in particular, the experience of state formation in Ukrainian territories, is a more complicate, often disguised phenomenon associated with the illegal actions of completely legitimate representatives of the branches of state power (Matviichuk *et al*., 2022).

This approach to understanding this issue is not only wrong, but also illogical. Its negative lies in the fact that without even a legislative basis for criminal liability for the usurpation of power, there is an opinion that representatives of different branches of state power can usurp power. One gets the impression that there is some kind of imposition and persuasion of the possibility of usurpation of power by representatives of different branches of state power.

This thesis is confirmed by the relevant provisions on the basics of lustration, provided for by the Law of Ukraine "On the Lustration of Power" dated September 16, 2014, where in part 2 of Article 1 it is noted:

> The lustration is carried out in order to prevent participation in the management of state affairs of persons who, by their decisions, actions or inaction, implemented measures (and/or contributed to their implementation) aimed at the usurpation of power by the President of Ukraine, undermining the foundations of national security and defense of Ukraine or unlawful violation of human rights and freedoms (Leheza *et al*., 2022: 344).

As we can see, this law is about the usurpation of power only by the President of Ukraine, and not by representatives of different branches of state power. From this law, it is only clear that the above-mentioned persons did not usurp power separately, independently from the President of Ukraine, but carried out their official duties. To date, there is not a single case of signs of usurpation of power by such persons.

Moreover, a huge number of lustrated representatives of different branches of power went to court demanding the protection of their constitutional rights and freedoms. We consider this law unconstitutional, because many innocent citizens suffered because of it. There is no relation of representatives of different branches of state power specified in this law to the usurpation of power by the President of Ukraine.

Myslyvyi (2017) considers: "The twenty-five-year history of Ukraines" independence shows that in the system of relations of power on its territory,

from time to time, situations arise when separate branches of power try to violate the existing balance, that, as a rule, is associated with the challenges of usurpation of power.

It is obvious that such actions are of a diverse nature and are manifested in violation of the legislation regulating the status, functions, competence, forms and methods of activity of high-ranking officials, reflected in various kinds of collusion between representatives of separate branches of power, inter-factional and inter-party agreements, accompanied by corruption, using bribery of government officials and public officers, that was often recognized by power holders themselves.

At the same time, despite the fact that these actions often demonstrate obvious arbitrariness and violation of the law, they are by no means always characterized by violent actions and, on the contrary, are disguised under the guise of political rivalry (Myslyvyi, 2017).

In our opinion, this is an insufficient analysis and argumentation of the organization of the work of separate branches of power, considering that their activities are connected with the challenges of the usurpation of power. Myslyvyi notes:

> The usurpation of power occurs, as a rule, in cases where at least one of the three branches of power gradually loses the signs of a democratically formed body, and its functions are concentrated by an official who has the authority or ability to influence the activities of the branches of power (Myslyvyi, 2017: 155).

It is impossible to usurp power by definition, since the very principle of the activities of the branches of state power is inextricably linked with law enforcement and judicial systems. They are generally out of politics, so considering some factors of their influence on other branches of power in order to usurp power looks somewhat illogical. The legislative branch of power has the most democratic system of its own activities, as it is based on the will of the people and has a representation of different segments of the population.

The activities of this legislative body are normalized in such a way that none of its decisions can be taken without the attention of civil society, and therefore it is not only out of place, but also incorrect to talk about the usurpation of power in this case. The supreme executive branch of power carries out its activities on the basis of the Constitution of Ukraine and is responsible to the President of Ukraine and is controlled and accountable to the Verkhovna Rada of Ukraine within the frameworks provided for in Articles 85, 87 of the Constitution of Ukraine.

The specified branch of power is dependent in its activities on the President of Ukraine and the Verkhovna Rada of Ukraine, and therefore, as we see, there can be no usurpation of power by the specified branch of

power in Ukraine, either from the point of view of the very specifics of its activity, or from the point of view of formal logic (Kobrusieva *et al.*, 2021).

The usurpation of local power cannot be perceived as real at all, since local government authorities operate in such a legislative system of coordinates that even theoretically makes such a phenomenon impossible (Chornyi, 2018).

The history of the state formation of independent Ukraine has clearly demonstrated that signs of usurpation of power in some places characterized the activities of the President of Ukraine, who, according to the Constitution, is the head of state and the guarantor of state sovereignty, the territorial integrity of the state, compliance with the requirements of the Constitution, human and civil rights and freedoms.

At the same time, the inviolability of the President of Ukraine during the exercise of his official powers (Article 105 of the Constitution of Ukraine), as well as the absence of legislation on his impeachment and the lack of a criminal law prohibition of the usurpation of power, deprive society of the opportunity to legally prevent violations (Halaburda *et al.*, 2021).

Despite the democratic, social and legal system of Ukraine (Article 1 of the Constitution) and without real levers and means of influence and stopping the violation of the law, people are the bearer of sovereignty and the only source of power in Ukraine (Article 5 of the Constitution), resorting to peaceful mass protests, rallies and demonstrations, exercising their right, guaranteed by Article 39 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

Conclusions

Therefore, it can be argued that in the context of the reform processes in Ukraine and the desire to become a full member of the European Community, civil society poses new challenges to the state power to deepen democratic processes. This is the key to the further fight against corruption with the help of institutions, civil society, law enforcement and the judicial system. Under such conditions, the President of Ukraine loses relevant important influences on the branches of power in order to usurp it.

In democratic countries, the question of the usurpation of power is not raised at all, since the system of power itself is built in such a way that it makes it impossible, even theoretically, to usurp power by its top leadership of the state. And vice versa, when public authorities at all levels in a country are too corrupt and these “corporate interests” are inextricably linked and subordinated not according to the principle of the vertical of power, but according to the principle of agreement, toadying, careerism and fear of

losing position, then there is a real threat of concentration of power in one person.

This leads to permissiveness and direct usurpation of power without the help of any forceful methods. There are enough such examples in world history, including in recent history, where the usurpation of power by one person gives rise to a dictatorship that develops into a dictatorial regime. An example of such regimes is the Russian Federation, North Korea, Syria, the Republic of Belarus, Iran and some African countries.

A long stay in the highest positions of the leaders of these countries gives rise to a feeling of permissiveness, impunity, a cult of personality. Such a top official of the state loses the sense of responsibility and reality and puts himself above the law and the state itself. Scientists have proven that the most serious disease of a person can be a disease of power, when, having become ill with it, a person sees no other way out than to be in power for life. Such persons become dangerous not only for the state itself and its citizens, but also for other countries of the world.

It is no coincidence that in developed countries the electoral laws and the tenure of senior positions are strictly observed. This allows us to systematically develop the institutions of civil society, ensure its further democratization, implement foreign and improve current legislation. Thus, the usurpation of power is clear evidence of the lack of effective activity of civil society institutions and its effective levers of influence on the highest officials of the state, as well as corruption in all branches of government.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 367-377
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Criminological Principles of Preventing Professional Deformation among Penitentiary Personnel

DOI: https://doi.org/10.46398/cuestpol.4176.21

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Abstract

The purpose of the research was to know the most significant personal and functional determinants of the professional deformation in the penitentiary staff. The importance of legal and moral awareness for the performance of operational and service activities, correction and resocialization of convicts is substantiated. It has been proved that a professionally deformed employee knows the legal and moral norms, but complies with them subjectively and arbitrarily and justifies his actions with various circumstances related to the specifics of the psychology and behavior of convicts. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. The conclusions identify socio-psychological measures aimed at the prevention of professional deformation of prison staff, among which are: improvement of the system of training, education and professional development; formation and maintenance of a sense of security, confidence in the usefulness and fairness of work. In addition, careful selection of personnel should be carried out taking into account the business qualities and especially the moral qualities of employees, etc.

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Recibido el 03/11/22 Aceptado el 19/01/23

Keywords: professional deformation; personal determinants; extreme psychological overload: crime prevention.

Principios criminológicos para prevenir la deformación profesional del personal penitenciario

Resumen

El objeto de la investigación fue conocer los determinantes personales y funcionales más significativos de la deformación profesional en el personal del ámbito penitenciario. Se fundamenta la importancia de la conciencia jurídica y moral para el desempeño de las actividades operativas y de servicio, corrección y resocialización de los condenados. Se ha comprobado que un empleado profesionalmente deformado conoce las normas legales y morales, pero las cumple de manera subjetiva y arbitraria y justifica su actuar con diversas circunstancias relacionadas con las especificidades de la psicología y conducta de los condenados. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. En las conclusiones se identifican medidas sociopsicológicas dirigidas a la prevención de la deformación profesional del personal penitenciario, entre las que se encuentran: mejora del sistema de formación, educación y desarrollo profesional; formación y mantenimiento de un sentido de seguridad, confianza en la utilidad y equidad del trabajo. Además, se debe llevar a cabo una cuidadosa selección de personal teniendo en cuenta las cualidades empresariales y especialmente las cualidades morales de los empleados, etc.

Palabras clave: deformación profesional; determinantes personales; sobrecarga psicológica extrema: prevención del delito.

Introduction

We consider the criminal-executive activity of penitentiary personnel from the point of embodying legal reality, which is saturated with social and psychological phenomena. This includes psychology of communities and groups, and psychology of an individual who lives and acts in a certain group, and the system of his/her relationship with the law. And that is why most of the problems of criminal-executive activity can be solved only in the aggregate of its legal and psychological and pedagogical support.

In the process of professionalization, penitentiary personnel acquire not only specific skills and abilities, but also adopt the values, attitudes, and rules of behavior typical for holders of a certain profession, marking them out of the society into a certain corporate group. Gradually, professional activity more and more absorbs the personality of penitentiary, and therefore, over time, the moment of no return comes, when the individual is no longer able to separate himself/herself from the profession, the view of the world is carried out exclusively through the prism of the profession, and personality's identification himself/herself with the profession becomes one of the most important steps in the process of self-determination of the individual.

1. Literature review

Sokolov Ivan notes that long-term occupation of the same activity can be complicated through excessive development of individual qualities which leads to reassessment of the personal content of the profession; formed are such properties as aggressiveness, suspiciousness, excessive ambition, apathy, indifference to human distress, unreasonable arrogance and admiration for power, misunderstanding of the sense of duty, rigid professional attitudes etc. (Sokolov, 2005).

By the way, another foreign scientist O. M. Stoliarenko adheres to the idea that professional activity is introduced into the system of social and psychological relationships, and the negative product of wrong construction of these relationships by a specific employee may lead to a deviant professional behavior (abuse of power, corruption, etc.) and professional deformation of the personality (Stoliarenko, 1987).

At the same time, when investigating professional deformation among the employees of penitentiary institutions the domestic scientist V. S. Medvedev proves that such deformation is most expressive in reproduction and application of social experience. The first way lies in psychological perception of oneself in other people, with whom personality is connected by the type of his/her activity and other constant relations. The second way concerns personality's reproduction of deformed ideas about the ways and means of performing activities (Medvedev, 1992).

That is why the problem of professional deformation among representatives of penitentiary personnel should be considered in the aggregate of both psychological and legal support, and in connection with this it presupposes three components: specific activity; special type of work; social and psychological character.

Among the most important problems related to professional deformation of penitentiary personnel representatives the following should be highlighted: improper regulatory and legal regulation of legal status and service procedures; overtime psychological stress caused by an increased level of crime in institutions; the negative influence caused by the environment of both those who are serving punishment and other already professionally deformed employees.

Therefore, the purpose of this article is to formulate legal principles of preventing professional deformation among penitentiary personnel (such principles are manifested in the explanation of professional deformation essence, its negative impact on effective functioning of the penitentiary system in general and its personnel in particular), as well as to identify the determinants of this negative phenomenon in order to develop appropriate prevention measures.

2. Materials and methods

The research is based on the work of foreign and Ukrainian researchers on methodological approaches of understanding prevention of professional deformation among penitentiary personnel.

With the help of the epistemological method, the essence of preventing professional deformation among penitentiary personnel was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the concepts of preventing professional deformation among penitentiary personnel was determined.

In order to get an idea about the extent of professional deformation among penitentiary personnel during the last five years, we analyzed statistics, which is not, unfortunately, based on all canons of statistical generalization, since we were not able to access all blocks of information. However, thanks to the existing data, we managed to analyze some of the modern reasons for manifestation of professional deformation among personnel of penitentiary institutions.

3. Results and discussion

We found that such reasons include the following: unfavorable individual psychological characteristics; conflict situations at work and in the family; improper control over employee's behavior during the performance of operational tasks as well as during off-duty hours; non-implementation of preventive psychological and preventive measures by the management of all levels of the Ministry of Justice of Ukraine (Bohatyrov, 2016).

In 2017, the "Intellect" Scientific School conducted an independent survey of convicts in correctional camps in Kyiv, Odesa, Kherson, Cherkasy, and Chernihiv regions regarding violation of their rights and legitimate interests by penitentiary personnel, including in particular: torture, violence, humiliation of their honor and dignity.

According to respondents the main reasons, are as follows: 1) impunity and, as a result, the permissiveness of penitentiary personnel members who use illegal methods at work (58%); 2) low professional and cultural level of personnel at penitentiary institutions (26%); 3) improper selection of candidates for work with convicts, which results in admitting persons with propensity for violence to personnel members of penitentiary institutions (41 %) (Bohatyrov, 2016).

It is appropriate to note that penitentiary personnel members are forced to constantly communicate with criminals - persons with an antisocial psyche, deformed consciousness and low morals. Thus, in order to predict possible behavior of a certain convict, the employee needs not only to know this convict perfectly, but also to be constantly for a long time in the environment of the criminal element, to feel his/her condition by means of partially recreating his/her life activities.

This process of being used in the role of a convict necessarily leaves an imprint on the employee himself/herself, his/her individual development as a personality. Indeed, most employees of correctional camps (prisons) psychologically almost do not differ from convicts. This phenomenon is mostly observed in prisons away from cultural centers, which is explained by the absence of psychological rest through moral and cultural diversity. Therefore, the long-term poor communication with people from other spheres of the society contributes to personality's obvious signs of professional deformation.

According to the available domestic studies, after summarizing their results, we came to the conclusion that the content of professional deformation of penitentiary personnel can be divided into 2 groups:

1. Personal group, determined by socio-psychological characteristics of penitentiary personnel. By the way, expediency of singling out this group is supported by foreign scientists who believe that the main cause of professional deformation consists in discrepancy between individual psychological characteristics of the personality and the level of requirements set by his/her professional activity, which increases importance of professional psychological selection (Silverman, 1989).
2. Professional group, stipulated by the socio-psychological nature of professional activity, specifics of work performed by personnel at penitentiary institutions, as well as by emotional burnout. This

group is also supported by foreign scientists (Furnham and Miller, 1992). At the same time, the specificity of professional activity is usually understood by scientists as negative features of its content, organization and conditions, as well as repeated repetition of typical official and psychological situations.

We consider it expedient to consider them in detail in order to more widely reveal their essence for a deeper understanding of professional deformation among members of penitentiary personnel.

So, the first group is characterized by normalization of an individual's behavior and determines effectiveness of his/her social identification, self-actualization and activity. That is why, in the context of professional activity among representatives of penitentiary personnel, such basic normative systems of behavior regulation as morality and law acquire significant importance. The phylogenetic integration of these systems is revealed through their functional cognitive-evaluative, normative-regulatory and value-oriented unity.

Compliance with regulations by penitentiary personnel representatives is based not only on the external influence of their performance of official duties, but can also be an internal aspect of their activities. The possibility of internal assimilation of morality and law as imperatives is caused precisely by the fact that they are generally accepted values.

According to the foreign scientist Boiko, it is moral defects and personal disorientation that are a prerequisite for professional deformation. A moral defect is due to inability to supplement work with such moral categories as conscience, virtue, respectableness, honesty, respect for rights and dignity of other persons, and at that formation of emotional burnout is facilitated. Probability of indifference to the subject of activity and apathy to the performed duties is increased (Boiko, 1996).

Moral and legal consciousness is knowledge of moral and legal norms, principles, practice of moral and legal relations. In the sphere of morality, knowledge of norms is mandatory, because only in this case they act as a prerequisite for moral responsibility of an individual both to morality (the society) and to his/her own conscience. Moreover, conscience is an expression, a manifestation of moral and psychological self-regulation, self-determination of individual's behavior (Tylchyk *et al.*, 2022).

Therefore, penitentiary personnel representatives in the modern society constantly learn legal and moral norms through socialization, they form an attitude to legal or moral requirements, accept or reject these requirements, passing them through their consciousness, that is, they evaluate the requirements, applying in practice those of them that they consider to be priority in view on their significance. Therefore, the evaluation function is common to all elements of legal and moral systems.

It should be noted that violations of the regulatory and legal regulation of official activities are quite diverse. One of the characteristic violations in daily activities of penitentiary personnel is legal nihilism which is the most dangerous and widespread phenomenon in the legal space. Legal nihilism indicates an extremely negative attitude towards any generally accepted socially important values (Villasmil-Espinoza *et al.*, 2022).

It seems that moral norms play a role which is never less important than that of legal norms in activities of penitentiary personnel. It can even be argued that implementation of legal norms necessarily involves analysis of a legal fact through the corresponding ethical system of the individual's constructs. This is determined by the fact that the law is ethical in its essence, and the content of legal norms due to their universality necessarily implies its ethical and value aspect of interpretation.

From the point of view of positive law, if there is a real threat to life of penitentiary personnel members, they have an opportunity to use special means (rubber truncheons, lachrymatory agents, handcuffs, etc.) against attackers. The ethical content of implementation of this right involves taking measures to avoid use of special means (in the presence of a full legal possibility), which are not provided for by the norms of law, but are provided for by one's own understanding of a certain effectiveness of the situation and the value of someone else's life and health.

Thus, each area of legal practice has specific features of law enforcement and, accordingly, should contain a specific system of ethical norms. We believe that with the help of law and morality, a certain order is maintained among penitentiary personnel members, and the guaranteed safety of both the personnel and the convicts is ensured.

Summarizing the group of personal causes of professional deformation among penitentiary personnel, it should be emphasized that they consist in insufficient education of moral imperatives during personnel training; low legal culture; hypertrophy of official powers; peculiarities of interpretation of the law by employees, given that they mainly deal with violations of laws, various social anomalies and criminals (Matviichuk *et al.*, 2022).

The second group is characterized, first of all, by penitentiary personnel working conditions which are associated with impact of extremely unfavorable factors including excessive tension, stressogenic conditions, extreme conditions and psychological overload. Unfortunately, the listed factors take place among penitentiary personnel continuously and are mainly related to convicts' violation of the established order of serving the sentence.

Their presence among young employees during the period of adaptation to the conditions of service in penitentiary institutions (prisons) significantly affects the state of their physical and mental health.

Although with the increase of the term of service and accumulation of proper experience in relationships with convicts, this influence decreases, but this does not reduce the gradual accumulation of mental tension in the employee's personality structure, which leads at a certain stage to more serious consequences than temporary loss of work capacity. Among them, researchers note significant changes in the nature of professional motivation, the level of work capacity, narrowing of communication ties with others, etc. (Kobrusieva *et al.*, 2021).

Also, mental tension of penitentiary personnel affects the nature of interpersonal relations among members of this personnel, and in general, social and psychological situation in the team. In its turn, an unfavorable, conflict situation leads to an increased stressful effect on employees.

Separately, it is worth paying attention to the problem of emotional burnout of penitentiary personnel members based on the fact that, according to modern ideas, the phenomenon of emotional burnout is typical for persons working in the social sphere, and is produced as a person's reaction to constant stressful stimuli in situation of professional communication.

Burnout is a syndrome, that is, a set of individual symptoms. In addition to emotional disturbances in penitentiary personnel such symptoms mainly include manifestations of decreased self-actualization indicators, which lead to deformation, first of all, of one's own personal and professional significance (Leheza *et al.*, 2022).

And therefore, in a broad sense, emotional burnout appears not only as fatigue from professional communication, but rather as means of protection developed by the respective subject of work, which subjectively allows to maintain the status of "on the other side of the law" in front of a convicted person; not to accept negative reality closely; to maintain one's own positive personal and professional self-esteem; spend one's own resources sparingly, etc. Moreover, the more educated an employee is, the less signs of burnout are present, probably due to the understanding of the illusiveness and falsity of the specified effects, awareness of his/her own responsibility for the events of his/her own life (Halaburda *et al.*, 2021).

Conclusions

Therefore, based on the results of the research of the legal basis for preventing professional deformation among penitentiary personnel, we suggest taking the following measures to prevent this negative phenomenon: improvement of the system of training, education and professional development; formation and maintenance of a sense of security, confidence in usefulness and fairness of one's work; carrying out

a careful selection of personnel taking into account business qualities and especially moral qualities of employees; improving skills of the management team in application of progressive forms and methods of work based on the scientific organization of management; creation of effective organization of work, working hours of employees with the aim of reducing overload, physical and psychological fatigue, as well as improvement of personal qualities of employees, creation of a friendly atmosphere in the team; establishing interaction with public organizations, the population, convicts and prisoners, taking into account the norms and principles of professional ethics, etc.

At the same time, during the research, we established that scientists have not researched such a factor of professional deformation as presence of a young employee (a personality who has not yet had time to professionally deform) in a team of already professionally deformed penitentiary personnel.

In our opinion, it is the specified factor that should be considered as a priority, since in fact it is other employees of the institution who are the source of creating the investigated negative phenomenon, its stimulation and fixation as a personality element of a young employee, in particular, by imposing certain negative traditions and habits (for example, constant use of alcohol after daily duty). We consider this vector of research to be undiscovered and quite promising in the sphere of preventing professional deformation among penitentiary personnel.

Thus, emotional burnout in penitentiary personnel is a form of professional deformation of a subject of professional activity, acquired by this subject as a result of action of protective mechanisms against the psycho-traumatic influence of working conditions at penitentiary institutions of the Ministry of Justice of Ukraine, manifested in a decreased emotional return, in an effort to reduce professional duties that require emotional costs, as well as in the desire to justify such actions by means of devaluing activities and objects of these activities.

Currently, psychological support of service activities performed by penitentiary personnel is becoming more and more topical. The fact is that formation of the criminal-executive system is accompanied by a number of difficulties.

These difficulties include: unstable socio-economic situation in Ukraine, humanization of the penal process, determination of the State Criminal-Executive Service of Ukraine as a separate body of the executive power, the new criminal procedural legislation based on application of international standards, a high criminogenic level, and specific conditions of service of penitentiary personnel. These difficult conditions are a constant source of stressful effects on personnel.

Therefore, any extraordinary events related to the prestige of the criminal-executive system cause a negative resonance in the society, and this ultimately has a negative effect on the authority of the entire system of law enforcement agencies

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 378-399
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Socio-philosophical analysis of Ukrainian legal mentality in the context of European integration processes

DOI: https://doi.org/10.46398/cuestpol.4176.22

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Abstract

The aim of the article was to carry out a socio-philosophical analysis of the legal mentality in the context of European integration processes. Comparative and observational methods were the main methodological tools. The research revealed that the legal mentality of the EU population is characterized by respect for the law, human rights and freedoms. The rights of the individual are recognized as priority over the rights of the state. The Ukrainian legal mentality is characterized by legal nihilism, legal idealism, statism, anomie, detachment from legal culture and ambivalence. It is concluded that, the consolidation of civil society with public authority during the military aggression of the Russian Federation indicates positive changes in the legal mentality. There are some positive changes in the attitude of the EU population towards the future EU membership of Ukraine. Increased legal awareness is a necessary component for the development of Ukraine's legal mentality. The current achievements embodied in the national and European legal mentality in the EU countries can be guidelines for Ukraine to achieve its goal of European integration.

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Recibido el 31/12/22 Aceptado el 20/01/23

Keywords: collective unconscious; determinants of behavior; statism; political culture; legal mentality.

Análisis sociofilosófico de la mentalidad jurídica ucraniana en el contexto de los procesos de integración europea

Resumen

El objetivo del artículo fue realizar un análisis sociofilosófico de la mentalidad jurídica en el contexto de los procesos de integración europea. Los métodos de comparación y observación fueron las principales herramientas metodológicas. La investigación reveló que la mentalidad jurídica de la población de la UE se caracteriza por el respeto de la ley, de los derechos humanos y de las libertades. Los derechos del individuo son reconocidos como prioritarios sobre los derechos del Estado. La mentalidad legal ucraniana se caracteriza por el nihilismo legal, el idealismo legal, el estatismo, la anomia, el distanciamiento de la cultura legal y la ambivalencia. Se concluye que, la consolidación de la sociedad civil con la autoridad pública durante la agresión militar de la Federación Rusa indica cambios positivos en la mentalidad legal. Hay algunos cambios positivos en la actitud de la población de la UE hacia la futura pertenencia de Ucrania a la UE. El aumento de la conciencia jurídica es un componente necesario para el desarrollo de la mentalidad jurídica de Ucrania. Los logros actuales incorporados en la mentalidad legal nacional y europea en los países de la UE pueden ser pautas para que Ucrania logre su objetivo de integración europea.

Palabras clave: inconsciente colectivo; determinantes del comportamiento; estatismo; cultura política; mentalidad jurídica.

Introduction

The phenomena related to the life of society and individuals are characterized by both universality and a particular national ethnic or ethno-cultural component. The challenges faced by the modern society includes socio-economic and political defeats. It is characterized by achievements, as well as the probability of positive development. Modern society is represented in a variety of multi-vector processes, ideas, life positions, ideological aspirations. Society is not monolithic, its main features are

instability, increased irrationality, uncertainty in social development, which has doubted the possibility of harmonious coexistence of people (Zhussupova *et al*., 2022).

The Covid-2019 pandemic, the economic sanctions policy that paralyzed the whole world, military aggressions have further aggravated the problem of the uncertainty of the future life and development of humanity. Real threats to people's security transform the main features of their worldview. Radical changes affected not only the material life of people. They cause a change in traditional and spiritual spheres, characteristics of stereotypes of behaviour in national and supranational societies (Bhatt, 2022).

The process of interaction and interdependence of the main spheres of human life in ethical societies accelerated and became global, which is considered an integral element of human civilization. The problem of rethinking the national mentality in the course of globalization is considered urgent, as many ethical societies are undergoing a transformation process.

Mentality is a way of thinking, a general spiritual attitude. Mentality is an established system of beliefs, concepts and points of view of individuals and social groups, which translates the accumulated experience of generations (Gordiychuk, 2018). These two concepts cannot always be considered synonymous. Mentality is a phenmen on, it is a practical implementation. All emotional, rational and cognitive, motivational elements contained in it develop in proportion to objective conditions (Kurbanov, 2022).

The core of mentality is the collective unconscious, however, the terms "conscious" and "unconscious" are quite difficult to define and use (Brazdau *et al*., 2021). The main mechanisms of unconscious influence come from the past, present and future. The deep and primal motives of our evolutionary heritage, such as survival and security, resource acquisition, reproduction, and social connections come from the past. These deep-rooted motives influence abstract social views such as conservative or liberal ideologies, as well as attitudes toward immigration (Bargh, 2019).

Socio-philosophical understanding is aimed at a detailed and in-depth study of the mental foundations of basic current and future social processes occurring in society (Tulenkov *et al*., 2021). People's activities are determined by both social and cultural ties, features of mental turn. The study of mentality reveals new determinants of human behaviour, on the one hand, and enriches the content of philosophy, on the other.

Mentality is perceived as an essential feature of any society. As a sociocultural subject, a person belongs both to the objective world and to the intersubjective picture of the world created by a certain mentality. Socio-philosophical analysis helps not only to accurately reveal the essence and content of spiritual stereotypes of people's mentality.

It also fixes the peculiarities of mentality and contributes to observing the process of transformation of national mentality in a new socio-economic environment (Urunova, 2020). It is an urgent need to have knowledge of the nature of the mentality of society, the ability to neutralize negative moments in ethno-national relations caused by mental differences.

Comparative law studies, through the in-depth analysis of law, its separation by legal forms, contribute to the understanding of the importance of various factors that shape legal norms (Cerchia, 2018). The category of mentality began to be widely used in legal studies. The existence of a legal mentality provides for non-rational mechanisms of existential understanding of law (Klimova, 2019). It helps to explain the role of mentality in state-building processes, as well as to shape society's reaction to changes in legal traditions, and prevents the excess of relevant innovations.

In view of the foregoing, the aim of the article is a socio-philosophical analysis of the Ukrainian legal mentality in the context of European integration processes. The aim involved the following research objectives: 1) summarize the main modern components and trends of the European legal mentality; 2) analyse the current state, problems and prospects of the Ukrainian legal mentality in order to identify the components necessary for the transformation of the Ukrainian legal mentality in order to implement European integration processes.

1. Literature review

The choice of the research topic correlates with the current vectors of the theoretical studies in different states. The work of Shtepa (2019) was the main tool and background of this research. The research was focused on determining the role of the legal mentality of the Ukrainian ethnic group in state-building processes. Special attention is paid to the constructive and destructive behavioural automatisms of the Ukrainian mentality in the state-building discourse. The work proved that the reception of European political and legal values by Ukrainian society will become an important factor for its constructive transformations in the state-building context.

The need for further institutionalization and deep rooting of the ideas of democracy, rule of law, human rights, dignity, tolerance, self-realization, and peace in the national culture is emphasized. The author drew the conclusion that this will become a factor in overcoming the counterproductive political and legal automatisms of the Ukrainian mentality.

The study of Cerchia (2018) also influenced the author's position on the issue under research. The author conducted a comprehensive analysis

of aspects of legal mentality. Attention was paid to problematic issues arising during the study of the historical development of legal culture and mentality, principal-agent legal relations. The findings of Tulenkov *et al.* (2021) on the mentality in the context of modern post-pandemic society were taken into account in the course of the research.

Its role in the development of historical and socio-postmodern scientific thought is emphasized. The mental approach to understanding the phenomena of social and individual life was considered and justified. The socio-philosophical aspects of shaping the mentality of the individual are updated and the main problematic aspects of the modern society are considered through the prism of the mental approach.

Kurbanov (2022) studied the interaction of the national mentality with objective conditions. It was concluded that all perceptual-emotional, rational-cognitive, motivational elements contained in the mentality develop in proportion to objective conditions. The findings contained in the article by Urunova (2020) on the essence of the globalization process are worth noting. Emphasis is placed on its impact on changing the mentality of people in traditional societies. It was established that in many societies the problem of protecting national identity, which is closely related to national mentality, is becoming urgent.

The research conducted by Bargh (2019) was used in shaping the author's position. It emphasizes the existence of several different sources of unconscious influence on choice and behaviour. It is concluded that they are generated by one and the same single mind, which produces conscious influence. It is noted that the main mechanisms of unconscious influence come from the past, present and future.

The studies of Humphrey and Bliuc (2022) and Utemuratov (2021) dealt with the issues related to the legal individualism, legal nihilism. Their influence on the well-being of young people living in Western environment is noted. Specific traits associated with individualism and nihilism that may lead to poorer outcomes in terms of well-being are emphasized. A conclusion was made about the need to improve the system of objectives to improve legal culture and eliminate legal nihilism and legal idealism.

The article by Klimova (2019) on the main theoretical and methodological approaches to the analysis of the essence of legal mentality is worth attention. The author emphasized the importance of identifying the specifics of the axiological context of this social phenomenon. The author focused on the essence and structure of the legal mentality, quantitative and qualitative characteristics of the functions of the legal mentality. Gordiychuk (2018) analysed the general trends in the evolution of researchers' views on the concepts of the category of mentality as a historically established psychological framework.

The author outlines such relevant vectors as objectivity, subjectivity, implementation in practice. The transformation processes of elements of spiritual culture are noted. The need to study, first of all, the imagination, mind, and morality of not a single individual, but the entire nation was justified.

The active study of the issues selected in the article confirms that the socio-philosophical analysis of the Ukrainian legal mentality in the context of European integration processes requires special attention. The diversity of studies in this field is also stated. Therefore, it is urgent to conduct a study according to new research criteria.

2. Methods

The research results were obtained through the use of a set of practical and methodological tools tested at each stage of the research. Figure 1 visualizes the research design determined by the aim outlined in the article.

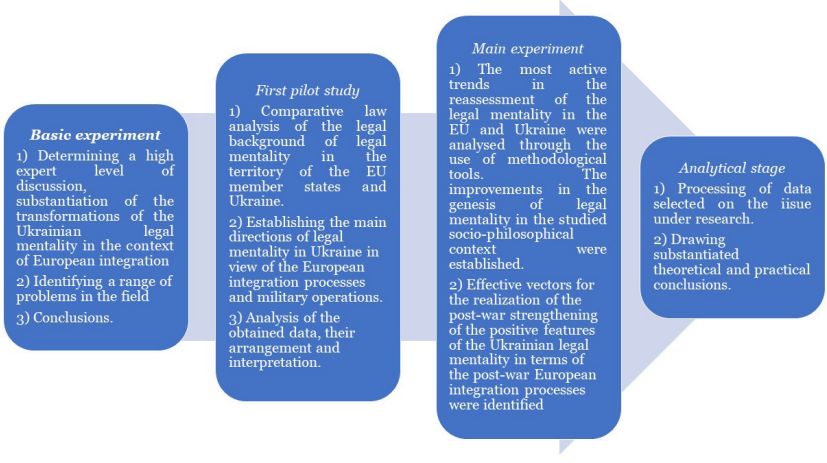

Figure 1. Abstract research design. Source: prepared by the authors.

The main hypothesis of the study is the concept of a possible approbation of the positive experience of the European Union in Ukraine for strengthening the legal mentality in the state in the context of European integration. The value characteristics of the approaches initiated in the EU

were outlined through the use of the main research method — comparison. This method was used during the study of the stages of overcoming legal nihilism and the formation of an identical legal mentality in the EU member states and in Ukraine.

It also helped to identify a wide range of problems in the field of legal mentality in Ukraine, which will become a further vector of post-war transformations of society and law. The observation method was applied for the analysis of the existing mentalities in the European context and their influence on the Ukrainian legal mentality.

The use of the historical method in a complex with it enabled revealing various historical, political and economic environment that forms the Ukrainian legal mental identity in the context of European integration. The historical method also made it possible to consider the issues under research through the prism of history, modern transformations, culture and lifestyle, customs and traditions.

The following research methods were used in the course of the study: system analysis (for analysing the totality of means of transformation of the legal mentality); structural and functional analysis (to identify the relationship and interdependence of geopolitical and social transformations with manifestations of legal mentality); institutional method (to identify the features of modern trends in re-evaluation of law by state institutions); doctrinal approach (for the comprehensive study of legal texts, which are the key to reforming and strengthening the legal mentality in different jurisdictions in Europe); modulation method (formation of a project idea on the prospects of renewing approaches to the legal mentality in Ukraine in the context of post-war recovery and intensification of European integration processes).

The doctrinal approach helped to identify and interpret the content of the regulatory acts and documents in the area under research. The functional was used to describe the activities, tasks and main prospects of interstate partnership in the context of transformations of approaches to the Ukrainian legal mentality in the context of European integration. The dogmatic method was applied when drawing conclusions in accordance with the aim of the research and the main outlined research objectives.

The above tools enabled covering the author's view of the possibility of introducing new approaches to the transformation of Ukrainian legal mentality in the context of European integration, preserving and enhancing strong sustainable signs of national identity.

3. Results

The concept of "mentality" (from Latin *mens, mentis* — "mind, intelligence", "composition of thinking") can be considered from the perspective of philosophy, sociology, political science and psychology. The mentality is based on the collective unconscious, but this does not limit the mentality. The mentality is constant in nature and is characterized by value orientations.

The characteristic semantic load of this term is a group feature that reflects a certain attitude of different groups to the world. This term is related to ethnic community, the experience of which is based on the collection and interpretation of the necessary information from a number of generations.

Legal mentality is a point of view and response to objects of state legal reality. Legal mentality is a special category that includes certain behaviours in the legal sphere, as well as a special law assessment system. It is formed by society and all the phenomena related to law on the basis of objective and subjective factors. In this case, the assessment is influenced by historical experience, characteristic and constant national ethnic unity. The legal mentality is structured and consists of a number of constituent elements. They all show its nature and form unity (Figure 2).

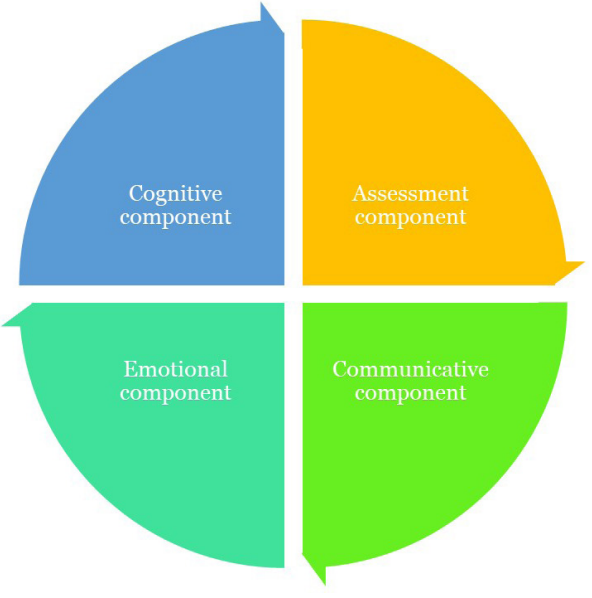

Figure 2. The structure of legal mentality. Source: prepared by the authors.

The cognitive component contains legal thought and legal consciousness that form the legal behaviour of the individual. The assessment component is aimed at establishing the way of mediation of legal values and directions in the minds of the individuals and society. The communicative component of legal mentality concerns legal customs. It includes social experience that accumulates legal advantages and is transferred in the process of historical development. The emotional component contains person's feelings and reflects his/her legal psychology. Value positions, impressions, intentions and ordeals that relate to a person or a particular society can be attributed to this component.

The European Union, which is a unique world community with sovereign countries connected by political, economic, social ties at different stages of European integration, plays an important role in the development of an internationally recognized legal mentality. Strengthening the ties between its Member States is one of the main goals of the EU integration policy. The European Union seeks to promote economic, social and territorial unity, reducing disparities between levels of development of different regions. Institutional integration is aimed at the transfer of political powers to the supranational level. The highest stage of institutional integration is a political union, which includes all important national sovereignties.

The European Union is characterized by an identity that has an impact on mentality and important behavioural effects. For example, traditionalism and nationalism are considered to be the main reasons for recent rise of populism. European national identity is determined in terms of, for example, ethnic and religious origin.

There is a multipolar division between different types of religions, as well as between atheists and religious people in the EU. According to the citizens of the world, European identity focuses on similarities, rather than on the differences between people. The EU population retains national identity and further develops or retains European identity. Local immigration gives rise to indigenous people's concerns about the integrity of local languages, identity and norms that influences mentality.

The origin of the immigrant population is crucial because cultural threat increases with the presumed increase in cultural distance between the native and immigrant populations. In the European context, the existing mentalities and their impact are determined by the different historical, political and economic circumstances occurring in the participating countries.

Multiple and different majority cultures often coexist in one country (for example, in Belgium, Spain). The EU mentality is also influenced by the values and beliefs characteristic of Eastern European cultures that have recently joined the European Union. So, European identity, along with national identity, has a strong impact on mental behaviour and attitudes.

The fact that the population of a number of EU countries has a feeling of detachment from social communication is of particular concern regarding the European mentality. This is manifested through a developed sense of sovereignty of one's worldview, immersion only in one's needs and problems. The lack of development of horizontal connections, isolation, commitment to the slogan "my home is my fortress" often make the process of social communication impossible.

This leads to the loneliness of the population even in very developed countries. The result is an increased suicide rate. The global average in 2019 across 180 countries is 9.49 suicides per 100,000 people. A number of EU countries maintain fairly high suicide mortality rates per 100,000 population (Europe Sustainable Development report, 2022) - Table 1.

Table 1. The state of achieving sustainable development goals in the context of the European mentality and its components in terms of the suicide problem.

	Sustainable development goals achieved (%) 2019	Problems remain 2019	Serious problems remain 2019	The main problems remain 2019
Austria	11.33			
Belgium		15.22		
Bulgaria	7.99			
Hungary		15.65		
Germany	10.18			
Greece	4.63			
Denmark	10.59			
Ireland	8.15			
Spain	7.39			
Italy	5.62			
Cyprus	4.35			
Latvia			15.04	
Lithuania				22.89
Luxembourg	11.52			
Malta	3.95			
Netherlands	10.48			
Poland	11.96			
Portugal	8.76			

Romania	9.02			
Slovakia	6.97			
Slovenia			18.23	
Finland		13.47		
France		12.76		
Croatia		14.01		
Czech Republic	11.22			
Sweden		12.75		
Estonia		14.89		

Source: Europe Sustainable Development report (2022).

Belgium, Hungary, Finland, France, Croatia, Sweden and Estonia still face some challenges in achieving the SDGs for suicide rates. Latvia and Slovenia have serious problems. Lithuania still has the main problems related to the suicide rate.

The family-like similarity that unites the EU countries into a single whole is reflected in the mentality that has a significant impact on the legal upbringing process. EU countries are characterized by respect for rules and laws. The World Justice Project, an independent interdisciplinary organization, conducts an annual assessment of the rule of law. The 2022 Index ranked 140 countries and jurisdictions worldwide (WJP, 2022).

Such factors as limiting government powers, lack of corruption, open government, and basic rights were considered. The level of order and security, regulatory enforcement, civil justice, and criminal justice were also assessed. The rule of law is declining in most countries for the fifth year in a row. However, EU countries mostly show quite high indicators. Denmark (1) is the country with the highest rule of law rating among 140 countries. It is followed by Norway (2), Finland (3), Sweden (4), the Netherlands (5) and Germany (6).

The legislative activity in the EU countries is free from corruption and one's own interpretation of the legal vision. The results of the relevant activity are clearly defined by legislative acts. The legal mentality of Europeans is based on an attitude towards legal canons from the perspective of a deeply thought-out order, the violation of which causes inevitable rejection. Officials or judges try to avoid a broader and more abstract interpretation of powers, subjectivity when making legal decisions. Members of the judiciary, like other citizens, have the right to freedom of expression, belief, association and assembly.

But they must always behave in such a way as to preserve the dignity of their office, as well as the impartiality and independence of the judiciary. Therefore, a legal mentality leads to a clear legal framework and reasonable justification. The laws of the countries are characterized by mandatory implementation for every citizen. For its part, law provides full protection of fundamental human rights.

The realization of civil law requires urgent means of resolving relevant disputes without an excessive cost. The population of EU countries has a fundamental right to go to court at any time. Everyone has the right to a fair and public trial within a reasonable time by an independent and impartial tribunal (ECHR, 1950). EU Member States properly fulfil their obligations under international law, namely under the agreements, international customs and practices.

EU officials must properly do the job they were hired to do by EU taxpayers. The mentality of the population clearly rejects any financial or moral preferences for officials at all levels. The recognition of the rights of the individual as a priority over the rights of the state is the most significant component of the European legal mentality. The independence of judges and the right to a fair trial (82% for both) are the EU values most supported by Europeans (Eurobarometer, 2021).

They are followed by freedom of thought, expression and religion (81%). The two most important personal values for EU citizens are caring for loved ones (77%) and making decisions about their lives (78%). The most important identities of EU citizens are their family (81%) and national identity (73%).

The most characteristic feature of the European legal mentality is striving for the rule of law, which is observed against the background of the gradual reduction of crime rates. In 2020, the police recorded 136 serious assaults per 100,000 inhabitants in EU countries, which is 8 cases less than 144 in 2019 (Eurostat, 2022). Between 2019 and 2020, the number of robberies recorded by the police in the EU reduced by 19% to approximately 182,300 cases.

The EU police registered about 1,339,400 burglaries in 2020, a decrease of 13% compared to the previous year. There were a total of 3,929,300 thefts registered by the police in 2020, which is 19% less than in 2019. For example, in the EU there were around 447,700 car thefts registered by the police in 2020. This is 49% fewer cases than in 2008 and 11% fewer than in 2019. In the EU, there were around 1,090,700 illegal activities involving controlled drugs or precursors registered by the police in 2020, which is 2% less than the 2019peak value.

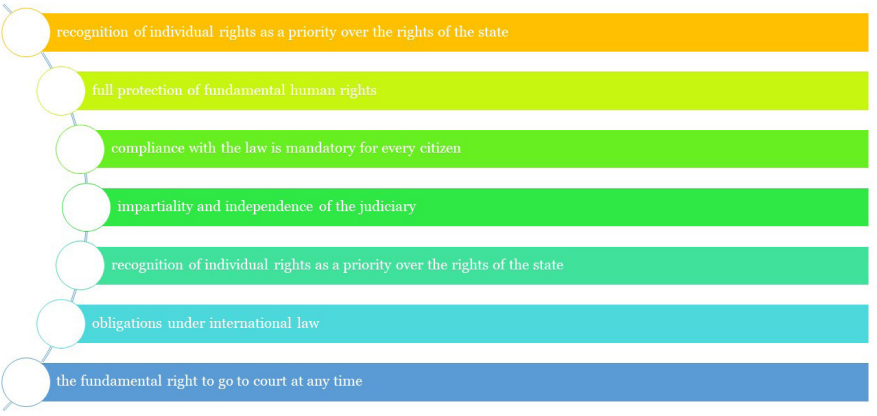

Figure 3. Features of the European legal mentality. Source: prepared by the authors.

The Ukrainian mentality is characterized by individualism, which brings such advantages as freedom of choice and a strong sense of self-efficacy. The inherent plurality and rooted democratic culture contribute to resistance to despotism. The Ukrainian mentality is based on the importance of finding meaning and goal, which is characteristic of the existential worldview. This should be realized through participation in life on many levels: physical, social, personal and spiritual. Moreover, the contradictions of life are being constantly studied. Cordocentrism occupies a special place in the Ukrainian mentality.

Ukrainian cordocentrism is a unique phenomenon that presents the doctrine of human integrity, where the soul and body are united by the spirit. Sharing the modern view of a human being as an intelligent creature, this mentality is characterized by the expansion of the limit of the intelligent, involving the concept of the heart as an intelligent component.

The structure of the Ukrainian legal mentality is very complex, dual and original. The essence of the legal mentality of Ukrainians should be considered through the prism of their history, modern transformations, culture and lifestyle, customs and traditions. The Ukrainian legal mentality was formed under the influence of the geographical location of the state at the junction of European and Asian legal culture.

There was no national state for a long time, Ukrainian lands and population were part of the USSR for a long time. Legal nihilism is deeply rooted in the consciousness of the Ukrainian people. The lack of desire

to maintain the rule of law is one of the defining characteristics of the Ukrainian legal mentality. The characteristic feature is the denial that none can be above the law, that all can be equally treated under the law. Mass ordinary legal nihilism combines the implications of such phenomena as legal ignorance, sceptical prejudices, and legal naivety. This legal mentality may include a lack of accountability to the law, clear and fair processes for ensuring compliance with the law.

There is a typical lack of an independent judicial system and non-compliance with guaranteed human rights. This legal mentality is manifested in the recurrent failure to fulfil legal orders, reluctance to understand the basic values of legal reality. People are set to achieve socially significant results by illegal means or by minimal use of the legal means in practice. This mentality is expressed by complying with legal requirements only under threat of coercion or for personal gain.

Statism occupies a special place in the Ukrainian legal mentality, which is characterized by the attitude towards the state as the highest result of social development. The individuals cease to count on their own capabilities as a result of excessive reliance on state authority. The result in society is the formality in the relationship between the state and the individual. This has led to lacking civil rights in Ukraine throughout the long historical period.

The current revision of legal values by an individual in Ukraine is an example of legal mentality. For example, marriage is universally recognized as a fundamental social institution. But the economic rise and the associated growth of individualism, many functions that were once reduced to marriage are undergoing transformation.

Sex, cohabitation and childbirth without registration have increased dramatically. This situation becomes a normal component of family life. The number of marriages in Ukraine has decreased significantly over the past 30 years. There were 214,000 marriages officially registered in 2021 compared to 493,000 in 1991 (Ukrainska Pravda, 2022).

People have a double attitude to a wide range of topics, including abortion, organ donation, euthanasia, drugs, and alcohol. This ambivalence has a major impact on people's emotions as people process information and solve problems. There are strong positive and negative associations. The revision of legal norms leads to a psychological conflict between opposing assessments.

But the legal mentality regarding the revision of legal values, for example, the attitude to marriage has begun to change positively since the beginning of the military conflict in Ukraine in 2022. The number of marriages in Ukraine registered for the first half of 2021 was 85,960 (Ukrinform, 2022). There were 103,903 marriages registered during the same period of 2022. This is 21% more than for the same period in 2021, and an absolute record

for the last seven years. The number of divorces in Ukraine during this period almost halved to 7,632 cases compared to 13,153 divorces in the first half of 2021.

Ukrainians are characterized by personal agitation, alienation and insecurity arising from the lack of goals or ideals, social instability resulted from the collapse of standards and values. These are signs of anomie in the current Ukrainian legal mentality. The current situation in Ukrainian society aggravated by a negative factor of military operations, has led to the imbalance of a number of psychological and social indicators. In this case, Ukrainian legal mentality was characterized by the despair, social panic, deep inner confusion or apathy.

The number of domestic violence began to increase in the wartime. This have contributed to the feeling of insecurity, which caused distrust in the actions of the authorities. However, the war of the Russian Federation against Ukraine raised the latter's significance and authority in the world. This situation promoted the consolidation of Ukrainian civil society with the state authorities, which indicates positive changes in the legal mentality of Ukrainians.

Ethnic values have a serious impact on the formation of the Ukrainian legal mentality. Ukrainians strive to preserve their own identity. Ukraine is populated by the representatives of various nations, nationalities, and social groups, which have some peculiarities of thinking, their own moral and social guidelines. In aggregate, this leads to the formation and development of a specific spiritual perception of reality, building a corresponding mentality. The start of Russia's large-scale war against Ukraine in 2022 triggered the reconstruction of Ukrainian identity, and, as a result, of Ukraine's foreign policy identity on a global scale.

A high level of legal culture is an important sign of legality. The level of legal culture determines the level of social activity of citizens, their direct participation in the activities of the state, control over its functioning. There is a high degree of civic responsibility for events in the state, the establishment of civil society institutions. The legal culture optimizes the system of legal protection of individual rights, anticipating mistrust of different strata of the population, nations and peoples.

The higher the level of legal culture, the more qualitative and effective law-making and law-enforcement, the more perfect the institutional structure of the state, the functioning of its bodies. The Ukrainian legal mentality is characterized by distancing from the legal culture, from its universal values.

While legal nihilism is the ignoring or denial of law, the Ukrainian legal mentality, which is based on legal idealism, is characterized by a revaluation of law, its idealization. Both cases are the result of legal illiteracy, low legal

awareness and low political and legal culture. Although legal idealism is not as obvious as legal nihilism, this phenomenon is no less harmful to the state and society than legal nihilism.

This is why both legal nihilism and legal idealism, which fuel each other, should be considered as a general manifestation of legal illiteracy. In case of legal idealism, laws are seen as miraculous documents capable of instantly solving all problems. So, legal idealism, in contrast to legal nihilism, values the place of law in society. The source of these who phenomena is the diseased legal awareness, weak political and legal culture. The ground for mistrust and indifference of Ukraine's population towards laws is their weakness and unsustainability. Indifference to the law, on the other hand, gradually leads to indifference to authority.

Independence had an effect on the legal mentality of Ukrainian society. This situation led to excessive politicization of the population. Society is too biased with political gossip and intrigue. This recedes the issue of compliance of socio-political phenomena with legal requirements into the background.

Any country that meets the EU membership requirements can apply for membership. These requirements are known as the Copenhagen criteria and include stable democracy and the rule of law, a functioning market economy and the adoption of all EU legislation. Ukraine is integrating EU legislation into national legislation. On June 23, 2022, the European Council decided to grant Ukraine the candidate country status at the summit in Brussels.

The main directions of interaction of the parties on the way to establishing the rule of law and strengthening the relevant institutions of Ukraine have been determined. The most important shift that is currently taking place in the consciousness of European society is the change in the mental attitude towards Ukraine against the background of the military conflict. The society of the largest number of European countries is ready to accept Ukraine's membership in the EU. The support for such an initiative increased on average from 55% to 70% in 2022 compared to 2020 (Razumkov Center, 2022).

Along with inherent negative components, Ukrainian legal mentality has a lot in common with such European values as democracy, striving for justice and love of freedom. Ukraine ranks 76th out of 140 countries in the world according to the overall balance of the Rule of Law Index (WJP, 2022). More attention should be paid to the issues of law and order (87), limiting the powers of the government (92), and criminal justice (93). The of the absence of corruption (116), regulatory law enforcement (106) were slightly worse. The best results were obtained for open government (50), fundamental rights (55), civil justice (67). This indicates a favour to the European legal system, and therefore to the European legal mentality.

4. Discussion

It can be stated that the genesis of mentality reflects the psychological peculiarities of mentality as an ethno-psychological category. It is a system of ideas and values that determines the way of action and arranges the corresponding actions in the socio-cultural realities (Gordiychuk, 2019). The single European mentality is a very young construct that emerged after the Second World War, although European culture with its separate legal ideas dates back to antiquity (Gobel *et al*., 2018). People do not face differences in a homogeneous environment, so they may support culturally determined stereotypes of other people's groups that they occasionally see.

Heterogeneous environment is more likely to expose people to diversity, so they will often encounter inconsistencies with mental stereotypes (Bai *et al*., 2020). But people can adapt old stereotypes. According to researchers, this view of diversity involves mental development. Innovative values breaking into the space of national society from European culture must correspond to the code of national society. The mentality must be popular, competitive and meaningful, if the national society wants to protect it from devaluation (Urunova, 2020).

It can be established that the legal mentality is based on an axiological characteristic, the components of which are the main ethnogenetic values (Klimova, 2019). They are aimed at preserving the original identity of the legal culture, do not allow the loss of individuality during the coexistence with other legal cultures. It is necessary to pay attention to the content and forms, composition and functions during the study of the issues related to the legal mentality. Its dynamics under the influence of various conditions and factors deserves special attention (Kurbanov, 2022).

It was stated that individualistic values can be positively associated with psychological well-being. Legal mentality, which is based on an orientation to a higher degree of individualism, can also manifest itself in ways that adversely affect psychological health (Humphrey and Bliuc, 2022). Young people living in Western countries need to protect themselves from the negative manifestations of individualism by creating wide social networks. Inter-ethnic tension in Europe caused by the increased number of ethnic minorities is growing, which may affect the transformation of the legal mentality. It is necessary to focus on the available strategies to eliminate possible tensions with the existing high level of immigration and diversity in many developed countries (Zhussupova *et al*., 2022).

It can be concluded that legal nihilism and legal idealism are related to general legal awareness, general legal culture, legal thinking of society. The implementation of a wide range of measures to increase the legal awareness and culture of the population require special attention. This especially applies to young people, who must take an active part in

building a democratic legal state, learn to know and protect their rights (Utemuratov, 2021). According to the researcher, effective implementation of this objective depends on many factors, including the proactive activity of state authorities. They should create preconditions to make every citizen strive for active participation in democratic transformations.

So, assimilation of European legal values by the Ukrainian society will become an important factor in further constructive transformations in the state discourse. Acceptance of the ideas of democracy, rule of law, human rights, dignity, tolerance, and self-realization in the national culture and public consciousness will become factors in overcoming the counterproductive legal advantages of Ukrainians (Shtepa, 2019). According to the researcher, the constructive influence of the European socio-cultural space on the Ukrainian legal mentality is another factor in eliminating the Soviet mentality, legal nihilism, and corruption.

Conclusions

The current integration and globalization processes touch upon all spheres of life of a society. The humanity enters a period of transformation with various complex contradictions associated with intensive development of economic, political, spiritual interactions and relations. Knowledge and understanding of the way of thinking, the general spiritual attitude of the nation, the ethnic group become especially important in these conditions.

It is urgent to acquire knowledge of the nature of the mentality of society, the ability to reduce negative manifestations in ethno-national relations caused by mental differences. The objective of socio-philosophical research is to identify and distinguish the natural and essential understanding of the concept of mentality.

Identity, which focuses on similarities between people, is a characteristic positive feature of the mentality for the EU countries. It can be both European and national. A sense of detachment from social communication can be considered a negative feature of the mentality of the EU countries. The legal mentality of the EU population is based on respect for the law, observance of human rights and freedoms, respect for human life, and tolerance. All European countries have a pattern of strict compliance with the law.

The legislative sphere in the countries of the European Union is free from corruption and beyond its own interpretation of the legal vision. The judiciary is impartial and independent. Mandatory compliance with the laws by the population, ensuring full protection of human rights by the state are also manifestations of legal mentality. The recognition of the rights of

the individual as a priority over the rights of the state is the most significant component of the European legal mentality.

The Ukrainian mentality is characterized by a democratic culture, an emotional and sensual component, and cordocentricity. It is characterized by the dualistic integrity of the unconscious and the conscious, the irrational and the rational. Important components are freedom of choice and a strong sense of self-efficacy. The Ukrainian mentality is specific and individual, which is its core importance. Identity is a positive feature of the Ukrainian legal mentality.

Legal nihilism, legal idealism, statism, anomie, distancing from the legal culture, ambivalence are negative features of the Ukrainian legal mentality. The legal mentality in Ukraine is also characterized by the modern revision of legal values by the individual, excessive politicization of the population. The war in Ukraine added to the importance and authority of the country in the world. This situation prompted the consolidation of Ukrainian civil society with the state authorities, which indicates positive changes in the legal mentality of Ukrainians.

Ukraine's status of a European state requires not only economic and political transformations. Ukrainian society should make a lot of efforts to increase the level of legal awareness. Awareness of Ukrainian society as Europeans, recognition and observance of European values is required, which provides for drastic changes in the legal mentality.

For its part, European society is changing its mental attitude towards Ukraine against the background of the military conflict. The society of most European countries is ready to accept Ukraine's membership in the EU. The Ukrainian legal mentality has a lot in common with such European values as democracy, striving for justice, and love of freedom.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 400-418
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Private-law definition of the concept and legal nature of human genetic information

DOI: https://doi.org/10.46398/cuestpol.4176.23

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Abstract

The article explores the private law regime of human genetic information. To achieve the objective, an analysis of bibliographic sources in the field of genetic and genomic research, legal support for the circulation of genetic information and its legal protection was carried out. The document also analyses the provisions of the legislation and practice of the United States and the Member States of the European Union. General and specific methods of scientific knowledge, including dialectical methods, formal logic and comparative law, were used to solve the problems raised. The article clarifies the doctrinal and legal definitions of the concepts of "genome" and "gene" of an individual. It points out the dual nature of the human gene as a material object: a DNA molecule, and also as a unit of hereditary information that is intangible in nature. The article explores the possibility of attributing genetic information to objects of civil rights, in particular material objects, intangible movable property and the results of intellectual activity. The conclusions support the need to distinguish between the concepts of genetic information and genomics. In addition, it reviews theoretical approaches to define the concept and nature of genetic information.

Keywords: genetic information; genes and genome; privacy; personal data; private law.

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Recibido el 14/12/22 Aceptado el 16/01/23

Definición de derecho privado del concepto y naturaleza jurídica de la información genética humana

Resumen

El artículo explora el régimen de derecho privado de la información genética humana. Para lograr el objetivo se realizó un análisis de fuentes bibliográficas en el campo de la investigación genética y genómica, soporte legal para la circulación de la información genética y su protección legal. El documento analiza también las disposiciones de la legislación y la práctica de los Estados Unidos y los Estados miembros de la Unión Europea. Para resolver los problemas planteados se utilizaron métodos generales y específicos del conocimiento científico, incluidos métodos dialécticos, de lógica formal y de derecho comparado. El artículo precisa las definiciones doctrinales y legales de los conceptos de «genoma» y «gen» de un individuo. Señala la naturaleza dual del gen humano como objeto material: una molécula de ADN, y también como una unidad de información hereditaria que es de naturaleza intangible. El artículo explora la posibilidad de atribuir información genética a objetos de derechos civiles, en particular objetos materiales, bienes muebles intangibles y los resultados de la actividad intelectual. En las conclusiones se fundamenta la necesidad de distinguir entre los conceptos de información genética y genómica. Además, revisa los enfoques teóricos para definir el concepto y la naturaleza de la información genética.

Palabras clave: información genética; genes y genoma; privacidad; datos personales; derecho privado.

Introduction

A quantum leap in the development of medicine, biology, genetics, and genomics has allowed scientists to solve one of nature's greatest mysteries – to decipher the human genome. Genetic engineering methods of today make it possible to interfere with human DNA by introducing specific mutations or replacing or editing some gene fragments. Moreover, in the context of the COVID-19 pandemic, thanks to continuous scientific research on human DNA and RNA, scientists have been able to create vaccines relatively quickly based on artificial messenger RNA, which uses human heritable information to produce proteins and corresponding antigens.

Currently, gene editing is rapidly emerging worldwide, and scientific research in genetic engineering is on the verge of spreading the practice of genetic "improvement" of an individual (Straiton, 2019). On the one hand, this knowledge is instrumental, making it possible to discover and

develop methods for treating existing and avoiding potential diseases that previously posed a mortal danger to entire populations.

On the other hand, insufficiently protected access to genetic information about an individual as the keys to its biological nature can lead to discrimination based on heritable genetic traits and infliction of colossal damage not only to the carrier of genetic information but also to his relatives and future descendants.

In many countries of the world, the collection, storage, and use of genetic information are carried out in the plane of public law, which is associated with the taking, processing, and storage of samples of biological material and the extraction of genetic data to search for criminals, identify corpses or missing persons. In addition, several states carry out mandatory genetic registration of specific categories of citizens, including military personnel and persons whose activities are associated with an increased risk of death or missing.

However, in this article, we are discussing the private-law nature of genetic information because most of the legal acts adopted by the international community to regulate the use of genetic information pay special attention to its confidential status and recognise that the interests of an individual prevail over the interests of society and the benefits of scientific research.

This approach indicates the recognition of genetic information as part of the private sphere of human life, which allows us to consider genetic information as a category of private law. Therefore, today it is crucial to solve the issue of the possibility and practicality of classifying genetic information as objects of civil rights and the formation of a special civil-law regime for genetic information, as well as a mechanism for its protection.

That is why the article aims to explore the private-law nature of human genetic information and the legal regulation of its collection, storage, and use through the prism of protecting the rights of the individual from whom the genetic information originates. This study has the following objectives:

- determine the concept, the legal nature of genes and the human genome, as well as their place in the system of objects of civil rights;
- analyse the legal regime of human genetic information;
- explore the mechanisms of the legal protection of human genetic information.

1. Literature review

Even though the regulation of biomedical activities in the field of genetic technologies began to take shape relatively recently, among law science research, one can already find many works devoted to the legal regime of human genetic information. This testifies to the growing relevance on a global scale of the chosen problem of the article.

Imekova and Boltanova (2020), in their studies on the place of genetic information in the system of objects of civil rights, drew attention to the fact that in order to determine the civil-law regime of genetic information, it is of fundamental importance to distinguish between genetic information and genetic data. Scientists noted that genetic information is personalised information, while genetic data is pseudonymised and characterised by a formalised form.

A slightly different approach was identified in the scientific works of Novoselova and Kolzdorf (2020), who distinguish between the concept of genetic data as personalised information about a certain individual, and genetic information as a sequence of nucleotides responsible for the manufacture of a product with a specific function or otherwise affecting the management of biological processes in the body (i.e. non-personalised data that can be specific to an unlimited number of persons).

Kwiatkowski (2020), in order to identify problems of legal regulation in the field of genetic and genomic research, analysed the jurisprudence of the European Court of Human Rights in determining the legal regime of objects of genetic and genomic research, in particular genetic information, biological materials, embryos, as well as practice regarding the search for a balance of private and public interests in determining the boundaries of the implementation of genomic and genetic research.

Kosseim *et al.* (2004) studied the general directions of legal regulation adopted at the international, regional, and national levels for the protection of genetic information. Shabani and Borry (2018) analysed the new General Data Protection Regulation (GDPR), which came into force in 2016 and repealed Directive 95/46/EC (European Union, 2016), in the context of improving the efficiency and harmonisation of personal data protection in the EU, taking into account the inclusion of genetic data in the catalogue of special categories of data (sensitive data).

Clayton *et al.* (2019), examining the legal landscape of genetic privacy, note that few legal doctrines or legislation, in general, provide adequate protection or meaningful control over the disclosure of an individual's genetic information.

In this regard, it is proposed to shift attention from attempts to control access to genetic information to the question of how this data can be used

and under what terms, given the need to find a compromise between the individual and society.

Levushkin (2019), justifying the possibility of including genes and genomes in objects of civil rights, considered the issue of the transferability of genes, genomes, and genetic constructs and the possibility of concluding various civil-law contracts with them. In addition, he proposes classifying genes and genomes as objects of intellectual property rights, providing them with patent protection and establishing appropriate legal procedures.

In general, the notion of recognising the patentability of genes and genomes (both natural and synthetic) is quite debatable among scientists. It should be noted that earlier, the position on the inadmissibility of patenting genes and genetic information prevailed. In particular, Then and Schweiger (1999) are convinced that a gene is a part of the wildlife that is a common heritage. No one invented genes; therefore, they cannot be patented.

Herrlinger (2004) points out that issuing a patent for a human gene violates public order and morality. Michelotti (2007) notes that genetic compositions are actually plagiarisms from publicly available sources (natural genes); therefore, synthetic genes should not be protected as objects of intellectual activity.

However, recently the position of scientists has changed. Beyleveld (2011) does not question that genes may be subject to patenting. However, he considers the practicality of including genes in intellectual property due to the possible risks of limiting patients' access to innovative developments in genetic technologies. Burk (2013), analysing US jurisprudence, also notes that synthetic genes, even those entirely identical to natural ones, are subject to legal protection as objects of intellectual property rights. Mokhov *et al.* (2020) substantiated that genes, in particular edited or synthesised, are objects of intellectual rights.

Novoselova and Kolzdorf (2020) detail that patenting a sequence or part of a gene as a substance is possible if certain conditions are met – the presence of a technical process and the disclosure of a novel technical function: A new route to the industrial production of a gene sequence shall be described, or a new function of the gene obtained (discovered) that allows the creation of a new medicinal product or assay (Segert, 2018; Wolf *et al.*, 2019).

Thus, in the scientific literature, one can find a variety of approaches to the definition of the concept and legal regime of such objects of civil rights as a gene, a genome, genetic information and genomic information. On this basis, conclusions about the legal regime and legal protection of genetic information are very different. In this regard, in this article, the author will unify and supplement the existing approaches in the science of private law.

2. Materials and methods

Considering the chosen subject of the research, the preparation of this scientific article used laws and regulations, court decisions, and legal literature. The subject and object of the study determined the application of the methodology of the science of civil law, since genetic information is included in the objects of civil rights in the form of personal information of an individual, intangible personal property (right to privacy), and results of intellectual activity.

The tasks set by the author for the study led to the use of general scientific and special methods of scientific knowledge, including dialectical, formal logic, and comparative law methods of analysis and synthesis.

Thus, one of the critical methods of this study was the dialectical method, which manifested itself in identifying and comparing opposite phenomena. In particular, when studying the possibility of extending the regime of objects of intellectual property rights to synthetic genes and referring anonymous and pseudonymised genetic information to personal data, competing groups of scientific views on these issues are opposed.

In addition, when applying the dialectical method, an alternative (antithesis) is put forward as opposed to the preferred point of view on the identity of the concepts of genomic and genetic information. In this regard, an idea is formed about the different legal natures of these phenomena.

The use of methods of analysis and synthesis manifested itself in the study of judicial practice in the application of legislation in the field of collection, storage, and use of genetic information in different countries, in particular, the dissemination of such information on the legal regime of personal data or intangible personal property (right to privacy).

The formal logic method was applied to understand the logic of the law regarding the use of genetic information without unnecessary subjectivity, which made it possible to conclude that genetic information is of a private-law nature.

The use of a comparative law method was manifested in the study of legal approaches of various legal systems that regulate the collection, storage, and use of human genetic information, which made it possible to identify a relatively high level of freedom of action for subjects in the field of circulation of genetic information at the international level.

The theoretical and methodological basis of the author's scientific research was the works of leading scientists and practitioners in the field of medical and intellectual law, dedicated to establishing the legal nature of the concepts of gene, genome, genetic information, and human genomic information as objects of civil rights. Considerable attention was paid to the

results of studies of the judicial practice of different legal systems, which helped to identify the main approaches to determining the private-law regime of genetic information.

Reviewing of the primary sources of national and international laws and regulations on the article's topic contributed to the author's conclusions. In total, the article reviewed thirty-seven sources. The complex methods, techniques, and means determined by the article's goals and the study's objectives helped reveal the issues outlined in the article to the maximum.

3. Results

An analysis of the sources that formed the scientific and theoretical basis of this study indicates that there are disagreements in the terms used both in the laws and regulations on the relevant topic and among scientists. Therefore, the concepts of human genetic and genomic information are equated, with which the author of this article does not agree. The Universal Declaration on the Human Genome and Human Rights (UNESCO, 1997) states that the human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity.

In a symbolic sense, it is the heritage of humanity. In the scientific literature, the genome is understood as the totality of an organism's genes, while the essence is not in the number of such genes but in the combination of specific genes as an integral system of a living organism.

In turn, a gene is a unit of heritable information responsible for the formation of certain qualities in the body, and with the help of which a certain process is encoded. From a biological point of view, a gene is a specific section of DNA, a sequence of nucleotides located in a particular place on a specific chromosome and responsible for the formation of products with a specific function, such as proteins.

That is, a gene is a collection of heritable material located in a single cell of an organism and contains the biological information necessary to build and maintain the organism. Genes are present in every living organism capable of reproduction. Their purpose is to follow, from generation to generation, the instructions necessary to create and maintain the life of an organism.

At the same time, DNA molecules do not independently perform a physical function in living cells and exist solely to store information in time. DNA, like a flash drive, is only a material carrier on which the information and instructions necessary for creating and operating living organisms are recorded in a digitally coded form. In other words, a gene can be viewed

as an inseparable combination of two components: Material basis – DNA molecules as a physical basis, as well as intangible content – the information contained in genes.

Unlike genes, the material carrier of the genome is a person himself/herself (living or dead), his/her organism, excluded from civil circulation, so it seems that the human genome should be identified directly with genomic information.

Although at the conventional level, the genome is defined as the heritage of humanity, the mechanism of legal regulation of human genome research and the application of their results in practice is dominated by the dispositive method, which gives participants in biomedical activities a set of rights and obligations, creating the basis for the free development of medical science for the benefit of humanity.

Given this, in the doctrine of private law and in practice, genes and the human genome are already recognised as objects of civil law. At the same time, the issue of their belonging to one or another named object of civil law is debatable. In particular, they can be considered as special substances and (or) a particular type of information of biological origin.

Recently, the discussion of the possibility of including genes in objects of intellectual property has become increasingly popular, especially considering the first successes in working with synthetic genes generated using computer software. For example, thanks to the Human Genome Project for sequencing the human genome, it became possible to print a new genome and introduce it into a living cell based on the code obtained.

However, this approach is often criticised because synthetic genes are plagiarising publicly available sources (natural genes). Since plagiarists should not, as a general rule, have the right to claim authorship, synthetic genes should not receive legal protection as objects of intellectual activity.

Meanwhile, at the regulatory level in European legislation expressly states that a biological material may be an invention and be protected by a patent if it is produced by means of a technical process, even where the structure of that element is identical to that of a natural element. The same approach was taken in the US when, in 2013, the US Supreme Court, in the case Association for Molecular Pathology v. Myriad, concluded that complementary DNA made in laboratory glassware was patentable. Generally, the possibility of patenting human genes differs in different jurisdictions (Table 1).

Table 1. The possibility of patenting human genes in different countries' jurisdictions

Countries	Genes as an object of patenting
European Union	Genes isolated from the human body or produced by means of a technical process, even where the structure of that element is identical to that of a natural element
US	Complementary DNA, synthetic genes, human-altered DNA sequences
Australia	Synthetic or altered natural genes
South Korea	Genes, parts of genes and other biomaterials isolated from nature, regardless of the source of origin
Mexico, Argentina, Brazil	Artificially isolated natural genes modified by humans
Japan	Genes artificially isolated from their natural environment, subject to industrial feasibility

Source: authors.

Despite the debatable issue of attributing genes and the human genome to a specific type of objects of civil rights, it is necessary to agree with the need to establish a special civil-law regime for genes, which would clearly provide for the possibility or impossibility of performing specific actions (transactions) with genes as an object, as well as related to such actions, a set of rights and obligations, permissions and prohibitions of different subjects participating in the relations gene engineering.

At the same time, the civil-law regime of genes should be inextricably linked with the right to life of an individual, providing a citizen with qualified medical care and patient treatment process, since any fact of interaction between an individual (patient) and a doctor, geneticist and other medical staff, gives rise to ensuring the right to healthcare.

Taking into account the established difference in the concepts of the genome and the gene as a whole and partial, it can be concluded that genetic information can be contained in any DNA molecule and store information about a certain quality, inclination of an individual, or features of the construction of his/her body.

Genetic information can reveal traits specific to a particular person and inherent traits in members of his/her family or even wider groups. In addition, genetic information can indicate both a real-life trait of an individual and only the correctness of the fact that a trait encoded in a particular DNA molecule will appear in an individual later.

In turn, genomic information is contained in a certain set of genes uniquely combined, revealing the characteristics of a particular individual as a unique being. At the same time, thanks to the genetic information of an individual, he/she can be easily identified; that is why, from a legal point of view, it is more appropriate to use the term "genetic information", since it corresponds to the concept of "genetic data", which is used in most international and national regulations to refer to information that identifies an individual.

In its most general form, genetic information is data and information obtained from a specific material source as a result of an individual's specific activity. At the same time, thanks to an individual's genetic information, he/she can be easily identified since it contains information about the previous, current physical and mental health of an individual, blood type, and other identifying information.

The main characteristic of genetic information is the presence of information about specific fragments of DNA, which is the carrier of heritable information about the individual and serves as the source of all genetically determined traits studied during the examination of biological objects.

A specific material source of human genetic information can be any biological materials, for example, biological samples (blood, blood plasma, skin, bone cells) or even a whole human corpse. As for the special activity during which genetic information is obtained, it can be a medical examination, testing, screening, medical and scientific research, genetic and molecular assays, and other types of biomedical activities.

An analysis of the legal literature made it possible to conclude that the concept of genetic information is used to define different phenomena. In particular, genetic information is defined as the following:

- genetic data containing information about human health (personalised to some extent), access to which may be restricted;
- general non-personalised information about the structure of proteins, encoded by the sequence of nucleotides;
- the general concept of nature embedded in every cell that belongs to everyone.

At the same time, along with genetic information related directly or indirectly to a specific individual and allowing him to be identified (personalised genetic information), it is also possible to extract data that allows us to obtain information about the relatives of an individual or about a certain group of persons (non-personalised data, which most often contained in a certain information system – a database).

The International Declaration on Human Genetic Data (UNESCO, 2003) uses the term "human genetic data" to mean information about the heritable characteristics of individuals obtained by analysis of nucleic acids or by other scientific analysis. From this definition, we can conclude that genetic data is one of the types of genetic information.

In the legal literature, there is a position that the concept of information includes both information, which is viewed as information related to a specific subject, object, fact, case, the rights to which belong to the subject of information, and data – a set of information, combined and ordered according to a certain attribute, several attributes or criteria, the rights to which, as a general rule, belong to the author of this information.

From this point of view, information about the heritable characteristics of specific individuals is more genetic information than genetic data. Such genetic information is of an individual, personal nature as relating directly or indirectly to a specific or specific person. In turn, genetic data have a sign of mass character, are non-personalised data (pseudonymised) and primarily pursue research goals, for example, to develop measures to increase life expectancy, develop technologies for screening the human gene pool, assess genetic risks, create medicinal products, and genome sequencing.

According to para. 1 of Article 16 of the Additional Protocol to the Convention on Human Rights and Biomedicine concerning genetic testing for medical purposes (CETS No. 203), research on a person may only be undertaken if the persons undergoing research have been informed of their rights and the safeguards prescribed by law for their protection. It follows from the above that this Convention considers genetic information in the context of the personal data of an individual.

Also, in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) "genetic data" is defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained (European Union, 2016).

At the same time, according to paragraph 26 of the Regulation, the principles of personal data protection do not apply to any information concerning an identified or identifiable natural person, as a result of which the processing of genetic information for statistical or research purposes is excluded from the scope of data protection, which once again confirms

the difference between genetic information as personal information of an identified person and genetic data as non-personalised information of a certain circle of persons.

Consequently, the protection and dissemination of genetic information are carried out in accordance with the legal regime of personal data in the part in which genetic information identifies a particular person, affecting the right to inviolability of his private life. Even if we proceed from the fact that pseudonymisation is the processing of personal data, genetic information is subject to protection until it is depersonalised, after which it loses the status of personal data.

However, international, regional, and national regulations do not consider that DNA is a carrier of genetic information not only about a particular person but also about his/her parents, relatives, and descendants.

In addition to its individuality, the DNA molecule is associated with another main property – heredity and the method of transmitting heritable information relating to an indefinite circle of persons. Thus, it is essential to provide for the confidentiality of genetic information not only as personal data of a particular individual but also as an identifying feature of a whole group of people connected by family ties.

It should also be noted that para. 27 of the EU Regulation states that it does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.

Given the above, based on the fact that human genetic information is personal biometric data obtained from specific fragments of DNA (sometimes RNA) of a living individual or a corpse, based on which it is possible to identify an individual, determine the genetic propensities of an individual, obtained voluntarily, and in cases provided for by law, forcibly fixed in a biological sample and (or) stored in an information record, database, one can draw an unambiguous conclusion that the concept of "genetic information" is wider than the concept of "personal data".

More often, genetic information has the form of data that has been processed using computer technology. Therefore, ensuring the security of genomic information will always be associated with the operating DNA databases that generate such information and ensure its storage.

Such databases are created both to register offenders and for other purposes of identifying and establishing legal facts (search for missing persons, establishing paternity, databases for medical purposes). Such databases of genetic information operate in the USA, the United Kingdom, the countries of the Middle East and Asia. The Icelandic database generally contains the genotypes of the country's entire population.

At the same time, genetic information is closely related to the categories of "private life", "family life", "right to respect for private and family life". Even the consideration of cases by the European Court of Human Rights (ECtHR) related to genetic and genomic research takes place within the framework of the right to respect for private and family life, enshrined in Art. 8 of the 1950 Convention for the Protection of Human Rights.

In such cases, the ECtHR indicates that genetic information is personal information, the protection of which is essential for ensuring the right to respect for private life (ECtHR Decision of 4 June 2013 in the case Peruzzo and Martens v. Germany). Genetic information contains data that allows not only to identify a person but also to establish a genetic relationship between people, as well as ethnic origin, and any uncontrolled or unreasonable use of genetic information is an interference with respect for private life (ECtHR Decision of 4 December 2008 in the case S and Marper v United Kingdom).

There has also been a legal debate in the United States about whether genetic information should be considered in the context of property rights or the right to privacy. In the end, the prevailing conclusion is that genetic information should be seen as a right to privacy rather than a vested interest, since it is privacy that has a more holistic view of the individual. Even in the practice of US courts in cases related to the human genome, a special place is given to disputes related to the misuse of genetic information and discrimination.

Thus, given the value that genetic information is for an individual as a "carrier" of genetic information and members of his/her family (including future descendants), as well as the high probability of using such information by third parties in order to restrict the rights of these persons and discriminate against them, it is quite justifiably extending the legal regime of privacy to genetic information.

It is to determine the guarantees of the right to confidentiality of genomic and genetic information that the UN International Declaration on Human Genetic Data was adopted, which is designed to ensure respect for human dignity, human rights and fundamental freedoms in the collection, processing, use, and storage of human genetic and proteomic data and biological samples, from which they are derived, respectively to the requirements of equality and fairness.

This Declaration sets out the criteria by which genetic data differs from personal information and requires a special legal regime guaranteed by the state (Art. 4).

In particular, genetic data can be predictive of genetic predispositions concerning individuals; they may have a significant impact on the family, including offspring, extending over generations, and in some instances, on the whole group to which the person concerned belongs; they may contain

information the significance of which is not necessarily known at the time of the collection of the biological samples; they may have cultural significance for persons or groups.

Such provisions of the Declaration indicate that two types of objects are used in genetic and genomic research and directly relate to privacy issues – these are genetic and genomic data, as well as their source – the biomaterial itself taken from a particular person.

After all, cells, tissues, or any substance of the human body, whether a sample of skin, bone, hair, or a drop of blood, contain a relatively complete picture of who we are.

Everything from gender, eye and hair colour to predisposition to certain behaviours or risk of developing certain diseases can be in a tiny biological sample that can remain identifiable even for hundreds of years. Therefore, the legal regime of privacy should extend not only to genetic information but also to biological materials that are material carriers of genetic information.

At the same time, it should be noted that the confidentiality of personal data is a relative concept. For some, the fact that they carry a little-known gene that is not essential to the average citizen may not be as important as information about an individual's credit history or marital status. On the one hand, DNA is conceptualised as a unique identifier and a record of an individual's life in the dimensions of the past, present, and future, which gives an idea of the individual in many aspects.

This naturally leads many people to desire to control and determine who has access to genetic information about them, provide solid privacy protections, or even possess personal genetic data. On the other hand, genetic data is not limited to one person, and information about one person reveals information about his/her close and distant biological relatives. Only by studying the vast array of genetic information of many people can one understand the significance and uniqueness of individual variants.

The public nature and value of genomic and genetic information make it challenging to decide what level of control individuals should have to ensure that privacy is adequately protected. It seems that a particular individual – a carrier of genetic information is obliged to determine the limits of interference in his/her personal life and give permission to introduce his/her genetic information, which is the key to the genome of a particular person. At the same time, for the development of biology and medicine, irreversibly pseudonymised genetic information should not be subject to the legal regime of privacy.

4. Discussion

Studies have shown that there is a tendency to classify a gene, a genome, genetic information and genomic information as objects of civil law and extend the legal regime of objects of civil rights to them (Mokhov *et al*., 2020).

At the same time, there are discussions about the private law nature of genes – whether to recognise them as material objects, since they are part of the material world in the form of a DNA molecule (Novoselova and Kolzdorf, 2020; Althabhawi and Zainol, 2022), whether this is intangible personal property included in the personal data of a subject of civil law Imekova and Boltanova (2020), since the DNA molecule itself is of no particular value – what matters is the code encoded in the gene, that is, the genetic information.

Does this fact mean that a single human gene is not subject to legal protection as part of the right to privacy? To perform any manipulations with the gene, it must be separated from the human body.

That is, genes are contained in any human biological material, including saliva, urine, and hair, which in most cases, naturally separate from the body without the informed consent of a person. This means that people daily leave billions of its genes everywhere, of no value, unless a particular individual is allowed to be identified (Pormeister, 2018; Ram, 2017).

The legal nature of the human genome is also ambiguous since it does not have a specific material substance and is contained in the aggregate of cells of the entire human body; that is, the genome is the intangible essence of the individual, along with life and health. The genome is devoid of economic content, and therefore, cannot be attributed to the property.

Since the literature did not distinguish between gene and genome concepts clearly, the doctrine did not investigate the difference in the legal regime of these legal phenomena (Krajewska, 2012; Lewis *et al*., 2021).

The issue of understanding the legal nature of genomic and genetic information is also debatable. In particular, there has yet to be a consensus among scientists on whether genetic information is a separate object of civil rights or is included in other named objects. Thus, some scientists believe that genetic information is covered by such intangible personal property as the right to privacy (Borodin and Ruzanova, 2021; Blinov *et al*., 2020), while others point out that genetic data is an element of such an object of civil rights as a database Imekova and Boltanova (2020).

In addition, in connection with the development of gene editing technologies, and the creation of synthetic genes using the latest computer software, at the doctrinal level, discussions are underway about the

patentability of synthetic genes and genetic data, that is, the possibility of classifying them as objects of intellectual activity (Marchant *et al.,* 2020; Wan *et al.,* 2022).

Also promising are studies of the circle of subjects covered by the legal regime of confidentiality of genetic data, given that DNA data can be used to identify not only the person from whose biomaterial the genetic information is taken, but also his relatives and future descendants, since in the reviewed articles the specified concept was not given due attention.

Conclusions

The importance of genetic data is constantly growing due to the expansion of the possibilities of its practical use. Genetic testing, medical and biological experiments, as well as mandatory genomic registration lead to the collection, processing, and storage of large amounts of genetic information about individuals. This fact indicates the need to determine the legal nature, develop a specific legal regime, and provide adequate guarantees to effectively protect genetic information from misuse.

To achieve this, the international community develops the boundaries of regulation of these issues, which are detailed in the national legislations. However, what is shared, both at the regulatory and practical level, is that genetic information is classified as personal data subject to special protection as the most confidential data.

At the same time, it is vital to maintain a balance of private and public interests, given that genetic information is of particular value for the development of biomedical technologies in order to explore the causes of certain diseases and find ways to overcome them.

International standards for the use of genetic information suggest that the interests of an individual prevail over the interests of society, which indicates the need for developing a regulatory framework for the circulation of genetic information in the plane of private law.

In addition, particular interest and prospects are seen in developing national legislation to ensure the patentability of synthetic human genes and genetic information as a result of intellectual activity. At the same time, it is necessary to approach with particular caution the possibility of including natural human genes in objects of intellectual property rights.

Thus, given the need for legislative transformations at the national and international levels, further research will be carried out to conduct a comparative-law analysis of the relevant innovations.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 419-436
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Application of international standards with a view to ensuring legal and organizational aspects of information protection in specialized information systems

DOI: https://doi.org/10.46398/cuestpol.4176.24

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Abstract

The article analyzes the regulatory and legal framework of Ukraine in the field of information protection, in order to develop proposals on the improvement of organizational and legal measures aimed at the protection of information resources in specialized information systems of the state authorities of Ukraine. It was imposed the necessity to clearly identify at organizational and legal level the problems of safe operation of specialized information systems, to determine the key threats in the field of information protection and to provide in time new modern legal tools to counteract the threats. The need for reorganization and improvement of organizational and legal measures aimed at information protection was considered. Dialectical, hermeneutic, inductive and deductive methods of analysis and synthesis were used in the research. It was concluded that changing the legal framework in the field of information protection is a time challenge, and only the most rapid modernization of organizational and legal measures aimed at protecting information in specialized information systems will ensure the task of sustainable operation of specialized information systems.

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Recibido el 14/10/22 Aceptado el 10/01/23

Keywords: information security; cybersecurity; specialized information systems; information resources; international legal standard.

Aplicación de normas internacionales con miras a garantizar los aspectos legales y organizativos de la protección de la información en los sistemas de información especializados

Resumen

El artículo analiza el marco regulatorio y legal de Ucrania en el campo de la protección de la información, con el fin de desarrollar propuestas sobre la mejora de las medidas organizativas y legales destinadas a la protección de los recursos de información en los sistemas de información especializados de las autoridades estatales de Ucrania. Se impuso la necesidad de identificar claramente a nivel organizativo y legal los problemas de funcionamiento seguro de los sistemas de información especializados, para determinar las amenazas clave en el campo de la protección de la información y proporcionar a tiempo nuevas herramientas legales modernas para contrarrestar las amenazas. Se considero la necesidad de reorganización y mejora de las medidas organizativas y legales destinadas a la protección de la información. En la investigación se utilizaron métodos dialécticos, hermenéuticos, inductivos y deductivos, de análisis y síntesis. Se llegó a la conclusión de que cambiar el marco legal en el campo de la protección de la información es un desafío de tiempo, y solo la modernización más rápida de las medidas organizativas y legales destinadas a proteger la información en los sistemas de información especializados, garantizará la tarea de la operación sostenible de sistemas de información especializados.

Palabras clave: seguridad de la información; ciberseguridad; sistemas de información especializados; recursos de información; estándar legal internacional.

Introduction

Development of the information and cyber space of Ukraine constitutes a key special feature of the future information technologies, and if Ukraine does not want to be left behind, it should already now, immediately, at an accelerated pace, respond to the changing threats, take specific steps to strengthen the state's information security. That is not just our view of the

current situation, but this idea is also confirmed by cyber-attacks against the critical infrastructural facilities, many other incidents that have made Ukraine disreputable as one of the key cyber grounds over the latest years (Yankovskyi, 2019).

Such status of cyber security in Ukraine has developed under the effect of a whole range of political, social and demographic, economic, legal, social and engineering, technological, and other factors. Superficial analysis of the situation, for instance, analysis of organizational as well as regulatory legal acts proves that in general the state is conducting an active and correct policy in the field of information security.

In particular, this is proven by the adoption of a number of regulatory legal acts over the recent years at the level of laws of Ukraine, decrees of the President of Ukraine, orders of the Cabinet of Ministers of Ukraine, orders of ministries and departments (On approval of the Concept of Developing Digital Economy and Society of Ukraine for 2018–2020 and approval of the action plan for its implementation, 2018; On the decision of the Council for National Security and Defense of Ukraine. On the Doctrine of Information Security of Ukraine, 2016; On the Main Principles of Ensuring Cyber Security of Ukraine, 2017; On the National Security of Ukraine, 2018); The strategy for the development of the system of the Ministry of Internal Affairs of Ukraine until 2020, 2017).

It was expected that these regulatory legal acts would become the basis for the development and implementation of effective organizational and legal measures that have to play a crucial role in ensuring information and cyber security in the state. However, analysis of actual results of application of their norms at the state level does not allow to talk about achievement of highly positive results. And sometimes even neglect of performance or compliance with the requirements of regulatory acts in the field of information and cyber security can be pointed out. Thus, it can be stated that the steps taken now in this domain that is important for Ukraine remain insufficient and ineffective.

Therefore, we can confidently state that ensuring of information and cyber security, reliable functioning of the national critical infrastructure, information and search as well as information and telecommunication systems must become not just a part of the state policy in the field of information protection, but must be included into the field of priority directions of the state policy. Hence, modern threats to information and cyber security require systemic response, adequate transformation of both the security sector in general and information and cyber security in particular already now (Rudyi *et al.*, 2018). In the same time should be taken into consideration relevant standards of the European Union (Gutnyk *et al.*, 2021).

One of directions of ensuring information and cyber security in Ukraine is organizing of ongoing monitoring of the global information security status, achievements in the field of information protection, that allowing to further ensure clear identification (at the organizational and legal level) of the problem of safe functioning of information and search as well as information and telecommunication systems, to determine key threats in the field of information protection and to ensure timely provision of new modern organizational and legal tools to counteract those threats, to meet the urgent need for reorganization and improvement of organizational and legal measures aimed at information protection in information and telecommunication systems.

Having said that, we cannot leave organizational and legal aspects of ensuring information security in sectoral specialized information systems (National Police of Ukraine, Security Service of Ukraine, Ministry of Defense, etc.) unattended. That is primarily related to the fact that mainly restricted-access information is processed in the information and search systems of those state entities. Therefore, development of new and improvement of current approaches to the implementation of those issues in the state's activity constitutes an important direction of ensuring its information and cyber security.

This article has been solving the following tasks:

- to conduct an analysis of regulatory documents that regulate issues of cyber security, information protection in information and telecommunication systems;
- to analyze international experience and international information security standards;
- to develop proposals for the implementation of international standards of information security to the existing legal framework in this field, primarily during the construction of complex information protection systems.

1. Literature Review

The results of analysis of a number scientific publications prove that the problems of legal regulation of organizational and legal measures aimed at information protection in specialized information systems constituted and still constitute an object of research for many experts. Some of them refer to the problems that cannot be solved if no new legislative, regulatory legal acts are introduced by the state in the field of digital space security, that is if information relations are not considered through the prism of the object of legal regulation (Rudyi *et al.*, 2017).

Here scientific achievements in this domain of such scientists as Buriachok, Tolubko, Toliupa, Khoroshko have to be mentioned. Special features of the organizational and legal principles of ensuring information security in specialized information systems are mentioned in the papers by Dovhan, Foros, Tkachuk, and others.

However, analysis of literature sources (Buriachok *et al.*, 2015; Foros, 2016; Dubov and Ozhevan, 2011) shows that no clear and totally comprehensible regulatory legal documents and organizational and legal measures aimed at ensuring existence of the national system of information and cyber security, protection of the state's information space, specialized information systems, computer networks have been finally developed.

There are no effective, efficient means of preventing and counteracting information threats, while the current ones are of no systemic nature and are, therefore, insufficient. The lion's share of information legal relations is regulated by by-laws, and sometimes even by departmental regulatory acts.

2. Methodology

The goal of this study is analysis of the applicable regulatory and legal provision of Ukraine in the field of cyber security, protection of information in information and telecommunication systems, development of proposals concerning improvement of organizational and legal measures aimed at information protection in specialized information systems with due account of the requirements of information standards on its basis.

Along with that, let us point it out that organizational and legal measures aimed at information protection in specialized information systems are considered as one of the strategic aspects of the system of information technology management in the state entities where restricted-access information is processed.

During scientific research, the use of the correct methodology is a guarantee that affects the result and quality of scientific work. The authors used the following main methods of scientific research: dialectical - gave an opportunity to consider the issue of cyber security as a process, the basis of which is the interaction, interdependence, mutual influence of various subjects, forms and methods and other components that take place in time and planes; hermeneutic, used to interpret relevant legal acts or their separate provisions, to establish the content of legislation and scientific knowledge taking into account the peculiarities of legal, legal and scientific language, when considering the categories of information space, information security; inductive and deductive - in the process of which a general conclusion about the results of the research is made on the basis of

the share of knowledge obtained; analysis and synthesis as interconnected and complementary methods, aimed at studying the existing methods of ensuring information protection in information and telecommunication systems, as well as during the study of regulatory and legal acts that regulate this field of activity.

The obtained data contributed to the formulation of the problem statement and research hypothesis as one of the methods of scientific knowledge.

3. State of organizational and legal support of information protection in specialized information systems of Ukraine

Lack of a systemic approach to the development of the state's legal policy in the information field also remains an important problem. A considerable drawback of the applicable Ukrainian legislation in this field, in particular, is lack of scientifically grounded definitions and wordings, and sometimes – their total non-availability. For instance, the applicable Ukrainian legislation does not have any clear definition of the notion 'information security' yet, though this notion may rather frequently be found in the regulatory legal documents regulating the issues of information protection.

The terminology applied in social relations in the field of information circulation often points to the lack of uniform, unambiguous approaches to the interpretation of many definitions, including the key ones. That refers, in particular, to Chapter XVI of the Criminal Code of Ukraine (Criminal offenses related to the use of electronic computing machines (computers), systems and computer networks and telecommunication networks) (Criminal Code of Ukraine, 2001), under which cyber crimes are investigated in Ukraine.

All that creates serious obstacles both for law-making activity in the information field, and for law-enforcement activity, as well as once again testifies to the lack of systemic nature in the settlement of the above issues (Dovhan and Tkachuk, 2019).

Thus, application of scientific methods of cognition, unified approaches to the development of conceptual principles in the field of information and cyber space protection, holding of analytical studies is a way capable of ensuring a real high-quality result, become the basis for passing further strategic decisions and determining the directions to improve regulatory legal, organizational and technical provision of cyber security in the state.

4. General analysis of the legislation of Ukraine in the field of information protection in information systems

Information relations constitute the basis of physical functioning of information and cyber space and therefore constitute the object of legal regulation. However, information technologies, telecommunication systems develop quicker than regulatory legal acts, by which they are regulated, are passed, which often constitutes the reason for the appearance of legal conflicts.

Current legislative base definitely is an important component in the implementation of information and cyber security of Ukraine. But it is high time that active actions be launched due to the fact that one of the key drawbacks of the applicable legislation in the security field is its passive nature, the need to ensure security of the information space and to counteract cyber crimes is only declared at the level of doctrines, decrees, decisions, etc. That is, the 'vector' that needs to be taken is set, while there is no financial, staff provision, no officials responsible for that are appointed, etc.

The legislation of Ukraine in the security field does not set the general frame approaches and directions, but sets detailed partial, step-by-step decisions. This statement is absolutely well-grounded and is accounted for, to our opinion, primarily by low level of training in the field of information technologies, the theory of information and cyber security of both officials assigned the duty of ensuring the state's information security, and specific performers dealing with the development of the regulatory legal base, and, most important – by the absence of the general state approach to ensuring sustainable functioning of the national critical information infrastructure.

Incorporation of Ukrainian legislation and the structure of regulatory legal acts of Ukraine in the field of information protection, that are binding as a legal doctrine, can be presented as follows: 1) Constitution of Ukraine; 2) laws of Ukraine; 3) decrees and orders of the President of Ukraine; 4) resolutions and orders of the Cabinet of Ministers of Ukraine; 5) regulatory legal acts of the Security Service of Ukraine, State Service for Special Communication and Information Protection of Ukraine; 6) international treaties of Ukraine related to information protection, consent to the mandatory compliance with which has been granted by the Verkhovna Rada of Ukraine. However, the problem of imperfect nature of the national legislation in the information field and absence of unified legal base related to ensuring information security in specialized information systems remains topical.

Among the key factors in this respect are regulatory factors – laws, standards, infrastructural decisions, etc. They aim at one common thing

– to ensure performance of organizational and technical guidelines, this enabling to raise the degree of protection of specialized information systems.

It should be pointed out that a significant progress has recently been made in the field of ensuring information and cyber security, in particular, at the institutional and organizational levels, in line with a number of regulatory legal documents (On approval of the Concept of Developing Digital Economy and Society of Ukraine for 2018–2020 and approval of the action plan for its implementation, 2018; On the decision of the Council for National Security and Defense of Ukraine. On the Doctrine of Information Security of Ukraine, 2016; On the Main Principles of Ensuring Cyber Security of Ukraine, 2017).

However, it should be taken into account that an important special feature of the information space functioning is its high dynamics and changeability of the threats posed to information security. That makes it impossible to develop effective organizational and legal provision in the field of information protection for the period longer that three – five years, and actually – even two years.

Therefore, at least every two years applicable legislation in this field will require adjustment in accordance with new challenges and threats as well as changes in the geopolitical security environment. Respectively, every two years information security policy in the bodies, institutions, enterprises processing information resources that are subject to protection must be reconsidered.

Such a situation causes changes in the treatment of security of its own information and cyber space by our state, and, hence, intensified protection of information, means of its processing and cyber environment in which this information circulates, identification of the objects under impact, that is taking measures to ensure information and cyber security (Yankovskyi, 2017).

Let us make an attempt to focus on the directions of improvement of organizational and legal measures aimed at information protection in specialized information systems where restricted-access information is processed with due account of special requirements set to security standards and independent audit of information security.

Currently, in Ukraine, besides the fundamental law On Information (1992), one of the key laws in the field of information protection is the Law of Ukraine on the Protection of Information in Information and Telecommunication Systems (1994). On their basis a series of regulatory documents for the system of technical information protection has been developed, of which the key one is ND TZI 2.5-004-99 (2012) The Criteria for Assessing Computer System Information Protection against Unauthorized Access. This document is used in the design and development

of comprehensive systems of information protection in state information resources as well as specialized information systems where restricted-access information protection of which is required by law is processed.

5. Discussion

Currently, due to lack of by-laws, requirements to the protection systems of specialized information systems are almost not specified. Now the norm of Art. 7 of the Law of Ukraine "On the Protection of Information in Information and Telecommunication Systems (1994)" still remains applicable. Under its provisions, state information resources or restricted-access information protection of which is required by law must be processed in the information system using a comprehensive information protection system of confirmed adequacy.

That is, all information protection systems in specialized information systems, their infrastructure requiring to comply with the requirements of the old standard for a comprehensive information protection system fall under the effect of this norm. However, the concept, inner structure and the model of implementation of a comprehensive information protection system, in fact, do not meet modern requirements to ensuring information security in specialized information systems, and the fact that this norm has not been removed from the applicable legislation is severely criticized (Yankovskyi, 2017).

In our opinion, the comprehensive information protection system currently contains the following drawbacks:

- outdated concept of information security system (it does not embrace the managerial level and security incident response, aims at protection and certification of information in some elements, and not in a specialized information system in general);
- does not ensure a sufficient degree of information protection system stable resistance to failures and restoration after failures;
- static nature and limited scaling opportunities (responding to incidents and threats posed to information security requires dynamic changes in the architecture of the protection system in real-time mode, which contradicts the paradigm of a comprehensive information protection system);
- large scale (considerable number of documents, confirmations and approvals).

Comprehensive information protection systems are not designed for risk-oriented approaches. They use the notions 'threat', 'vulnerability', and

do not take into account possible level of damages, related to compromising of a specialized information system (performance of the tasks assigned appears to be under threat and the possibility of unauthorized access to information assets of the specialized information system arises).

Therefore, implementation of a comprehensive information protection system is not accompanied by actual substantiation, which right away means implementation of ineffective solutions. Mandatory nature of the use of the comprehensive information protection system, under the law, is dictated not by the belonging of the object under protection, but by the mode of access to information assets.

In all aspects of ensuring information protection in specialized information systems analysis of possible threats to their failure, that is threats increasing vulnerability of information, lead to its leakage and unauthorized access, accidental or purposeful compromising, destruction, when it is impossible to establish a comprehensive information protection system, constitutes a key element.

Time has come to substantiate the development of organizational and legal measures aimed at information protection in specialized information systems, determining the strategy and tactic of the information protection system as well as taking into account the dynamics of changes in the threats to the information assets of the specialized information system.

With this in view it is necessary either to adjust current international information protection system standards, or to immediately develop and introduce own, qualitatively new security standards for the protection of information resources in specialized information systems.

Unlike a comprehensive information protection system, modern international information security standards must harmoniously be enacted within the organizational and legal structure, primarily, series of international standards ISO/IEC 27000, developed by the technical committee ISO/IEC JTC 1, subcommittee SC 27 of the International Organization for Standardization (ISO) jointly with the International Electrotechnical Commission (IEC).

Such approach to the modernization of organizational and legal measures of the information protection system in specialized information systems must be developed in accordance with the recommendations of international standards and in compliance with the provisions of the applicable Ukrainian legislation.

The critical criterion for information protection in ND TZI 2.5-004-99 (2012) is correspondence of the architecture and parameters of software and hardware means of a specialized information system to the regulations, that is, a comprehensive information protection system. Unlike it, the ISO/

IEC 27000 series of standards is the model to follow in the development, introduction, functioning, monitoring, analysis, support, and upgrading of the system of information security management.

Thus, currently, in Ukraine there have appeared two simultaneous paradigms of information protection systems: comprehensive information protection system and information security management system. Changing of the regulatory legal base in the field of information protection is the challenge of the times, and only as quick modernization of organizational and legal measures aimed at information protection in specialized information systems as possible will enable to ensure performance of the task set – sustainable functioning of specialized information systems.

In the conditions of implementation of the technology of systems with open architecture, that are distinguished for the complex interaction of information systems of different origin (interoperability), availability of problems with transfer of applied software between different platforms (mobility) and other special features, the issue of implementation of the system of information security management is becoming more and more important.

The standard (ISO/IEC 27000) allows to correctly organize the process of information asset protection and risk management for those assets. To control the quality of information security management, process the institute of certification has been introduced. The certificate has an international status.

Under the Law of Ukraine "On Standardization" (2014) and to perform the "Program of Works in National Standardization" (2017) the State Enterprise "Ukrainian Scientific-Research and Training Centre on the Problems of Standardization, Certification and Quality" has adopted state standards of Ukraine in the field of development and certification of information security management system, harmonized with international regulatory documents through confirmation. Let us outline the main of them:

- DSTU (State Standard of Ukraine) (ISO/IEC 15408-1:2017 Information technology – Security techniques – Evaluation criteria for IT security – Part 1: introduction and general model;
- DSTU ISO/IEC 15408-2:2017 Information technology – Security techniques – Evaluation criteria for IT security – Part 2: Security functional components;
- DSTU ISO/IEC 27000:2017 Information technology – Security techniques – Information security management systems – Overview and vocabulary;

- DSTU ISO/IEC 27001:2015 Information technology – Security techniques – Information security management systems – Requirements;
- DSTU ISO/IEC 27002:2015 Information technology – Security techniques – Code of practice for information security controls;
- DSTU ISO/IEC 27003:2018 Information technology – Security techniques –Information security management systems – Guidance;
- DSTU ISO/IEC 27004:2018 Information technology – Security techniques –Information security management – Monitoring, measurement, analysis and evaluation;
- DSTU ISO/IEC 27005:2015 Information technology – Security techniques – Information security risk management;
- DSTU ISO/IEC 27006:2015 Information technology – Security techniques – Requirements for bodies providing audit and certification of information security management systems;
- DSTU ISO/IEC 27007:2018 Information technology – Security techniques – Guidelines for information security management systems auditing
- DSTU ISO/IEC 27008:2018 Information technology – Security techniques Guidelines for auditors on information security controls;
- DSTU ISO/IEC 27011:2018 Information technology – Security techniques – Code of practice for Information security controls based on ISO/IEC 27002 for telecommunications organizations;
- DSTU ISO/IEC 11577:2017 Information technology – Open Systems Interconnection –Network layer security protocol;
- DSTU ISO/IEC 15408-3:2017 Information technology – Security techniques – Evaluation criteria for IT security – Part 3: Security assurance components.

For the processes of information security management system, the model of cyclic process, which uses the principle of managing information security, has been applied, of which centralized administration is the core (takes into account the specificity of functioning of a specialized information system – compliance with the secrecy mode).

Analysis, assessment and management of risks should be made on the basis of the classical CIA model (confidentiality, integrity, availability). In particular: confidentiality – access to information assets exceptionally for officially authorized users in the minimum necessary scope; integrity – protection of accuracy/correctness and completeness of the information

assets of a specialized information system and information processing methods; availability – ensuring continuous access to the information and hardware assets of a specialized information system, services in accordance with the mandates and rights provided to users in the necessary scope.

There is a separate observability requirement – ensuring the principle of non-denial of committed actions. The formulated rules are recorded in the respective documents (documentation of the procedures constitutes one of the key requirements of the ISO 27001 standard) (Sereda *et al.*, 2017: 72).

It would also be expedient to briefly analyze new ISO/IEC 27035 Information technology – Security techniques – Information security incident management standard (New ISO/IEC Standard Will Help Cope with the Most Serious Information Security Risks. Information technology, 2016), providing practical recommendations on detection, registration, and assessment of information security violation incidents.

The standard is valid for a wide range of information security incidents, purposeful or accidental, caused by technical or physical reasons.

Information security incidents pose a threat for specialized information systems as the result of appearance of a possible threat of unauthorized access to information resources, failure of network services, interception of identifiers, web-site modification, theft of personal data, and other incidents, for example, such as increasing terrorist threats (Wojciechowski, 2017).

An awareness of the principles, models, procedures play a key role in complete understanding of this standard. Key element of the ideology of this standard is analysis of incidents aimed to determine what information resources of the specialized information system should be protected against what incidents and to what extent prospective losses should be assessed in qualitative and quantitative figures. A considerable number of threats can be reduced using the approach to information security incident management, described in this new international standard.

However, implementation of international standards in Ukraine for information protection in information and telecommunication systems of special designation is faced with a number of problems, of which audit of the information protection system is the key one. Permission for making such audit is granted only to the organizations possessing a license for carrying such activity, granted by the state.

And during the audit (at the stage of state examination (Senyk, 2018)) of a comprehensive information protection system in the information or information and telecommunication system of special designation international standards on information and cyber security are not applied, this having a negative impact on the results of the audit.

Therefore, in order to introduce international standards into the processes of development and putting of comprehensive information protection systems into operation in information and search as well as information and telecommunication systems of special designation there is a need to replace regulatory documents on technical protection of information with modern basic standards that will take into account the experience of a number of international standards that have earned a good reputation in developed countries of the world and have been tested by time. In this case it will be possible to carry out state accreditation of the information protection system on the basis of international standards.

Conclusions

Judging by the research done, we consider that current regulatory legal base in Ukraine does not embrace the whole spectrum of modern threats to information security and should, therefore, be substantially supplemented.

The current status of information and cyber security provision in Ukraine can be characterized as insufficient, this being caused by a number of organizational as well as regulatory legal factors. One of the key factors among them is non-availability of effective regulatory legal base in the system of information and cyber security management. There are the following organizational reasons therefor:

- lack of readiness of state entities and the state in general to adequately respond to cyber incidents. Currently, there is no state program for filling this gap in Ukraine. Cyber security management in the state is characterized by low level of professional community involvement in it, lack of transformational approach presupposing availability of entities responsible for the implementation of programs, strategies in cyber and information security, lack of control over their implementation;
- at the state level there is no effective entity responsible for cyber intelligence. Most frequently the state is warned about possible cyber incidents, sometimes even through mass media, private, volunteering, or international entities;
- information protection audit is conducted with no due account of the requirements of international standards, this having a negative impact on its quality;
- the level of staff training in Ukraine, in particular, for state entities, in the field of cyber security is insufficient. Profile education in information protection issues needs to be improved;

- currently there are no programs of cyber culture development in the society.

Currently, at the organizational and legal level it is necessary to clearly identify the problem of safe functioning of specialized information systems, to determine key threats in the field of information protection and to provide new, modern legal tools to counteract these threats in time. In order to ensure organizational and legal principles of information and cyber security at the state level it is expedient to establish a respective institute or body.

This can be done either at the level of the Council for National Security and Defense, or at the level of the advisory body of the President of Ukraine. It should include not just professionals from state authorities, but representatives of business, volunteering or professional communities. Such institution must ensure development of new regulatory legal acts in the field, give proposals concerning changes in the applicable legislation, develop recommendations on ensuring functioning of the national cyber security system, settle other issues requiring respective expert evaluation.

Along with that, improvement of the organizational and legal measures aimed at information protection in specialized information systems must be based on international standards, which, unlike Ukraine's regulatory documents, take the process of processing, accessing and preservation of information and not a comprehensive information protection system as the object of protection. With this in view it is necessary either to adjust ISO/IEC standards of series 27000, or – to develop own, qualitatively new standards of ensuring information protection in specialized information and telecommunication systems.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 437-452
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Disciplinary liability of insolvency officers: current challenges

DOI: https://doi.org/10.46398/cuestpol.4176.25

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Abstract

In this article we have studied the specific features of the liability of insolvency administrators for disciplinary offenses. The norms of the current legislation (in particular, the Bankruptcy Proceedings Code of Ukraine, the Tax Code of Ukraine, the Labor Code of Ukraine) regarding the determination of the legal status of insolvency officers and the specific features for bringing them to liability have been analysed in the article. The purpose of this research was to study problematic issues related to the liability of insolvency administrators. During the research general scientific methods, in particular dialectical, methods of analysis and synthesis, formal and legal, systematic approach have been used. It is concluded that disciplinary liability in the profession of insolvency officers in Ukraine is of mixed nature. It is partly civil, partly disciplinary and administrative liability -- in its essence -- and is not clearly regulated by the current legislation. Referring to the facts of bringing insolvency administrators to disciplinary liability even for a single offense has, on the one hand, elements of civil liability. On the other hand, disciplinary liability can also be imposed on insolvency administrators.

Keywords: disciplinary liability; arbitration managers; ministry of justice of Ukraine; self-regulated organization of arbitration managers; current challenges.

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Recibido el 04/11/22 Aceptado el 12/01/23

Responsabilidad disciplinaria de los gestores de arbitraje: los desafíos de hoy

Resumen

En este artículo se han estudiado las características específicas de la responsabilidad de los administradores concursales por infracciones disciplinarias. Las normas de la legislación actual (en particular, el Código de Procedimientos de Quiebra de Ucrania, el Código Fiscal de Ucrania, el Código Laboral de Ucrania) con respecto a la determinación del estatus legal de los oficiales de insolvencia y las características específicas para llevarlos a responsabilidad han sido analizadas en el artículo. El propósito de esta investigación fue estudiar cuestiones problemáticas relacionadas con la responsabilidad de los administradores concursales. Durante la investigación se han utilizado métodos científicos generales, en particular dialécticos, métodos de análisis y síntesis, enfoque formal y legal, sistemático. Se concluye que la responsabilidad disciplinaria en la profesión de los oficiales de insolvencia en Ucrania es de naturaleza mixta. Es responsabilidad en parte civil, en parte disciplinaria y administrativa --en su esencia-- y no está claramente regulada por la legislación vigente. Referirse a los hechos de llevar a los administradores concursales a la responsabilidad disciplinaria incluso por un solo delito tiene, por un lado, elementos de responsabilidad civil. Por otro lado, la responsabilidad disciplinaria también se puede imponer a los administradores concursales.

Palabras clave: responsabilidad disciplinaria; gestores de arbitraje; ministerio de justicia de Ucrania; organización autorregulada de gestores de arbitraje; desafíos actuales.

Introduction

The professional activity of insolvency officers in Ukraine has a very complex specificity due to the peculiarities of the legal status of the insolvency officer. Apart from the private legal nature, the activity of insolvency officers is burdened with a public element associated with obtaining the right to carry out professional activities through a specially authorized state agency - the Ministry of Justice of Ukraine - and the procedure for recognition in cases of bankruptcy (insolvency) by the state court.

Therefore, insolvency officers in Ukraine, although they are not civil servants, court officials, representatives of creditors and debtors in bankruptcy proceedings, are vested with powers of external administration, supervision and management of the business activities of the bailiffs and

are entitled to the fullest possible proportionate satisfaction of the demands of the creditors.

V. V. Dzhun noted that taking into account the factors of significant public interest in the activities of insolvency officers and the features of their real legal status, the conclusion that the insolvency officer is a special subject of public law is very grounded (Dzhun, 2009). The strengthening of public element in the competition procedure was noted in 1863 by G. F. Shershenevich in his systematic work "Competition process" (Shershenevich, 2000).

Therefore, the authority empowered by the state to perform public functions of redistribution of the property of the debtors for the benefit of the creditors causes increased legal liability of insolvency officers for the compliance with the lawfulness and completeness of their procedural actions in the bankruptcy proceedings.

1. Methodology of the study

The scientific article is based on the provisions of the legal acts of Ukraine, official data of court practice regarding the disciplinary liability of insolvency officers. Scientific data of current jurisprudence, international relations, world politics and economics was actively used while working on the article. Theoretical basis of this article was the current scientific development of domestic and foreign scholars on disciplinary liability of insolvency officers, the strains of improvement of legislation on this matter and law enforcement practice.

During the study, general scientific methods were used, in particular, dialectic, methods of analysis and synthesis, formal and legal, systematic approach. The comparative and legal method was widely used, by means of which the experience of France and the Federal Republic of Germany with regard to imposing disciplinary liability on arbitration supervisors was examined. The systematic method has been used in identifying the problems of the current state of affairs in this matter.

2. Results and discussion

2.1. Grounds for disciplinary liability of insolvency officers and its features

In accordance with the Art. 21 of the Bankruptcy Procedures Code of Ukraine insolvency officers are brought to the following types of liability for their actions: civil, administrative, disciplinary, criminal (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

The disciplinary liability among the listed types of legal liability is of particular interest for the research and requires conceptual rethinking and legislative reform taking into account the following listed factors.

As we have already noted, disciplinary liability is one of the types of legal liability. The classic notion of disciplinary liability in domestic law is found in the Labour Code, which regulates the relations between employers and employees (The Labour Code of Ukraine, 1971). In the field of labour relations, disciplinary liability is the obligation of an employee who has committed a disciplinary offence to account to his/her employer for his/her illegal actions and to bear disciplinary penalties provided by the labour law.

The basis for disciplinary liability is a disciplinary offence - a culpable, illegal failure to perform or improper performance of the duties imposed on the employee (violation of labour discipline) for which disciplinary liability is incurred. According to the Art. 1471 of the Labour Code of Ukraine: "Disciplinary penalties shall be imposed by the authority that has granted the right to hire (recruit, approve and appoint to the position) the given employee" (The Labour Code of Ukraine, 1971).

According to the Labour Code of Ukraine, disciplinary penalties shall be imposed by the owner or its authorised agency indirectly upon the discovery of a disciplinary offence, for a breach of the employment discipline prescribed by the employment regulations, the disciplinary statute or another disciplinary procedure (The Labour Code of Ukraine, 1971).

> General disciplinary liability is stipulated by the Labour Code of Ukraine and internal labour regulations for all categories of employees, except for those whose labour activity is regulated by special legislation of Ukraine or by internal acts (statute or discipline regulations). The special disciplinary liability is characterized by the possibility of applying to the offender of labour discipline, in addition to the admonition and dismissal, also such disciplinary restraint measures, such as: demotion in rank, demotion, loss of badge, dismissal with loss of rank, reprimand for inactive service, a delay of up to one year in promotion to a higher rank or in being appointed to a higher position, reduction in rank, reduction in rank by one level, etc., (Official position of the Ministry of Justice of Ukraine, 2018: 15).

There is a number of questions: whether an insolvency officer is a subject of labour relations, an employee in the context of the Labour Code of Ukraine, what type of disciplinary liability is applicable to him? The professional legislation does not provide an answer to this question, but a concrete answer can be found in the Tax Code of Ukraine. Since the insolvency officer is a subject of independent professional activity in accordance with paragraph 1 of the Art. 10 of the Bankruptcy Code of Ukraine, in accordance with the Tax Code of Ukraine he cannot be an employee since he is a self-employed person (Tax Code of Ukraine, 2010: article 14.1.226).

The conclusions of the Supreme Court's Resolution of 13 March 2018 in the case No. B8/180-10 are also interesting in this context. Thus, the Court states the following in clauses 49.1 and 49.2: "The insolvency officer is appointed by the court and acts in accordance with the provisions of the Law of Ukraine "On Restoring the Debtor's Solvency or Declaring the Bankruptcy of the Debtor". Nevertheless, even the insolvency officer's performance of his duties as the head of the insolvency organization, i.e. the duties of the head of the company, does not confirm the existence of employment relations and the respective guarantees associated with them.

The Bankruptcy Law does not automatically create employment duties when the duties of the head of the company are performed by the head of the insolvency organization. The Law on Bankruptcy shall be predictable in application, which complies with the principle of legality and legal certainty as components of the rule of law. A prerequisite of the employment relations is the existence of an employment contract between the employee and the employer.

In this case the court-appointed insolvency officer is a subject of independent professional activity, is not an employee and, therefore, the employment contract between him and the company is absent. There is no owner or his authorized agency, the presence of which is required by the Art. 117 of the Labour Code of Ukraine and his fault. The nature of the relationship between the insolvency officer and the debtor is civil one and is regulated by "the Law on Bankruptcy". (Resolution of the Supreme Court, 2018).

Thus, the insolvency officer is not a subject of disciplinary liability under the Labour Code of Ukraine and his liability is of special nature and is regulated exclusively by a special law - the Code of Ukraine on Bankruptcy Procedures.

The codified act defines the concept and types of "disciplinary misconduct" (Article 19):

1) the fact of engaging in an activity incompatible with the activity of the insolvency officer;
2) violation of professional ethics rules of the insolvency officer;
3) failure to perform or improper performance of his/her duties;
4) non-compliance with the statute and decisions of the self-regulatory agency of the insolvency officers (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

Paragraph 5 of the Art. 20 of the Code of Ukraine on Bankruptcy Procedures stipulates that: "If violations of *legislation* are found during the insolvency officer's inspection, the bankruptcy authority may terminate

the insolvency officer's activity and submit the materials to a disciplinary commission for imposing *disciplinary penalties* on the offender" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

The bankruptcy legislation does not provide sufficient legal definition of the types of disciplinary offences, although the scope of disciplinary offences may be defined exclusively by law. The stated conclusion is based on the provisions of the Art. 92 of the Constitution of Ukraine (Constitution of Ukraine, 1996) and also on the practice of applying the Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) (Convention on the Protection of Human Rights and Fundamental Freedoms, 1950).

In the interpretation of the law, it is inadmissible to use a broad interpretation of the construction of the enshrined in its disciplinary offences. In our opinion, this interpretation does not comply with the principle of legal definiteness and, therefore, contradicts the Art. 8 of the Constitution of Ukraine and violates the guarantees for the right to profession provided by the Art. 8 of the Convention.

2.2. Specific features of bringing insolvency officers to disciplinary liability

It should be noted that there is no code, statute or collection of disciplinary rules and regulations for insolvency officers in Ukraine. Both the Code of Ukraine on Bankruptcy Procedures (Law of Ukraine No. 2597-VIII, 2018) and the Order on the procedure for monitoring the activities of insolvency officers (Order No. 3928/5, 2019), and the Code of professional ethics of insolvency officers (Congress of Arbitration Administrators of Ukraine, 2019) do not contain specified list of disciplinary offences (infractions, gross misconduct) and correspondingly established sanctions for their commission.

This results in duplication of the functions of the agencies controlling the activities of the arbitral authorities, dual jurisdiction of judicial control (commercial and administrative), full use of the formulas of offences and sub-evaluation of the sanctions.

Insolvency officers who are subject to disciplinary liability shall be liable for violation of the law, the rules of the organization of their professional activities, the rules of professional ethics, the regulations of self-regulatory organizations. This entails substituting the notion of disciplinary offence with the notion of gross misconduct, which is not clearly defined and is applied in a voluntary and subjective manner.

Violations found as a result of inspections and referred to the Disciplinary Commission are generally classified by the inspection agencies as "gross

violations". Such violations are often the basis for imposing disciplinary liability on the insolvency officers, including forfeiture of the right to operate. But there is no clear definition and list of gross violations in the professional regulations.

The system of control over the activities of insolvency officers in Ukraine is characterized by duplication of internal control responsibilities on the part of the state authority for bankruptcy and judicial control within the scope of the proceedings in the bankruptcy case. We believe that this duplication of control agencies causes a shift in the scope of different types of responsibility of insolvency officers: civil and legal and disciplinary.

State courts control the activities of insolvency officers within the scope of court proceedings in bankruptcy cases. Judicial control is based on the analysis of the current reports of the insolvency officer on the exercise of his/her powers at different stages of bankruptcy proceedings, reviewing appeals by parties to bankruptcy proceedings in the form of applications and complaints about the insolvency officer's performance. Institutional control is based on scheduled and unscheduled inspections of the activities of the insolvency officers. Unscheduled inspections are carried out at the request of any individual or legal entity regarding the activities of the insolvency officers.

Occasionally, complaints are filed simultaneously with both the Commercial Court and the Ministry of Justice of Ukraine. Often the aim of such complaints is not to restore the violated right of the claimant, but to remove the disloyal insolvency officer and replace him with a trustworthy one.

This duplication of control functions in the law and in law enforcement practice interaction between the state agency on bankruptcy and the commercial court is virtually absent, and these forms of control exist separately and independently of one another and are aimed at different results with the same subject of control: as opposed to the main focus of home control on the part of the Ministry of Justice of Ukraine, the main result of the exercising by a state court of bankruptcy control in case of finding violations of the legislation is the dismissal of the insolvency officer and/or the court decision ordering to require him/her to initiate certain actions/obstruct their initiation within the scope of the bankruptcy case, where the latter shall exercise the powers of special subjects in bankruptcy proceedings.

In accordance with the Art. 21 of the Bankruptcy Code of Ukraine: "Insolvency officers shall be liable to disciplinary liability under the procedure established by this Code. The bankruptcy state authority shall impose disciplinary penalties on the insolvency officers upon the filing of a disciplinary commission" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

Special attention should be paid to the fact that the Regulation on the Ministry of Justice of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of July 2 2014 No. 228. does not provide for the Ministry of Justice of Ukraine to impose disciplinary liability on insolvency officers.

Similar provisions are stipulated by the Art. 3 of the Bankruptcy Code of Ukraine, which provides an exclusive list of powers of the bankruptcy authority, in particular: "establishes the procedure for exercising control over the activities of insolvency officers, checking the organization of their work, their compliance with the legislation on bankruptcy". However, there is no obligation to impose disciplinary liability.

We believe that this case is not an accident - the Ministry of Justice of Ukraine and the insolvency officers do not have a full range of legal relations that could entail disciplinary liability.

It should be noted that the Ministry of Justice of Ukraine does not employ insolvency officers and they, in turn, are not civil servants. In bankruptcy cases, insolvency officers are appointed by the state courts and the source of payment for their work is creditors, debtors or the liquidation estate.

A characteristic feature of disciplined liability of insolvency officers is the fact that the authority which imposes disciplinary liability on the offenders (the Ministry of Justice of Ukraine) does not decide on the imposition of the respective penalty. The Disciplinary Commission shall take a decision in accordance with the Art. 22 of the Bankruptcy Code of Ukraine.

This procedure, especially in combination with a short statute of limitations, inherently undermines the effectiveness of the disciplinary liability mechanism.

The provisions of paragraph 3 of the Art. 20 of the Code of Ukraine on Bankruptcy Procedures and paragraph 3, clause 6 of the Section II of the Control Procedure as amended, establish an unreasonably large number of persons who have the right to appeal (complain) against the actions of insolvency officers, which is the basis for unscheduled audits. It is, in fact, any individual or legal entity who contacts the supervisory authority on the grounds of non-compliance or improper performance of the duties of the insolvency officer.

Notwithstanding the fact that any legal relation that creates obligations for the insolvency officers to perform a certain set of procedural actions shall arise within the scope of bankruptcy proceedings, the list of persons entitled to apply for information on their violated rights shall be limited to the participants in the bankruptcy proceedings as defined by the Bankruptcy Procedures Code of Ukraine.

The Disciplinary Commission of Arbitrage Managers, in accordance with the Art. 22 of the Bankruptcy Code of Ukraine: "shall be constituted in accordance with the procedure established by the bankruptcy authority to consider the cases of arraignment of insolvency officers for committing a disciplinary offence.

The Disciplinary Committee shall consist of seven members, three of whom shall be appointed by the order of the head of the bankruptcy authority and four of whom shall be appointed by the meeting of insolvency officers. The duties term for the members of the Disciplinary Committee shall be two years. The Disciplinary Commission shall be chaired by the head of the bankruptcy authority or a person designated by the authority" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

The activity of the Disciplinary Commission is regulated by the Regulation on the Disciplinary Commission of Insolvency Officers, approved by the Decree of the Ministry of Justice of Ukraine No. 2993/5, dated of 25th of November, 2019 (Ministry of Justice of Ukraine, 2019).

The Disciplinary Commission of Insolvency Officers is an advisory and expert agency established by the Ministry of Justice of Ukraine to take a decision on the imposition of disciplinary penalties in respect of offences detected by the insolvency officers' supervision authorities. Its members shall not receive any compensation for their activities or for their expenses incurred in travelling to the meeting. At the same time, the Disciplinary Commission is not a separate agency or legal entity. It cannot issue regulatory documents or act as a party to court proceedings, nor it can be a defendant in a court, when a decision to impose disciplinary liability on the insolvency officers is appealed.

The lack of clarity of the legal status of the Disciplinary Commission of Insolvency Officers causes low problems of disciplinary proceedings.

There are two types of decisions to impose the same disciplinary penalties on insolvency officers: the decision of the Disciplinary Commission and the order of the Ministry of Justice of Ukraine. There may be a considerable lapse of time between the adoption of these decisions, which creates a procedural problem in terms of determining the time limit for disciplinary liability.

Decisions of the Disciplinary Commission, which are drawn up in a protocol, do not sufficiently motivate and substantiate the grounds for taking specific decisions on each disciplinary case. According to court practice, the decision to disqualify insolvency officers from disciplinary liability cannot be determined by the content of the minutes, do not allow to establish the motives used by the Disciplinary Commission, in particular why the credible arguments of the person who was held liable were suppressed.

Protocol decisions of the Disciplinary Commission shall not be transparent and open to the public. As the Disciplinary Commission is not an independent agency, it is not able to maintain its website or publish its decisions in mass media.

Disclosure of information about disciplinary proceedings may be made with due regard to the confidentiality of the activities of the insolvency officer and the bankrupt company. At the same time, it is necessary to take into account the presence of commercial and state secured assets, especially in state-owned enterprises.

The experience of France and the Federal Republic of Germany is very useful to take into account in the proposals for reforming the legal status and work regulations of the Disciplinary Committee of Insolvency Officers. In France, the National Commission for the Registration and Discipline of Court Administrators and Court Representatives (CNID) (henceforth referred to as the National Commission) is an independent and self-regulated agency, independent of the Ministry of Justice.

The Commission is not a court but acts as a tribunal. Every three years, the National Commission conducts inspections of court representatives and court administrators. Professional auditors are hired for this inspection. Regarding decision-making, there are no set criteria and situations are regulated depending on the circumstances. Regarding the qualification of disciplinary offences, the expert noted that an act is considered a disciplinary offence if it is of a continuous, systemic nature.

The Federal Republic of Germany does not in any way control the quality of work of the members of the profession of insolvency officers. The state control is not exercised in general in the profession, but in each case where the court controls the actions of the manager. Complaints about the work of the insolvency officer shall be sent by a sheet to the court, which shall forward it to the insolvency officer for explanations.

The explanations shall be given to the creditor with a copy to the court. In exceptional cases, if it is insufficient, the court shall examine the case and take specific steps for the supervision. This may include additional requirements or, in the worst case, the replacement of the insolvency officer by another person (Hlushko, 2019).

According to its statute the Disciplinary Commission is not a structural unit of the Ministry of Justice of Ukraine, which means that its decisions in the form of a protocol on the results of the relevant meetings (p. 5 of the Art. 22 of the Bankruptcy Code of Ukraine) are not decisions of the Ministry of Justice of Ukraine. However, the Ministry of Justice of Ukraine as a state agency responsible for bankruptcy shall be executed by the decree of the Ministry, which in essence is an administrative act of the powers that should be subject to administrative jurisdiction.

This circumstance created a jurisdictional collision for consideration of appeals against decisions on imposition of disciplinary penalties: bankruptcy cases are considered by commercial courts, while decisions to impose disciplinary liability on insolvency officers are considered by administrative courts.

In view of the above-mentioned law collisions, there is ambiguity in determining the terms of disciplinary liability. Paragraph 4 of the Art. 21 of the Bankruptcy Code of Ukraine stipulates that the decision to impose a disciplinary penalty shall be taken within two months from the date of detection of the disciplinary offense, but not later than one year from the date of its commission. What decision is referred to: the protocol decision of the Disciplinary Commission or the order of the Ministry of Justice of Ukraine? The legislation does not clearly regulate it. There is a significant time lag between these decisions being taken. These are the arguments used by the insolvency officers in bringing them to disciplinary liability.

The most widespread types of irregularities detected by the authorities controlling the activity of insolvency officers are the following: failure to conduct inspections (the absolute majority of violations); violations regarding creditors and maintenance of the creditor register; violations related to the inventory and protection of the property of a debtor; errors related to the realization of the property of the debtor (bankrupt); errors related to the analysis of financial and business activities; violations related to the identification and management of the assets of the debtor; failure to submit timely and proper information on their activities to the joint-stock company; violations of organizational nature (lack of an insurance contract, deficiencies in management, failure to comply with the rules of the office equipment); failure to upgrade the qualification; failure to implement the order to eliminate the violations identified by the previous inspection.

Cases of different types of sanctions for the same offences were recorded. There is no gradation and harmonisation of the types of offences according to the degree of guilt of the insolvency officer, the degree of gravity of the offence, the systemic nature of the offence, the overall individual capacity to execute a particular order and the amount of the inflicted school.

Based on the above, we can conclude that the application of the above formulas and definitions of disciplinary offences of insolvency officers today is of subjective and evaluative significance and requires a clear normative regulation.

2.3. Scientific discussion on amending the rules for recovering penalties on insolvency officers

Experts in the field of insolvency, judges of commercial and administrative courts are discussing the feasibility of amending the rules on

the jurisdiction of disputes over the cancellation of orders of the Ministry of Justice and the decisions of the Disciplinary Commission of Insolvency Officers in order to transfer their decisions to state courts (appellate state courts), to refer their decisions to commercial courts (appellate commercial courts), which directly apply the bankruptcy law.

The study of court practice shows that administrative courts due to the lack of proper specialization of judges can be important to assess the correctness of the application of bankruptcy law by insolvency officer, which may be necessary to assess the legality of the penalty imposed on him.

The Bankruptcy Procedures Code of Ukraine provides the establishment of a single self-regulatory organization with mandatory membership of all insolvency officers, whose information is included in the Unified Register of insolvency officers. Such an organization was established in Ukraine on 21 of November 2019. Today it is called the National Association of Insolvency Officers of Ukraine (NAIOU).

According to the Art. 33 of the Bankruptcy Code of Ukraine (Functions and duties of self-regulatory agency of insolvency officers), the self-regulatory organization of insolvency officers shall carry out in the manner prescribed by this Code control over the activities of insolvency officers for the compliance with this Code, the Code of Ethics for Insolvency Officers and other regulations on the activities of insolvency officers (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

A self-regulatory organization of insolvency officers "shall have the right, upon application of a participant in a bankruptcy case or at its own initiative, to review the performance of the insolvency officer for the compliance with the statute of the self-regulatory organization of insolvency officers; Code of Ethics for insolvency officers; decisions of the self-regulatory agency of insolvency officers related to the activities of insolvency officers.

Violation of the professional ethics of the insolvency officer and non-compliance with the statutes and decisions of the self-regulatory organisation of insolvency officers are disciplinary offences, the commission of which is a basis for holding the insolvency officer disciplinarily liable (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

The current legislation on bankruptcy does not define the concept of "professional ethics" in terms of ethical norms and standards of professional activity of insolvency officers. The legislator has therefore placed the establishment and regulation of this norm within the competence of the self-regulatory organisation of insolvency officers. As a general rule, professional ethics is a code of rules governing the conduct of a specialist in a service environment, norms, standards that comply with current laws and regulations, professional knowledge, teamwork and a strong awareness of moral responsibility for performance of professional duties (Donkov *et al.,* 2020).

The insolvency officer, in the exercise of his professional activity, has a duty, sometimes excessive, towards the participants in the bankruptcy proceedings (bailiffs and creditors in the first place); courts, the bankruptcy authority and other state authorities; other insolvency officers and professionals in the field of insolvency; the public in general.

In his or her activity, the insolvency officer shall be guided by such basic principles as ensuring competence; independence and objectivity; contributing to increasing the value of the competition and liquidation proceedings; respect for confidentiality; and good faith.

The professional ethics of the insolvency officer is the proper behaviour of the insolvency officer prescribed by the corporate rules in cases where the legal regulations do not establish specific rules of conduct for him or her.

The NAIOU at its statutory meeting on November 21, 2019 approved the Code of Ethics for Insolvency Officers, but as of today it can be stated that it has only a basic form, contains only the general principles of ethics of professional activity of insolvency officers and does not regulate all the rules of professional activity of insolvency officers.

No doubt, violations of ethical rules can and should lead to the imposition of disciplinary sanctions. At the same time, it is clear that not every ethical violation should lead to the imposition of disciplinary penalties. Only gross, obvious violations that are incompatible with the status of the insolvency officer should lead to disciplinary liability.

An examination of the disciplinary practice concerning violations of ethical rules by judges reveals that such violations include, for example, driving while being intoxicated, inappropriate statements about trial participants, publications in the press, where the judge grossly violates the presumption of innocence and allows personal attacks on other individuals, etc. The disciplinary practice of judges today does not consider violations (even obvious and gross violations of the requirements of procedural law that are allowed in the administration of justice) as violations of ethical norms.

The Ukrainian Council of Insolvency Officers of Ukraine of October 2, 2020 the Procedure for Control by the National Association of Insolvency Officers of Ukraine over the Activities of Insolvency Officers, which was developed in accordance with the Bankruptcy Procedures Code of Ukraine, was adopted, Code of Ethics for Insolvency Officers and acts of the National Association of Insolvency Officers of Ukraine (The Ukrainian Council of Insolvency Officers of Ukraine, 2020).

The NAIOU control procedure specifies the number of persons entitled to apply to the NAIOU for filing a complaint or an appeal. This number is limited to the participants in bankruptcy proceedings as defined in the

Bankruptcy Procedures Code of Ukraine as well as to the persons who monitor the bankruptcy.

Conclusion

Thus, disciplinary liability in the profession of insolvency officers in Ukraine has a mixed nature. In its essence, it is partly civil, partly – disciplinary and administrative liability and is not clearly regulated by the current legislation. On the one hand, it has elements of civil liability taking into account the facts of bringing insolvency officers to disciplinary liability even for a single violation of the current legislation.

On the other hand, insolvency officers are brought to disciplinary liability, whose actions have the corpus delicti of criminal offenses, although in this case the specified violations of the law should be the subject matter of law enforcement agencies.

Unfortunately, insolvency officers are not immune from criminal prosecution, and quite often minor misconduct by insolvency officers leads to the initiation of criminal proceedings against them. In Ukraine, there is a lack of sufficient regulation and coordination of the actions of law enforcement agencies and disciplinary control agencies over the activities of insolvency officers.

Insolvency officers, who are subject to disciplinary liability, shall be liable for violation of the law, the rules of the organization of their professional activities, the rules of professional ethics, the regulations of self-regulatory organizations. This entails substitution of the notion of *disciplinary offense* with the notion of *gross misconduct*, which is not clearly defined and is applied in a voluntary and subjective manner. Violations found as a result of inspections and referred to the Disciplinary Commission are generally classified by the inspection agencies as "gross violations".

Such violations are often the basis for disqualification of insolvency officers. However, there is no clear definition and list of gross violations in the regulatory legal acts. Therefore, in our opinion, it is necessary to introduce amendments to the current legislation in order to modify the conceptual apparatus and eliminate collisions in regard to bringing insolvency officers to disciplinary liability.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 453-468
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Methodological principles of studying the essence of public administration bodies as subjects of administrative procedural law

DOI: https://doi.org/10.46398/cuestpol.4176.26

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Abstract

The purpose of the study was to clarify the methodological foundations of the essence of public administration bodies as subjects of administrative procedural law. The methodology of scientific work is determined by the optimal combination of general and special methods of scientific knowledge, which made it possible to form a holistic understanding of the legal form of social phenomena accompanying the development of the state. It is proved that administrative procedural law has its own system, the primary element of which is the administrative procedural norm, so that its normative impact coincides with the purpose of administrative procedural law, namely the practical implementation of administrative and legal norms in the field of public law and, by extension, public administration, i.e. the transformation of substantive administrative law norms at the level of practical implementation of a particular right of a person. The system of administrative procedural law, consisting of rules, institutions and administrative procedural sub-sectors, stands out. Everything leads to the conclusion that the system of administrative-procedural law is in the formative stage and is structurally composed of administrative-procedural norms, institutions and sub-branches and is essentially related to the substantive norms of administrative law.

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Recibido el 15/11/22 Aceptado el 20/01/23

Keywords: administrative law; administrative procedural law; public administration; subjects of law; public administration.

Principios metodológicos del estudio de la esencia de los órganos de la administración pública como sujetos del derecho procesal administrativo

Resumen

El objeto del estudio fue esclarecer los fundamentos metodológicos de la esencia de los órganos de la administración pública, como sujetos del derecho procesal administrativo. La metodología del trabajo científico está determinada por la combinación óptima de métodos generales y especiales de conocimiento científico, lo que hizo posible formar una comprensión holística de la forma jurídica de los fenómenos sociales que acompañan el desarrollo del Estado. Se prueba que el derecho procesal administrativo tiene un sistema propio, cuyo elemento primordial es la norma procesal administrativa, de modo que su impacto normativo coincide con la finalidad del derecho procesal administrativo, a saber, la aplicación práctica de las normas administrativas y jurídicas en la materia de derecho público y, por extensión, de la administración publica, es decir, la transformación de las normas de derecho administrativo sustantivo en el plano de la implementación práctica de un determinado derecho de una persona. Se destaca el sistema de derecho procesal administrativo, constituido por normas, instituciones y subsectores procesales administrativos. Todo permite concluir que el sistema de derecho administrativo-procesal se encuentra en fase de formación y se compone estructuralmente de normas, instituciones y subramas administrativo-procesales y está esencialmente relacionado con las normas sustantivas de derecho administrativo.

Palabras clave: derecho administrativo; derecho procesal administrativo; administración pública; sujetos de derecho; administración pública.

Introduction

The Ukrainian state has entered a new stage of its development, which is connected with many factors of a legal and social nature that have recently occurred in the country. Such factors should include: 1) the formed civil society, which has recently become an active participant in decision-making in the state and a driving force in the management of state affairs;

2) a change in the ideology and role of the state in the realization of human and citizen rights and freedoms; 3) the aspiration of civil society to become a part of the European community and to introduce standards of state functioning institutions at the level of developed countries of the world; 4) the emergence of an active citizen position regarding the fight against corruption in state authorities; 5) adoption of a number of normative legal acts, which oblige to adapt the national legislation to the legislation of the European Union and a number of others.

All this necessitates the revision of established legal positions and categories that determine the principles of the functioning of state institutions and the procedural regulation of their activities, taking into account the changes taking place in our country. The above is the basis for summarizing scientific developments regarding the essence of public administration bodies as subjects of administrative and procedural law.

1. Purpose and objectives of the research

The main goal of the article is the need to clarify the methodological foundations of the study of the essence of public administration bodies as subjects of administrative and procedural law, which makes it necessary to focus on the analysis of categories of a more general order, such as "state administration", "public administration", "sub "object of state administration", since the interrelationship of the latter is central to legal science and to understanding the need for fundamental changes regarding the introduction into legal circulation of categories used by EU law.

2. Literature Review

The scientific-theoretical basis for solving the questions within the scientific work is the scientific works of domestic administrative scientists, in particular: Averyanov, Bandurka, Bevzenko, Chernov, Voronin, Hayduchenko, Gulac, Demsky, Dzhafarova, Koliushko, Kolpakov, Kramarenko, Kuzmenko, Melnyk, Mykolenko, Mosyondz, Muza, Muzychuk, Paterylo, Selivanov, Streltsov, Tyshchenko, Tymoshchuk, Tsybulnyk, Shatrava, Yastremska and other authors. their works are a scientific foundation for further research of the mentioned issue.

3. Research Methodology

The methodology of a scientific work is determined by the optimal combination of general and special methods of scientific knowledge, which allows to form a coherent scientific idea about the legal form of social phenomena accompanying the development of the state. The logical-semantic method is the basis for the formation of categories and concepts, in particular: "state administration", "public administration", "administrative-procedural law", "procedural forms", "administrative acts".

The system method was used when determining the general principles of the functioning of the public administration of Ukraine. The comparative legal method was used to study the peculiarities of the administrative-procedural legal personality of public administration bodies. The method of documentary analysis was used to illustrate the achievements and shortcomings of the modern doctrine of building a new model and system of public administration bodies in Ukraine.

4. Results And Discussion

To solve the tasks, we will turn to theoretical developments. Let us emphasize that the state, as a "social phenomenon", is created for the purpose of organizing society to ensure and protect individual, collective and general societal interests by establishing universally binding rules of conduct (legal norms) in a certain territory. At the same time, the fulfillment of the above is possible only under the condition of a social contract, which consists in the fact that the state undertakes to maintain the balance of private and public interests in society, and citizens, in turn, undertake to comply with the established rules of conduct.

That is, in a broad sense, the functions of the state can be divided into three large groups: 1) establishment of universally binding rules of conduct, 2) provision of a mechanism for the implementation of the above rules; 3) the function of resolving disputed issues (justice). The combination of these basic functions of the state found its consolidation in the Constitution of Ukraine. So, in Art. 6 of the Constitution of Ukraine it is stated that state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial (Law of Ukraine, 1996).

To establish their content, it is necessary to proceed from the forms of state activity. Thus, legislative activity consists in the adoption of laws, executive activity - in their direct implementation, and judicial activity - in the resolution of disputed issues. The question arises whether modern forms of state activity of the Ukrainian state meet public demand. The answer to this question, as we see it, lies in the definition of the essence of

the activity, which implies the direct implementation of laws and is called "state administration".

Let us emphasize that the category "public administration", taking into account the transformational processes taking place in our country, is currently too narrow, since it does not take into account a large number of subjects involved in the realization of public interest. Accordingly, the category "subject of state administration" also cannot meet the needs of law enforcement practice and needs its revision and introduction into legal circulation of a category that would unite all subjects involved in the realization of public interest.

In this aspect, the experience of European countries is useful. Taking into account the Action Plan "Ukraine - European Union" approved by the Cabinet of Ministers of Ukraine dated 12.02.2005 and the Council on Cooperation between Ukraine and the European Union dated 21.02.2005 (Plan, International document on February, 2005), work on the convergence of legal terminology in national legislation.

Also, the Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union" defined the goal of adapting the legislation of Ukraine to the legislation of the European Union, which consists in achieving compliance of the legal system of Ukraine with the acquis communautaire, taking into account the criteria put forward by the European Union (EU) to the states, who intend to enter it.

In order to implement the Plan, a working group was formed to prepare a draft of the concept of reforming public administration by order of the Cabinet of Ministers of Ukraine dated March 26, 2008 No. 531-r, the result of which was the corresponding project (order of the Cabinet of Ministers of Ukraine, 2008).

In the project of the Concept of reforming public administration in Ukraine, there was an attempt for the first time at the legislative level to establish the category "public administration", which was proposed to mean executive power bodies, local self-government bodies and other entities that, in accordance with the law or administrative agreement, have the authority to ensure the implementation of laws , to act in the public interest (performance of public functions) (Koliushko and Tymoshchuk, 2006).

The definition of administration that was laid out in the book "Science of Administration and Administrative Law" is interesting. Thus, it is: 1) the broadest concept: every planned activity of an individual and a private person, which competes to achieve the specified goals; 2) more closely: every planned activity of the state competing to achieve state goals; 3) even more closely: executive powers of the state, i.e., the entirety of state functions minus legislation; 4) most closely: the entirety of state functions minus

legislation and the judiciary (Bevzenko and Koliushko, 2016). Professor V. Yavorsky notes that administration is the activity of the state, covering all areas, with the exception of legislation and the measure of justice (Bevzenko and Koliushko, 2016). These definitions were formed back in the 18th-19th centuries, but have not lost their relevance even today.

Thus, public administration is the activity of public administration entities regulated by laws and other legal acts, related to the implementation of management functions in the ways specified in instructions, regulations and procedures, which focuses on the implementation of directives, orders, etc. (Kramarenko, 2022). The proposed definition is too narrow, as it does not take into account the service basis of the modern state and does not correspond to the human-centered concept of the latter's development.

Chernov and Hayduchenko give the following definition of public administration. As regulated by laws and other normative legal acts, the activity of public administration subjects is aimed at implementing laws and other normative legal acts, by making administrative decisions, providing administrative services established by law (Chernov and Hayduchenko, 2014).

According to Yastremska and Majnyk, the concept of "public administration" has become widespread in recent years and involves the provision of European-level administrative services by implementing the principles of democratic governance into practice (Yastremska and Majnyk, 2015). We only partially agree with the proposed definitions, because we believe that public administration has a wider range of legal relations that are not taken into account by researchers. Thus, relations related to work with citizens' appeals, control-supervisory and tort relations were left out of consideration.

According to I. V. Paterilo, it is appropriate to include the following characteristics of public administration under the law of the European Union: 1) the concept of public administration covers public authorities of various levels, other public institutions, as well as subjects of delegated powers; 2) the recognition by individuals or certain institutions of the legal status of public administration is directly related to their performance of public functions of the state; 3) classifying certain persons as subjects of public administration, and therefore their performance of tasks and functions of the state, is possible only under the condition that this is provided for and regulated by state regulations (Paterylo, 2015).

The position that was formed by S. O. Masyondz, who considers public administration as a legal category that has two dimensions: functional and organizational-structural, needs attention. According to the functional approach, this is the activity of the relevant structural entities for the performance of functions aimed at realizing the public interest. According

to the organizational and structural approach, public administration is a set of bodies that are formed to exercise public power (Mosyondz, 2013).

We believe that the most key features of public administration bodies are the implementation of public interest, as well as the endowment of the latter with public-authority powers. At the same time, the implementation of the public interest does not always involve the endowment of public administration with powerful powers, we are talking about the service component of the functioning of the state.

In this context, the scientific work of O.V. Dzhafarova, who understands the public administration bodies as subjects of permitting activity as a system of separate state bodies, primarily executive power, local self-government bodies, legal entities of public and private law, endowed with their own or delegated powers to carry out permitting activities, which were created for the purpose of implementing public functions in all spheres of society functioning, the activities of which are aimed at realizing the rights, freedoms and legitimate interests of a certain group or individual natural and legal persons enshrined in the Constitution of Ukraine, ensuring life, human health, safety of the environment and national interests (Dzhafarova , 2015).

To the main features of the public administration body as a subject of permitting activity, the scientist includes: 1) the purpose of the activity is to maintain a balance of public and private interest (the effort to ensure benefits that have a general societal weight, that is, benefits that are important not only for one individual, and for a significant number of people – communities, societies); 2) have organizational separation; 3) vested with authorization powers; 4) the organization, grounds and procedure of permitting activities are regulated by the norms of administrative law; 5) connectedness with the limits, grounds and method of implementing the authorization powers defined in the legislation (Dzhafarova, 2015).

In their turn, scientists determine the criteria for the activity of public administration bodies through the appropriate forms of public power implementation, which plays an important role in maintaining the effectiveness of the management system: issuance by authorized persons of certain decrees and orders; provision of administrative services to individuals and legal entities; implementation of control and supervision activities; handling complaints, etc. (Shatrava *et al.*, 2020).

The analysis of scientific works, in which questions were raised about the criteria for the effectiveness of public administration bodies, provides an opportunity to indicate: the effectiveness of the internal management activity of public administration bodies; public trust in the relevant bodies of public administration; indicators of the provision of quality public services, timeliness of the provision of public services, the economic component of the provision of public services, etc. (Streltsov *et al.*, 2021).

The analysis of existing scientific developments allowed us to come to the conclusion that the content of the category "public administration" is broader compared to the category "bodies of public administration", as it covers all subjects whose activities are aimed at the implementation of public functions of the state, including physical ones and legal entities of public and private law with delegated powers on the basis of national legislation, as well as on the basis of relevant agreements.

It should be noted that the need to introduce a unified category into legal circulation, which designates subjects implementing public interest, namely «public administration bodies», is overdue.

This is due to a number of circumstances: 1) the formation of a theoretically grounded model of unified rules and procedures for the activities of entities that perform public-authority functions on a conceptual basis; 2) the need to adapt the national legislation to the legislation of the European Union, but at the same time, the European experience of understanding public administration should be applied in the part that does not contradict the Constitution of Ukraine and allows to improve (rather than change) the system and mechanism of public administration in accordance with the best European practice and European standards; 3) ensuring the balance of "humanitarian" and "sociocentric" concepts of state development, which involves depriving state institutions of the "monopoly of power" and introducing a mechanism for delegating public-authority powers to other institutions of civil society; 4) the active civic position of modern Ukrainian society regarding participation in the implementation of public functions of the state, provided that this is provided for and regulated by normative acts.

Summarizing the above positions, we will single out the signs that determine the belonging of subjects to public administration bodies, namely: a) the purpose of creation is the implementation of the public interest of the state and territorial communities, as well as guaranteeing the rights and freedoms of natural persons, the rights and legitimate interests of legal entities; b) the competence of a power-administrative nature is established by the current legislation; c) predominant organizational separation.

Within the scope of this study, we will try to define the concepts, peculiarities of activity and system of public administration bodies, which are subjects of administrative-procedural law. To define the system of public administration bodies, we would consider the general provisions of legal science. To do this, we will analyze the existing views on the essence of the "system" category.

But the system cannot exist by itself, because the latter exists in a certain environment of interaction with this environment and fulfills its purpose by operating with its properties. R. S. Melnyk formulates his own definition of a system - it is a whole complex of separated, interconnected and interacting

elements, which forms a special unity with the environment and is at the same time an element of a higher order system (Melnyk, 2010).

In turn, V.K. Kolpakov notes that the system is characterized by certain features, among which are the unity of the system in relation to the environment (integrity) and the diversity of connections with the environment, the nature of which makes it a subsystem of another, more complex system (Kolpakov, 1989). Y. G. Voronin understands the "system" as a set of united, interconnected and interacting elements, the purpose of which is to achieve a socially useful result, welfare. That is, all elements of the system, each fulfilling its purpose, work for the overall result that the system faces (Voronin, 2016).

Summarizing the given definitions, we emphasize that the definition of the «system of public administration bodies» should be carried out through a systemic approach, since it provides an opportunity to reveal its essence through its elements, relationships, connections, integrity, etc. Therefore, the elements of the system of public administration bodies should include: executive power bodies, local self-government bodies, enterprises, institutions and organizations in cases where the latter have delegated part of their powers and other subjects performing public management functions.

Taking into account the fact that the purpose of our research is public administration bodies that, performing tasks related to the implementation of the public interest of the state and territorial communities, as well as guaranteeing the rights and freedoms of natural persons, the rights and legitimate interests of legal entities, are assigned the corresponding rights and obligations recorded in administrative and legal norms, it is necessary to determine the question how the process of implementing the relevant norms takes place.

It is obvious that many material norms of law in the sphere of public administration cannot be fully implemented without the improvement of the corresponding procedural mechanism (Bandurka and Tyshchenko, 2002). All this determines the need to review the existing scientific positions on the procedural regulation of the activities of public administration bodies, since this activity is the main content of their functioning.

For this purpose, we will analyze the existing scientific approaches to understanding "administrative process", "administrative procedural law", "administrative procedure", "administrative procedural form". But first, it is necessary to note that today there are lively discussions about the separation of the branch of law that defines the principles of direct implementation of the norms of substantive law. Each material rule of law is essentially "static" because it contains the consolidation of a certain right.

Its implementation always involves the implementation of a set of consecutive actions, which also have their own legal regulations and which lead to a change in the position of a certain object. Such a complex of actions is called "process". Turning to the dictionary of the Ukrainian language makes it possible to determine the interpretation of the "process" category. Thus, "process" (lat. processus - movement) means: 1) a sequential change of states or phenomena that occurs in a natural order; the course of development of something; 2) a set of consecutive actions, means aimed at achieving a certain result; 3) consideration of a court case; the court case itself (Bilodid, 1977).

Analysis of the content of the specified category allows us to distinguish the characteristic features of this phenomenon, which should include: 1) a complex of actions; 2) all actions are sequential and interconnected; 3) the process has its beginning and end in the form of a certain result; 3) the process is always a certain period of time from the beginning to obtaining the result; 4) a change in the state of the object (phenomenon) in relation to which the last one was initiated. Yu. S. Shemshuchenko, in turn, notes that the process in law is:

> A legally defined procedure for the application of material legal norms (election process, budget process, law-making process, etc.). From this follows the presence of procedural law as a set of legal norms that regulate the order (procedure) of the implementation of material norms of constitutional, civil, criminal, administrative and other branches of law. Procedural law gives energy to substantive law, is a procedural form of implementation and protection of the latter (Shemshuchenko, 2003: 187).

O. V. Kuzmenko understands the legal process as a system of interrelated and mutually determining legal forms of activity of competent bodies, officials, which are manifested in the implementation of consecutive operations, clearly defined by procedural norms, for the resolution of legal cases that determine the corresponding legal consequences (Kuzmenko, 2013). At the same time, O. I. Mykolenko says that any legal process is a legal procedure, but not every legal procedure is a legal process (Mykolenko, 2010). Without plunging into theoretical controversy, we will express our own position on this matter.

We believe that the category of legal process involves a set of legal procedural forms of activity of the relevant subjects on the basis of which a certain activity is carried out, which is regulated by the norms of the law of the relevant branch. We emphasize that, depending on the scope of social relations, which require their own procedural regulation, criminal, civil, administrative, constitutional, budgetary, election process, etc. are distinguished. We will analyze existing approaches to understanding the category "administrative process".

According to A. O. Selivanov:

> The administrative process includes a set of sequentially implemented stages of proper behavior of subjects - participants in administrative legal relations, according to which rights and obligations are distributed between them in relation to the normativity of the fact as a special property of reality. Substantive administrative law reflects the desire of the parties to achieve the goal established by law, which acts as a means of knowing the fact and constitutes the essence of the process. This conclusion creates a prerequisite for a broad understanding of the administrative process, which allows us to avoid excessive fixing of the terms of legal science, and as a result, to prevent the narrowing of the interpretation of the process in its narrow jurisdictional understanding (Selivanov, 2000: 14-15).

As Muza notes, the "broad" concept of the administrative process is the most recognized doctrinal approach in the science of administrative law, since its authors illuminate the essence of the administrative process through various spheres of implementation of the administrative substantive legal relationship using procedural and legal means. Using the theoretical foundations of the "broad" concept of the administrative process, it is possible to avoid scientific inaccuracies regarding the characteristics of certain types of procedural legal relations in administrative law. At the same time, such a doctrinal approach also has its shortcomings (Muza, 2016).

Another group of scientists interprets it in a narrow sense, i.e. it is associated only with the consideration of administrative cases. Thus, V. M. Bevzenko emphasizes that what distinguishes administrative procedural law from the rest of the branches of national law is its main idea, purpose - and regulation of the joint activity of administrative courts, individuals and legal entities - participants in public legal relations - in connection with the protection, restoration or recognition of public rights, freedoms and legitimate interests of these persons (Bevzenko, 2011).

The analysis of the mentioned position shows that the scientist considers administrative procedural law from the standpoint of the implementation of administrative proceedings. At the same time, in scientific works of a later period, the scientist talks about the "administrative process".

We support of the "broad approach", but we consider it expedient to talk not about "administrative process", but about "administrative procedural law". According to E. F. Demsky, the social purpose of administrative procedural law is expressed in the construction of legal norms aimed at ensuring the real possibility of implementation and protection in the administrative (instance) and, in necessary cases, in the judicial procedure, the rights and legitimate interests of private (physical or legal) person (Demsky, 2008).

The researcher stipulates the presence of administrative procedural law as follows: 1) administrative procedural norms mediate the functioning of public power in the state, since the subject of procedural branches of law is derived from the subject of legal regulation of material branches of

law; 2) administrative affairs make up a significant part of public relations in the sphere of public administration; 3) consideration and resolution of administrative cases always bears the imprint of management practice (Demsky, 2008).

According to Kuzmenko, "administrative-procedural law is a system of legal norms that regulate state-authority organizing social relations that arise in connection with the implementation of the administrative-procedural form on the application of the norms of the relevant material branches of law" (Kuzmenko, 2004: 168).

We emphasize that it is impossible to formulate the author's definition of administrative-procedural law without knowing the essence of its subject. However, the specified task can be solved again only after clarifying the subject of administrative law, since administrative procedural law determines the procedural form of implementing the norms of administrative law. Thus, according to V. B. Averyanov, the subject of administrative law should be understood as managerial relations, but not all, but only those that arose in connection with the performance of executive and administrative functions by bodies of public, first of all, state power.

The peculiarity of these relations, the author notes, is that: they arise only as a result of power activities, activities on behalf of the state; the relevant executive authority always participates in them. The specified relations arise in various spheres of state administration: economic, social, political, but all of them are connected by the protection of public interest (Averyanov, 2002). The position of the outstanding scientist, which was formulated later, also needs attention. He notes that in the subject of administrative law, two main components should be distinguished: power-coercive and public-service (Averyanov, 2007), within which, in fact, appropriate ways of implementing management powers are manifested.

Transforming the above into tasks that are within the limits of scientific work, we will formulate the subject of administrative and procedural law. Thus, the latter should be understood as a set of administrative-procedural relations that arise in the field of public administration in connection with the implementation of the administrative-procedural form for the application of the norms of the relevant material branches of law. This conclusion regarding the subject of administrative-procedural law reveals a "broad approach" to its understanding and is currently the most acceptable, as it reveals the functional purpose of the latter as an independent branch of law.

Conclusions

It should be noted that administrative-procedural law has its own system, the primary element of which is an administrative-procedural rule, the regulatory influence of which coincides with the goal of administrative-procedural law, namely the practical implementation of the norms of administrative law in the field of public administration, that is, the transformation of the norms of substantive administrative law into a plane practical implementation of a certain right of a person. The system of administrative-procedural law is at the stage of formation and consists of administrative-procedural norms, institutions and sub-branches and is essentially related to substantive norms of administrative law.

So, administrative-procedural law is a branch of national law under which it is expedient to understand a set of administrative-procedural norms, institutions and principles of regulation of the procedure for solving individual-specific cases in the sphere of public administration. The resolution of an individual-specific case in the field of public administration is transformed into an administrative-procedural form, which is always connected with the implementation of a material administrative-legal norm.

Taking into account the broad approach to the definition of administrative procedural law, we consider it expedient to single out the following structure of administrative procedural law from the standpoint of division into three sub-branches: 1) management administrative-procedural law, which consists of positive law enforcement activities of public administration bodies, which is divided into external management administrative-procedural law and internal management administrative-procedural law; 2) administrative-delict procedural law, which is related to the administrative-procedural form of protection against violations of the established rules (proceedings in cases of administrative offenses, disciplinary proceedings and proceedings on citizen complaints); 3) administrative-judicial law as justice in matters of administrative jurisdiction, which is regulated by a separate procedural code - the Code of Administrative Justice of Ukraine.

Summing up, let us emphasize that we clarified the degree of scientific development of the problem of defining the concept and characteristics of public administration bodies as subjects of administrative-procedural law, which made it possible to formulate the author's approach to the definition of public administration bodies as subjects of administrative-procedural law.

Thus, the latter represent a system of bodies of executive power, local self-government, enterprises, institutions and organizations in the event that they are delegated by the bodies of executive power and local self-government part of their powers and other subjects performing public

management functions, as well as a set of organizational actions and measures, which are carried out by them within the limits determined by the administrative and procedural law, with the aim of realizing the public interest and reliably ensuring the rights and freedoms of a person and a citizen.

Among the special features that characterize public administration bodies as subjects of administrative-procedural law, it is appropriate to include the following: a) granting a certain amount of administrative-procedural competence necessary to realize the purpose of creation; b) the presence of close ties with other subjects of administrative and procedural law; c) normative-legal consolidation of the ability to be a subject of administrative-procedural relations.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 469-481
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Features of interaction between law enforcement agencies during the investigation of criminal offenses according to international standards

DOI: https://doi.org/10.46398/cuestpol.4176.27

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Abstract

The purpose of the research was to highlight the interaction between law enforcement agencies during the investigation of crimes in accordance with international standards. It also highlights the main areas of cooperation between law enforcement agencies in different States during the investigation of criminal offenses. Taking into account the great public danger of criminal offenses, it is worth noting that they have long since acquired a transnational character and it is therefore interesting to pay special attention to the issue of cooperation between the National Police of Ukraine and various international police organizations in the investigation of this category of criminal offenses. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. Among the main conclusions, it draws attention to the necessity of the issue of strengthening cooperation between the operational units of the National Police of Ukraine engaged in the fight against criminal offenses and international police bodies engaged in operational and investigative activities, as a condition of possibility to combat crime in all its manifestations.

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Recibido el 07/12/22 Aceptado el 26/01/23

Keywords: international cooperation; criminal offenses; police investigations; international standards; law enforcement agencies.

Características de la interacción entre los órganos de aplicación de la ley durante la investigación de delitos penales según las normas internacionales

Resumen

El propósito de la investigación fue resaltar la interacción entre los organismos encargados de hacer cumplir la ley durante la investigación de delitos, de conformidad con las normas internacionales. Se destacan además las principales áreas de cooperación entre los organismos encargados de hacer cumplir la ley en diferentes Estados, durante la investigación de delitos penales. Teniendo en cuenta el gran peligro público de los delitos penales, vale la pena señalar que hace tiempo que adquirieron un carácter transnacional e interesa, por lo tanto, prestar especial atención a la cuestión de la cooperación entre la Policía Nacional de Ucrania y las diversas organizaciones internacionales policiales en la investigación de esta categoría de delitos penales. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Entre las principales conclusiones, llama la atención la necesidad de la cuestión de fortalecer la cooperación entre las unidades operativas de la Policía Nacional de Ucrania que se ocupan de la lucha contra los delitos penales y los cuerpos policiales internacionales que realizan actividades operativas y de investigación, como condición de posibilidad para combatir el delito en todas sus manifestaciones.

Palabras clave: cooperación internacional; delitos penales; investigaciones policiales; estándares internacionales; cuerpos de seguridad.

Introduction

The current state of crimes is characterized by a steady increase in the number of criminal offenses that belong to the category of latent ones. The vast majority of these offenses are committed by persistent criminal groups or "professional" criminals; they are carefully planned and characterized by a high degree of organization and technical equipment.

When preparing for practical implementation of a criminal plan, criminals develop in detail various options for hiding traces of their illegal encroachments, and during investigation, they look for opportunities to send the investigation in the wrong direction and provide organized countermeasures.

It is also important that information about the investigated illegal event in the vast majority of cases does not lie on the surface; it does not come to the disposal of law enforcement agencies in a haphazard manner through previously known channels.

Thus, the practical significance of the interaction of the investigator with operative workers is that procedural activities without the use of non-procedural methods would be impossible, and operational investigative activities without further use of its results in the criminal process are pointless (Yefimov *et al*., 2022).

1. Literature review

Many works of domestic and foreign scientists are devoted to the theoretical and practical issues of interaction between investigative units of the National Police of Ukraine and law enforcement bodies of other countries during investigation of criminal offenses.

The mechanism of interaction of the investigator with the bodies that carry out operational and search activities should be based on the observance of a system of principles that ensure timely and effective resolution of tasks set before them.

In our opinion, the following principles are among the fundamental ones: legality; respect and observance of rights and freedoms of humans and citizens; humanism; relevance of the results of interaction to the investigation of a specific criminal act; combination of individual and collective operation; clear differentiation of competence of each of the interacting parties; continuity of interaction throughout the investigation; interests of the parties in achieving the set goal; timely exchange of information between subjects of interaction about known circumstances that may be important for the investigation; non-disclosure by the parties of operational and search information and investigative information, as well as taking measures to ensure preservation of such information.

Practice shows that non-compliance with these principles leads to errors, which can be subdivided into errors of a procedural nature, epistemological errors (logical and actual ones) and effective (operational) errors (Bielkin, 1988).

While procedural errors are associated with a deviation from requirements of the current legislation, logical errors are connected with violations of laws and rules of logic in meaningful processes, incorrect application of logical techniques and operations, and such errors depend mainly on the way of thinking of investigative and operative employees as well as on their actions (Yefimov *et al.*, 2021).

In turn, actual errors are related to unreliability and incompleteness of operational and search data which prior to being applied must be thoroughly checked and compared with already available materials. As for effective (operational) errors, they are usually associated with improper organization and planning of anticipated investigative (search) and procedural actions, based on results of operational and investigative activities being an informative component.

However, the analysis of scientific researches has shown that this issue is rather urgent today and requires more global research. Relevance, practical significance, insufficient research of the indicated issues led to the choice of the topic of the article and determined its purpose (Yefimov, 2022).

Methodology of the article is a study of interaction during investigation of criminal offenses by the National Police of Ukraine in cooperation with law enforcement bodies of other countries

Thus, the article is aimed at studying interaction of law enforcement bodies during investigation of criminal offenses in accordance with international standards.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; the conceptual apparatus was deepened and the essence of concepts of universal human principles of law as a universal normative framework was defined thanks to the logic-semantic method.

Constituent elements of methodological approaches to understanding universal human principles of law as a universal normative framework were investigated by means of using the system-structural method. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding universal human principles of law as a universal normative framework.

3. Results and discussion

As the analysis of investigative practice shows, joint activities of the investigator and operatives at the initial stage of the investigation are usually carried out in the absence of complete information about circumstances of the respective criminal offense committed as well as in limitation of time, due to the possibility on the part of criminals to hide traces of their illegal acts, destroy documents and other information carriers.

The specified circumstances determine the search-and-reconnaissance nature of such activities, their focus on checking actual data possessed by the investigative bodies and obtaining additional information in order to eliminate information uncertainty. This involves, in particular, obtaining information about locations of hidden documents and property acquired through crime; establishing circumstances characterizing identity of the suspects and the most important potential witnesses; identification of persons who have information about the criminal offense and can testify about it.

Along with this, from the very beginning of a certain investigation, an extremely important direction for interaction of the mentioned subjects consists in coordination of their activities aimed at stopping, neutralizing and eliminating possible attempts of illegal interference of interested parties, including by means of implementing coercive measures provided for by law.

As for the next stages of investigation, the main attention of persons, who carry out operational and investigative activities, is usually focused on identifying new episodes of illegal activity, establishing the circle of persons involved in the crime as fully as possible as well as on establishing connections between them and creating conditions for carrying out and ensuring effectiveness of investigative (search) actions.

However, during the entire pre-trial investigation, activities performed by employees empowered to carry out operational and investigative activities as well as those performed by the investigator should be complementary in order to avoid unnecessary duplication of work. In contrast, a lack of proper interaction has a negative impact on the course of the respective investigation.

The above provides grounds for concluding that the main conditions ensuring coordinated activity of the named persons include the following: 1) joint planning of investigative (search) and other procedural actions and operational and investigative measures or coordination of separate plans available to the investigator and the operational worker in order to ensure coordination of actions and clear differentiation of responsibilities in the process of joint work; 2) mutual and timely exchange of information in the

process of developing versions and their verification; 3) joint analysis of the investigative situation, consisting of data collected during the proceedings, obtained in the process of carrying out the specified actions and measures, and, if necessary, further adjustment of the plan (plans); 4) discussion of decisions on implementation of investigative (search) actions and possible tactical techniques which are the most appropriate to be used (Halaburda *et al.*, 2021).

The legal literature has repeatedly stated that investigators are extremely rarely involved in getting acquainted with materials of operational developments. As a result, a number of authors consider it expedient to legislate the right of the investigator to get familiarized with operational and official documents related to investigated criminal proceedings and presented in the respective proceedings (Villasmil Espinoza *et al.*, 2022).

Since investigation of criminal offenses under review is in the majority of cases combined with a significant amount of pre-trial work and the necessity of simultaneous investigation (search) actions as well as operational and investigative measures, the prerequisite for an effective pre-trial investigation consists in timely creation of investigation teams. Timeliness of their creation depends on two interrelated conditions. The first condition is to identify circumstances that indicate the need to create an investigation team in a timely manner. The second condition is characterized by the shortest possible periods needed for organization of such teams.

The need to establish an investigation team at the beginning of an investigative process usually arises in the event of initiating a pre-trial investigation based on the materials of the prompt verification of information about persons who are preparing, committing or have committed the crime.

This is due to the fact that even before the start of investigation, the mentioned materials contain information about persons who committed the crime, places of possible hiding of documents and objects relevant to the proceedings, as well as money and other property obtained through criminal means. As a result, a real opportunity is provided to plan, coordinate and get prepared for the entire complex of necessary investigative (search) actions and operational search measures in advance.

Regarding the next stages of the investigation, the need to create an investigation team most often arises after receiving certain actual data indicating that the respective criminal offense was committed by a criminal group (which, for example, is typical for such acts as legalization (laundering) of funds or other property obtained through criminal means by others persons or purchased by the person himself/herself, embezzlement using payment cards, securities, as well as by means of illegally presenting a claim for reimbursement of value added tax, manufacturing or selling counterfeit securities and plastic cards, etc.) or after it is established that the suspect (accused person) committed not one, but several criminal offenses.

As for the distribution of responsibilities among members of the investigation team, it depends on both conditions under which the investigation is conducted and the situation under investigation. The most optimal option, as practice shows, is to allocate independent areas of work to investigators and operative workers. Grounds for the latter's allocation may also be different, for example, in relation to the verification of the proposed versions, in relation to specific suspects or business entities or specific episodes of illegal activities.

The data obtained as a result of operational search activities can be both indicative and contain forensically significant information (Leheza *et al.*, 2022).

Results of operational search activities of a guiding value are quite diverse in terms of their content. These may be data on methods of preparation, commission and concealment of a criminal offense; on composition of the criminal group; objects and documents that can be evidence in the proceedings; on persons who may be questioned as witnesses; on relationships and connections of the persons involved in the proceedings; on the line of conduct chosen by the suspect during the investigation; on attempts made by criminals to influence witnesses and accomplices in order to give false testimony (Matviichuk *et al.*, 2022).

Using targeted operational information, the investigator can:

- predict the most probable places of hiding documents and objects, which may be important for proceedings, possible attempts of their destruction or changing places of storage; forecast location of money and other property obtained by criminal means;
- predict behavior of witnesses and the suspect. In particular, their possible reaction to the very fact of the start of a pre-trial investigation can be predicted (for example, to the fact of providing organized opposition to the investigation), to conducting this or that investigative action (for example, a search) or to certain questions in the process of interrogation (Tylchyk *et al.*, 2022).

Taking into account the great public danger of criminal offenses, it is worth noting that they have long acquired a transnational nature, and it is worth focusing special attention on the issue of cooperation between the National Police of Ukraine and international organizations on investigation of this category of criminal offenses. This fact is confirmed by Yu. Chornous in his scientific work, the author notes that:

> In the context of combating organized interregional crime, special relevance is acquired by issues of interaction of police units with other units, law enforcement bodies of Ukraine and international law enforcement bodies, state institutions and organizations, non-state institutions, enterprises, as well as organizations dealing in exchange of operational search information (2012: 235).

Moving on to the issue of interaction between the National Police and international organizations regarding investigation of criminal offenses, it is worth noting what "interaction" actually means. We fully support the position of Topchii and Horbachevskyi, who note that it is:

> Coordinated, based on the tasks of criminal proceedings, complex (procedural and operative investigation) actions performed by criminal procedural activity subjects whose purpose to reveal, investigate and prevent criminal offenses, to bring to justice guilty persons only on the grounds specified by the norms of criminal procedural law, and other criminal acts; such actions are carried out at strict delineation of their competence, within the limits of the given powers, by means of the most effective combination of measures allowed for them and corresponding material support while preserving the secret of pre-trial investigation and sources of confidential information (*Topchii and* Horbachevskyi, 2013: 128).

Having analyzed various opinions of Ukrainian and foreign scientists, it is possible to formulate an author's definition concerning interaction of the National Police of Ukraine with law enforcement bodies of foreign states, as regards investigation of criminal offenses in the sphere of banking activity. Therefore, the mentioned type of interaction should be understood as defined by the current legislation and a clearly planned set of defined complementary measures, including those of an informational nature, aimed at identifying persons who have committed the respective criminal offense in the sphere of banking, as well as gathering information that will have evidentiary value in the proceedings, while using capabilities of foreign authorities (and non-governmental structures), law enforcement bodies and international organizations.

The instruction on organization of activities performed by pre-trial investigation bodies of the National Police of Ukraine (Law of Ukraine, 2017) defines the following ways of ensuring organized interaction of investigative units of NPU with other pre-trial investigation bodies of the NPU in countering criminal offenses in the sphere of banking activity:

- "complex use of the forces and means of all police departments during pre-trial investigation of criminal offenses in the sphere of banking activity;
- creation of investigative-operational teams for a comprehensive, complete and impartial investigation of the circumstances of criminal proceedings for criminal offenses, such teams should include employees of operational and other units of the National Police, and, if necessary, those of
- interdepartmental investigative-operational teams;
- effective control over timely and complete conduct orders given by investigators to operational units concerning implementation of clandestine or official investigative actions;

- qualitative preparation of materials on problematic issues of the pre-trial investigation bodies in investigation of criminal offenses and their discussion by collegiums (at meetings) of the Ministry of Internal Affairs, the NPU, the Main Directorate of the National Police, as well as by joint boards and at meetings with other law-enforcement and state bodies and making concrete and effective management decisions" (Law of Ukraine, 2017).

In the current Criminal Procedure Code of Ukraine in Section IX "International cooperation during criminal proceedings" considerable attention is paid to the problems of international cooperation in combating crime (Law of Ukraine, 2012). In particular, after analyzing the norms of this section, it is possible to determine the following main directions of international interaction: a) Chapter 43 defines provisions of international legal assistance when conducting procedural actions; b) Chapter 44 defines the procedure for extradition of persons who have committed a criminal offense; c) Chapter 45 defines provisions of criminal proceedings in the order of adoption; d) and Chapter 46 defines the concept of recognition and execution of judgments of foreign courts and the transfer of convicted persons (Law of Ukraine, 2012).

Article 542 of the CPC of Ukraine defines the scope of international cooperation during criminal proceedings: "international cooperation in criminal proceedings shall be the taking of measures necessary in order to provide international legal assistance through serving documents, conducting certain procedural actions, extradition of individuals who have committed criminal offenses, provisional transfer of persons, taking over of criminal prosecution, transfer of sentenced persons, and execution of sentences. An international treaty of Ukraine may provide for other forms of cooperation in criminal proceedings than those specified in this Code (Law of Ukraine, 2012).

The Department of International Cooperation and European Integration of the Ministry of Internal Affairs implements the powers vested in the Ministry of Internal Affairs regarding creation of state policy on international cooperation issues, as well as monitoring of implementation of state policy on international cooperation issues by constituent elements of the Ministry of Internal Affairs apparatus. Cooperation of crime combating operational units in relation to morality with investigative bodies of foreign countries is implemented by the International Police Cooperation Department of the National Police of Ukraine.

An important problem in overcoming criminal offenses consists in regulation and maintenance of cooperation relations with various organizations of an international nature, which do not belong to law enforcement bodies, but which, as a result of the peculiarities of their work, may be connected with implementation of law enforcement activities,

including provision of assistance to individuals by means of performing return of monetary resources and compensation for caused damages.

The issue of cooperation of operational units for protection of the economy of the National Police in combating criminal offenses in the banking sector with foreign law enforcement bodies in the sphere of operational and investigative activities is carried out on the basis of Art. 5-1 of the Law of Ukraine "On Operational-Investigative Activity" (Law of Ukraine, 1992) and the Section IX of the CPC of Ukraine (Law of Ukraine, 1992). Thus, cooperation is carried out in the following forms:

- exchange of operationally significant, forensic information and other data about criminal offenses being prepared or committed, about persons involved in such offenses and persons who are wanted, as well as exchange of archival information on the specified issues;
- fulfillment of requests and orders concerning clandestine investigative actions;
- mutual assistance in carrying out clandestine investigative actions, joint execution of special operations;
- Exchange of experience on issues concerning operational and search activities, assistance in training, retraining and upgrading of staff qualifications;
- interdepartmental scientific research on the problem of operational and search activities (Bondar, 2020).

Conclusions

Thus, the study of the problem of cooperation between investigation units of the National Police of Ukraine and investigation bodies of foreign countries in the investigation of criminal offenses gives grounds to make certain conclusions.

The first conclusion is that combating investigated criminal offenses requires involvement of a large number of participants in implementation of specified measures, the list of these participants is established depending on the specific case, and usually on powers of specified subjects.

The second conclusion is that when combating criminal offenses in the banking sector at the state level, it is necessary to develop an effective interaction between the highest legislative body of power and the President of Ukraine, since it is they who initiate and develop political direction of the state in the sphere of protecting operation of banking structures by means of a body of executive power as the body that ensures implementation of the

state policy in the specified sphere, and of course by means of the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine as bodies controlling undisputed implementation of legislative prescriptions in the specified sphere.

Thirdly, cooperation of investigation units with investigation bodies of foreign countries is organized by the Department of International Cooperation and European Integration of the Ministry of Internal Affairs as well as by the International Police Cooperation Department of the National Police of Ukraine.

In the case of the mentioned interaction, mutual exchange of information resources is carried out regarding criminal offenses in the banking sphere, as well as assistance in conduct of clandestine investigative (search) actions, as well as joint scientific research activities. Ukraine is a member of Interpol and it has concluded an agreement on procedural and strategic cooperation with Europol, which is the basis for the use of capacities of the mentioned organizations in the sphere of investigating criminal offenses at the international level.

In the fourth conclusion, it should be noted that interaction of the National Police of Ukraine with international organizations takes place at the global level as well as at the regional level. The best results are manifested in the process of cooperation between law enforcement bodies of Ukraine and the Working Apparatus of the Ukrburo of Interpol, the purpose of which consists in exchange of information resources, establishment of persons, things and documents recorded in the Interpol databases; assistance in the international search for criminals; implementation of extradition measures; implementation of procedural actions at the international level.

These types of cooperation have also criminalistic directions. This refers to the information component that characterizes investigated criminal offenses and helps in their disclosure. Similarly persons, objects and documents registered in the Interpol database are also related to criminalistics, because here forensic methods of diagnosis and identification are used, as well as various areas of forensic techniques.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 482-501
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Observance of individual rights in criminal proceedings during martial law

DOI: https://doi.org/10.46398/cuestpol.4176.28

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Abstract

The objective of the research was to identify threats to individual rights in criminal proceedings during martial law. The research involved system methods, descriptive analysis, systematic sampling, doctrinal approach and forecasting. Martial law introduced as a result of armed conflict carries important implications for criminal justice. Ensuring the observance of individual rights in criminal proceedings during this period applies to several crimes, the common feature of which is the time of their commission. The classification of subjects of prevention of infringement of such rights is presented. The prospects for improving the protection of individual rights in criminal proceedings require international assistance in the detection of crimes related to the armed conflict. It is concluded that ensuring the observance of individual rights in criminal proceedings during martial law requires combining the efforts of national and international specialists. Prospects for improving this process envisage international assistance with increased use of its results as evidence in national and international courts. It is appropriate to develop international recommendations for national law enforcement agencies and judicial bodies.

Keywords: criminal justice research; human rights protection; martial law; rights enforcement; justice and armed conflict.

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Recibido el 12/12/22 Aceptado el 24/01/23

Observancia de los derechos individuales en los procesos penales durante la ley marcial

Resumen

El objetivo de la investigación fue identificar las amenazas a los derechos individuales en los procesos penales durante la ley marcial. La investigación involucró los métodos de sistema, análisis descriptivo, muestreo sistemático, enfoque doctrinal y pronóstico. La ley marcial introducida como resultado de un conflicto armado conlleva importantes implicaciones para la justicia penal. La garantía de la observancia de los derechos individuales en los procesos penales durante este período se aplica a varios delitos, cuyo rasgo común es el momento de su comisión. Se presenta la clasificación de los sujetos de prevención de la vulneración de tales derechos. Las perspectivas de mejorar la protección de los derechos individuales en los procesos penales requieren asistencia internacional en la detección de crímenes relacionados con el conflicto armado. Se concluye que**,** asegurar la observancia de los derechos individuales en los procesos penales durante la ley marcial requiere combinar los esfuerzos de especialistas nacionales e internacionales. Las perspectivas para mejorar este proceso prevén la asistencia internacional con un mayor uso de sus resultados como prueba en los tribunales nacionales e internacionales. Es apropiado desarrollar recomendaciones internacionales para las agencias nacionales encargadas de hacer cumplir la ley y los órganos judiciales.

Palabras clave: investigación en justicia penal; protección de los derechos humanos; ley marcial; observancia de los derechos; justicia y conflictos armados.

Introduction

Law and order maintained through legal means, is a component of national security. In this context, ensuring observance of individual rights, in particular, in the field of criminal justice, is a necessary element of the regulatory, law enforcement and institutional activities of the sovereign state. However, state guarantees are significantly limited in emergency situations of threats to national security due to objective reasons.

The extreme manifestation of those threats is an armed conflict. Regardless of its nature or legitimacy, it threatens fundamental rights and freedoms. Accordingly, states enjoy wide discretion in choosing the means of national security protection (Arden, 2015). In fact, all the measures taken to resolve the armed conflict can be considered as those dictated by the need to preserve national security (Teferra, 2016).

Martial law introduced in response to an armed conflict always entails the introduction of restrictions on the exercise of rights and freedoms. Article 4(1) of the International Covenant on Civil and Political Rights allows the states to take measures derogating from their obligations during such a state that threatens the life of the nation, which was officially proclaimed by the state. At the same time, such a retreat must be determined by the extent strictly required by the exigencies of the situation (United Nations, 1966).

As regards criminal justice during martial law, there are threats of violation of proportionality requirements and the need for restrictions in cases where national legislation does not keep pace with regulating changes caused by armed conflict (P.H.P.H.M.C. Van Kempen, 2014). For example, the authorities can resort to the introduction of special powers regarding extrajudicial restriction of the right to inviolability of private life, departure from standard course of criminal proceedings, etc.

Although the state cannot depart from the guarantees of the right to life, the prohibition of torture, cruel or inhuman treatment (Myjer *et al*., 2009), there are examples of actual violation by the state: a) torture and other forms of cruel treatment to obtain confessions; b) kidnapping and extrajudicial executions; c) activities of non-government groups in applying coercion to persons suspected of criminal offences; d) leaving arbitrarily detained persons without legal protection, etc. (Office of the High Commissioner for Human Rights, 2003).

Accordingly, the imperfection of the legal regulation and the possible abuse of power by government agencies during martial law are a serious threat to legal order and the rule of law (Christakis and Bouslimani, 2021).

So, the legality of the criminal justice depends, first of all, on the extent to which the criminal justice ensures compliance with the standards of the rule of law stipulated by national, supranational and international documents (Carrera *et al*., 2021). The main purpose of human rights is protection against abuse of power, limitation of excessive coercion against suspects, proper collection of evidence, legal prosecution and justice for the accused (P.H.P.H.M.C. Van Kempen, 2014).

A system approach to the analysis of ensuring observance of individual rights in criminal proceedings during martial identified a number of urgent problems:

1. A professional discourse is mainly reduced to the most dangerous violations of international humanitarian law, in particular, war crimes. These actions have an obvious connection with the armed conflict, as they do not simply coincide with it in time, but are committed under its significant influence. This connection defines the fundamental difference between ordinary criminal offences and war crimes (Schwarz, 2018). International and national law enforcement

practice relies on the principle of individual responsibility with regard to war crimes. This means that both servicemen and civilians who maintained ties with one of the parties to the conflict or were related to it shall be held criminally liable for war crimes (David, 2011).

At the same time, other general criminal acts, such as acquisitive and violent crimes, can also be committed during martial law. They are not related to armed conflict. However, the peculiarities of the martial law may lead to the violation of the individual rights during criminal proceedings because of the lack of qualified law enforcement officers, the impossibility of carrying out certain procedural actions, the physical absence of lawyers at the place of detention of the person, etc. Therefore, disproportionate restrictions on the individual rights and freedoms can be caused by a much larger range of criminal offences, rather than only crimes directly related to the armed conflict.

2. Although the violation of individual rights of the suspects and the accused in criminal proceedings is the main focus, the victims are also important. In particular, war crimes with mass casualties cause many victims, survivors, where everyone has the right to know the fate of their near relations (Schmitt, 2022). The international courts focus on "high-level" cases, so the national law enforcement and judicial systems carry the main burden. While the state's obligations include investigating violations, prosecuting and punishing perpetrators, legal remedies and redress for victims or their families must be provided (United Nations, 2011). As a whole, inadequate attention is paid to the victimological dimension of the problem, especially in cases of general crimes.

3. In temporal terms, threats of violation of individual rights in criminal proceedings during martial law cannot be reduced only to the pre-trial investigation stage. They can potentially arise from the peculiarities of the organization of criminal justice and manifest themselves not only during the investigation, but also during the trial of cases. Therefore, it is advisable to consider several aspects of such threats:

    - Problems of the organization of criminal justice during martial law. They are related to regulatory and institutional support for proper procedures for identifying, prosecuting and punishing criminal offenders. The states are obliged to exercise criminal jurisdiction over crimes committed on their territory or by their citizens. Accordingly, international courts investigate crimes and administer justice when states fail to do so (Mayans-Hermida and Hola, 2020). In this context, the challenge is that the identification and collection of evidence

of large-scale crimes related to armed conflict is often beyond the capacity and resources of local police teams, investigators and prosecutors (Schmitt, 2022).

The state must guarantee access to judicial processes, services and remedies (Carrera *et al.*, 2021). This is the basis for the mandatory requirements to be complied with in order to ensure the observance of individual rights during martial law through the criminal justice system: a) the national legislation defines the grounds for limiting individual rights; b) the national law is accessible to everyone; c) the law has predictable consequences (Council of Bars and Law Societies Of Europe, 2019). However, it is clear that the entire criminal justice system is extremely vulnerable to threats of violation of individual rights during martial law (Mayans-Hermida and Hola, 2020).;

- Problems of detecting the facts of crimes committed during martial law. They refer to acts both related and not related to armed conflict. The failure to detect the crime and the failure to prosecute the perpetrators deprives the victims of their rights to protection and redress. In particular, the modern conception of justice as a complex system of information is emphasized by the understanding of the extreme importance of documenting crimes against the civilian population (D'Alessandra and Sutherland, 2021).

This is why non-government organizations try to set an agenda in order to draw attention to certain crimes. This prompts the state, first of all, the prosecutor's office, to register and conduct an investigation of specific facts. These facts could remain without a proper response if the attention of civil society is not drawn (Jeßberger and Steinl, 2022).

The activity of mass media becomes especially important. Experience of wars in the 21st century showed the possibilities of citizen journalism as a way to confront human rights violations. This resulted in a significant amount of open-source content. In this regard, there is a task to submit this information to the courts in order to bring the perpetrators to justice (Freeman, 2018). Therefore, the state should create a system of communication between law enforcement agencies and judicial bodies and civil society institutions during martial law;

- problems of conducting pre-trial investigations. The states are obliged to conduct careful, efficient and independent criminal proceedings. The evidence obtained during the investigation determines the framework of the analysis of the crime (P.H.P.H.M.C. Van Kempen, 2014). Failure to properly organize the investigation process may result in a violation of the right to an effective remedy. The conceptual difficulties of ensuring observance of the individual rights in criminal proceedings are revealed during the pre-trial

investigation as regards the important limitations on how to collect evidence and keep people in custody (McBride, 2009).

Two blocks of problematic issues can be distinguished in this context:

A) forensic support for the investigation of crimes during martial law, which should ensure: a) the most effective collection of information in hard-to-reach areas; b) objectivity of the received data; c) safety of persons participating in the proceedings; d) availability of information to all interested parties (CENSS, 2019). The widespread use of digital evidence and artificial intelligence to analyse digital material is necessary in this context (D'Alessandra and Sutherland, 2021);

B) implementation of operational measures and procedural actions during martial law. It is about the use of both covert methods of investigation (eavesdropping, interception of communications, surveillance, electronic surveillance, involvement of informants, infiltration, agents provocateurs, etc.), and overt investigative actions (search, extraction of fingerprints, biological samples, DNA profiles, etc.) (P.H.P.H.M.C. Van Kempen, 2014). At the same time, the state can classify the sources of obtaining information and not grant the right to access them (European Court of Human Rights, 1978; 1987; 2010). Particular attention is paid to the legitimacy of the detention of suspects and retaining them in custody, including the determination of the terms of such detention (McBride, 2009).

Violations during interrogations pose a potential threat. For example, the ECHR emphasized the inadmissibility of fairly widespread methods used during interrogations in extreme conditions that constitute inhuman and degrading treatment: hooding, noise exposure, sleep deprivation, standing continually over prolonged periods, slaps, etc. Excessively long interrogations also belong to this practice (Office of the High Commissioner for Human Rights, 2003; P.H.P.H.M.C. Van Kempen, 2014). Besides, the danger of violent disappearances of persons suspected of committing crimes is also a threat to the rights of a person in criminal proceedings (Myjer *et al.*, 2009);

- problems of judicial review of cases. The importance of judicial review as a way to protect individual rights increases during martial law. The judicial review balances: a) the interests of the state in ensuring security and b) the interests of individuals in ensuring the observance of their rights and freedoms (Arden, 2015; European Court of Human Rights, 1987). Attempts to introduce remote hearings are typical for the period of armed conflict. However, digital tools do not always meet privacy, data protection and information security standards in the context of judicial proceedings.

In particular, the use of video conferencing for judicial proceedings instead of personal presence in courts affects the relationship of the accused with lawyers, the decisions of judges, etc. (Carrera *et al.,* 2021). The duty of the state to prevent, investigate, prosecute, punish and redress for violation of the individual rights in criminal proceedings, torture or other forms of ill-treatment is important (Office of the High Commissioner for Human Rights, 2003). These violations are often revealed during the trial of cases on crimes committed during martial law.

Besides, it is necessary to emphasize the problem for the implementation of criminal proceedings and trial of cases: the real observance of an individual right to protection (legal aid in the broadest sense). The international community recognizes the extraordinary complexity of the work of lawyers in emergency situations.

However, the requirements of the investigation and the objective difficulties of the investigation of crimes should not cause limitations on the defence (Office of the High Commissioner for Human Rights, 2003). Moreover, ECHR emphasizes that the observance of the right to a fair trial is ensured through the contact between the accused and his/her defence counsel. Otherwise, it is difficult to establish a trustful relationship between the lawyer and the client (Carrera *et al*., 2021).

So, it is concluded on the basis of the foregoing that the current state of human rights protection in criminal proceedings during martial law is characterized by conceptual problems of ensuring observance of individual rights.

The diversity of these problems determines the number of proposals for solving them or, at least, reducing their severity. In particular, it is about improving the legal regulation of: a) investigative actions, in particular, interrogation (Myjer *et al*., 2009); b) remote hearings (Carrera *et al*., 2021); c) procedures for interaction with civil society institutions, primarily mass media (D'Alessandra and Sutherland, 2021), etc.

The analysis of ensuring observance of individual rights in criminal proceedings during martial law is extremely relevant and has practical significance for legislators, law enforcers and human rights defenders. The organizational and legal dimension of the problems of ensuring the observance of the rights in this aspect focuses on the prospects of comprehensive prevention of violations of individual rights in criminal justice in order to achieve fairness, accountability and redress for the victims of crimes.

Aim. Taking into account the above-mentioned, the aim of this study is to consider the main threats to the observance of individual rights in criminal proceedings in view of the peculiarities of the wartime, as well as the prospects for improving human rights protection in this area. The aim

involved the following research objectives: determine the list and specifics of crimes committed during martial law; identify the main challenges to the proper protection of individual rights in criminal proceedings with due regard to the experience of Ukraine; identify the subjects whose activities contribute to the reduction of threats of violation of individual rights in criminal proceedings during martial law; determine the promising directions for improving the protection of individual rights in the said context.

Taking into account the above-mentioned, the aim of this study is to consider the main threats to the observance of individual rights in criminal proceedings in view of the peculiarities of the wartime, as well as the prospects for improving human rights protection in this area. The aim involved the following research objectives: determine the list and specifics of crimes committed during martial law; identify the main challenges to the proper protection of individual rights in criminal proceedings with due regard to the experience of Ukraine; identify the subjects whose activities contribute to the reduction of threats of violation of individual rights in criminal proceedings during martial law; determine the promising directions for improving the protection of individual rights in the said context.

2. Methodology and methods

The sources that cover the relevant aspects of ensuring observance of individual rights in criminal proceedings during martial law were selected in order to achieve the aim and fulfil the objectives set in the article. Their analysis enabled to identify the main components of the subject under research, which reflect the complexity of the problem of human rights protection in the criminal justice system caused by the armed conflict.

The article also used the generalization of the legal positions of ECHR, international recommendations for jurists (prosecutors and lawyers), as well as the study of Ukraine's experience in regulating the observance of individual rights in criminal proceedings during martial law. This resulted in identifying the main promising directions for improving human rights protection in the field of criminal justice under martial law.

The following methods were used in this study to achieve the aim: the system approach was applied to interpret martial law as a special legal regime introduced to protect national security, and the functioning of criminal justice in this period; the descriptive analysis was used to identify and study the specifics of threats to the protection of individual rights in criminal proceedings during martial law; systematic sampling and doctrinal methods enabled identifying and describing the signs of crimes in relation

to criminal proceedings which have threats of violation of individual rights; forecasting was used to determine the prospects for improving the level of protection of individual rights in the field of criminal justice during martial law.

3. Results

Ensuring observance of individual rights in criminal proceedings during martial law is part of the general humanitarian discourse in the field of criminal justice. The solution to this problem requires combined efforts of the international community and national jurisdictions. At the same time, the prerequisites for its analysis are: a) understanding the essence of martial law; b) determining the list and specifics of crimes committed during martial law.

Martial law is supposed to mean a special legal regime that is introduced in the country/some of its regions in the event of armed aggression or the threat of an attack. Accordingly, martial law is a consequence of the most significant threats to national security in the form of an existing or potential armed conflict. Special conditions arise under martial law that led to specific changes in the field of criminal justice (Martial Law in Times of Civil Disorder) (see Figure 1).

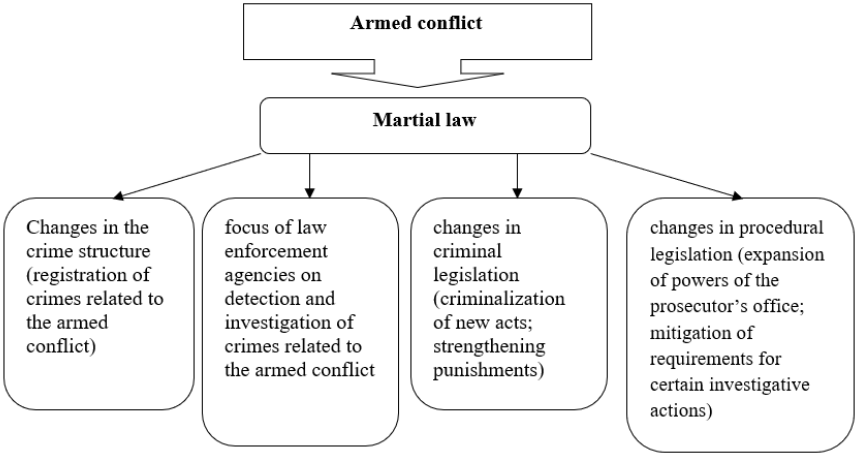

Figure 1: Consequences of martial law in the field of criminal justice. Source: own creation

A variety of crimes can be committed during martial law, which are caused by the armed conflict to a certain extent. It is complicated to determine their range because of their heterogeneity. Neither national nor international documents contain even an approximate list of those acts. It is considered that the totality of the said crimes can be regulated according to the following criteria: a) the grounds of criminalization and the nature of the acts; b) subject composition. The classification groups do not exclude each other, they describe actions in different aspects. Commission of the acts during martial law can be considered their main common feature (see Figure 2).

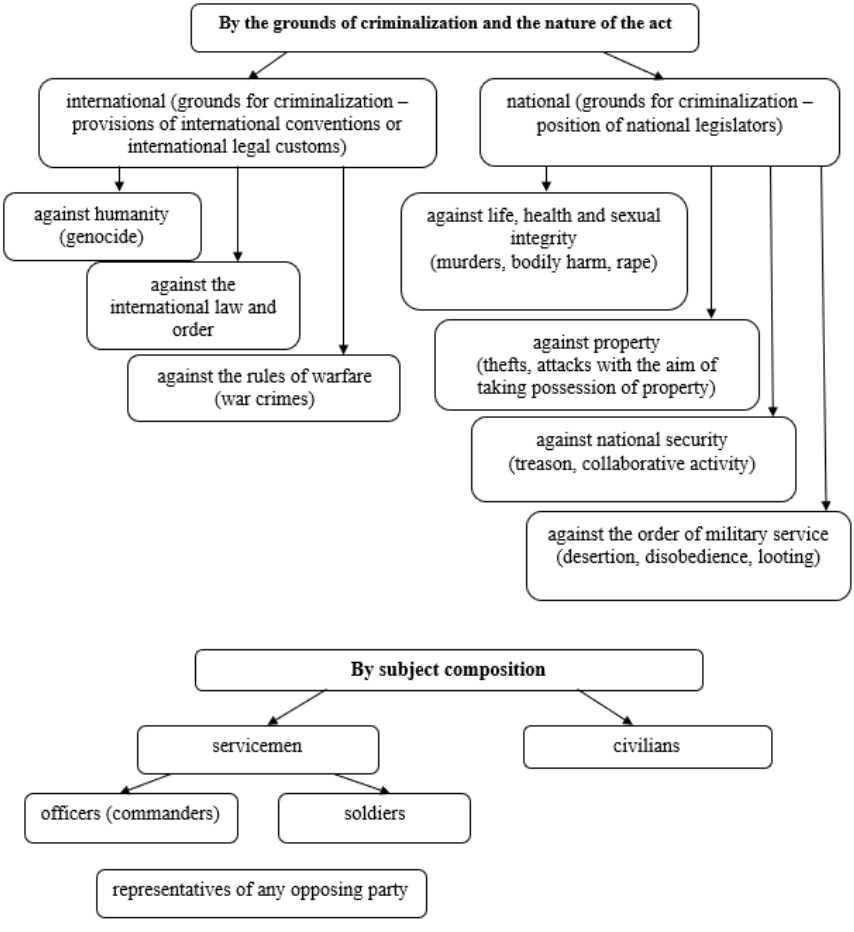

Figure 2: Classification of crimes committed during martial law. Source: own creation

The acts directly related to armed conflict are the most typical type of crimes committed during martial law. They are separated because they are not committed at other times and outside of the conflict. Besides, they can be committed throughout the entire period of martial law. It is obvious that crimes related to armed conflict are the most socially dangerous. Therefore, the international documents, in particular, in the statutes of international courts and ad hoc tribunals, introduce criminalization of a significant number of those acts (Schwarz, 2018). Figure 3 presents the most typical features of crimes related to armed conflict developed by international judicial practice.

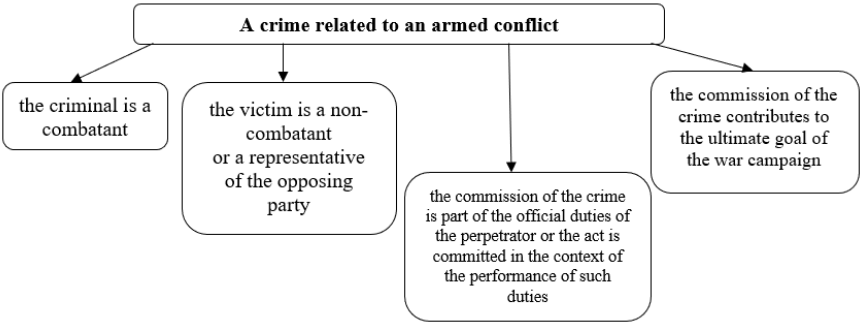

Figure 3: Typical features of a crime related to an armed conflict. Source: own creation

Despite the international community's attention to crimes with the specified features, it should be noted that other acts committed during martial law are also dangerous. For example, enhanced criminal liability was introduced in the criminal legislation of Ukraine for thefts and robberies committed during the armed conflict. This applies to crimes committed throughout the country, not only in regions of hostilities.

Human rights apply to almost all aspects of criminal procedure law, regardless of the specifics of the criminal justice system (P.H.P.H.M.C. Van Kempen, 2014). It follows that individual rights may be violated at different stages of criminal prosecution during martial law. The criminal justice system of Ukraine, where martial law has been introduced since February 24, 2022, may illustrate the specifics of the threats to ensuring observance of human rights.

This is why a special procedure was provided for the conduct of criminal proceedings. Generalizations of the positions of researchers, lawyers and judges (Gvozdiy, 2022; Lisitsyna *et al.*, 2022; Mykhailenko, 2022) enable identifying the most important novelties in criminal procedure law:

- it is allowed to establish interdepartmental investigative groups to ensure the prompt investigation of all criminal offences;
- extending the powers of prosecutors, who can grant permission to conduct investigative actions that were previously handled by investigative judges (search, entry into premises, seizure of property, detention, etc.);
- detention procedure was simplified (its term was increased by 3.6 times), it is allowed to conduct investigative activities around the clock;
- significantly complicated appeal of investigative actions;
- it is possible to consider requests for preventive measures remotely without the participation of the suspect or the accused; in general, the share of the use of video conferencing during the period of investigation and court proceedings has increased significantly;
- attention is drawn to the inappropriately excessive discovery of materials from parties to criminal proceedings.

In view of the foregoing, it is possible to compare the stages of criminal prosecution and the main threats to the observance of individual rights during martial law that may occur at those stages (see Figure 4).

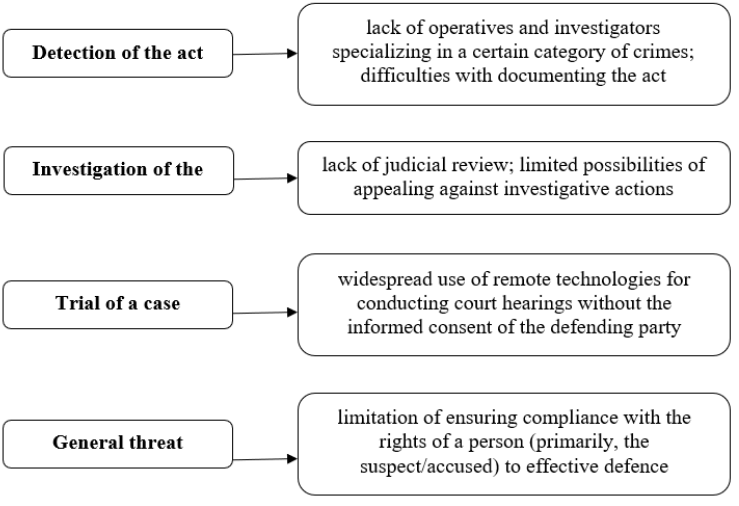

Figure 4: The main threats to the observance of individual rights during martial law at different stages of criminal prosecution (based on the experience of Ukraine).

So, the introduction of martial law did not prevent the conduct of pre-trial investigation, the activities of the prosecutor's office and the administration of justice in the territories controlled by the authorities. At the same time, martial law objectively limits the rights of the participants in criminal proceedings, primarily the suspect and the accused (Gvozdiy, 2022).

Monitoring violations of human rights during criminal proceedings under martial law, their detection, discontinuation, and prevention is an important condition for the legality of the functioning of the criminal justice system. This is why determining the actors whose activities are the most effective and appropriate under martial law is an important component of the discourse.

The involvement of international organizations for monitoring violations will be limited due to the danger to the life and health of their representatives, as well as the specifics of many crimes that are investigated/tried in courts (for example, treason, war crimes, etc.). However, it is appropriate to create independent international ad hoc commissions. For example, the UN Human Rights Council created the Independent International Commission of Inquiry on Ukraine, which actively works with victims and representatives of civil society (United Nations, 2022).

Accordingly, the said actors may be classified by distinguishing: a) government agencies; b) representatives of civil society. At the same time, the state is represented by the prosecutor's office (Myjer *et al.*, 2009) and courts. Professional lawyers' associations should be singled out among representatives of civil society (Office of the High Commissioner for Human Rights, 2003; Gvozdiy, 2022). Figure 5 presents the general vision of the system of actors engaged in monitoring and supervision in the field of prevention of violations of individual rights in criminal proceedings during wartime.

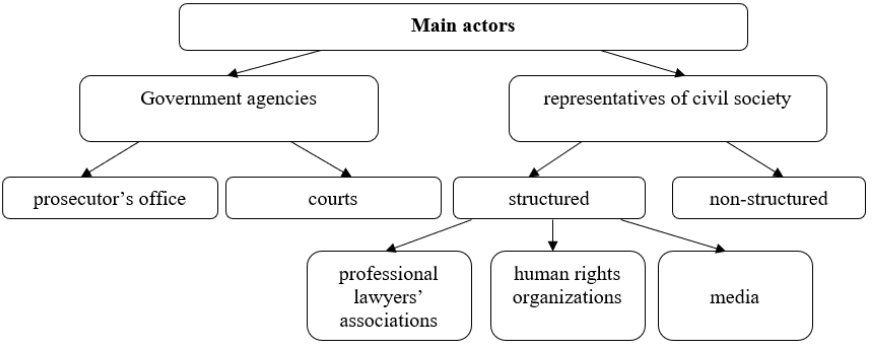

Figure 5: The main actors in preventing the violation of individual rights in criminal proceedings during martial law. Source: own creation.

The above aspects helped to determine the main promising directions for improving protection of individual rights in criminal proceedings during martial law. It is seen that they are connected with increasing of international participation in criminal proceedings on international crimes (war, genocide, aggression). This: a) will enable to conduct criminal proceedings in the most complex cases faster and more effectively; b) will enable national law enforcement agencies not to leave crimes that are not directly related to armed conflict, but are committed during martial law without response. The international participation may include a range of issues from documenting events to working with crime victims (see Figure 6).

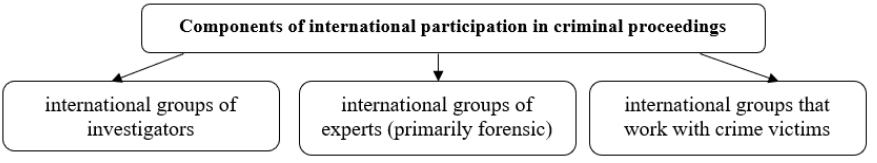

Figure 6: International participation in criminal proceedings in the context of improving protection of individual rights during martial law. Source: own creation.

In view of the foregoing, it is appropriate to consider the issue of developing standard procedures for attracting international assistance in conducting criminal proceedings during martial law. Appropriate procedures may be outlined in international recommendations for national law enforcement and judicial authorities. This will enable to actively involve experienced experts, to implement the results of their work in procedural documents with their subsequent use as evidence in national and international courts.

4. Discussion

The studies on the state and prospects of ensuring observance of individual rights in criminal proceedings during martial law can be represented by two blocks: a) international recommendations of UN agencies, the European Lawyers' Association, legal positions of ECHR, aimed at improving national legislative and law-enforcement practice; b) expert studies that cover different aspects of this issue.

This research has shown that those studies are focused either on general issues that are indirectly related to criminal proceedings during wartime, or on the generalization of the experience of international courts on war crimes.

In general, one should agree with the original thesis that measures taken with a view to national security considerations can limit the right to effective protection and to a fair trial (Council of Bars & Law Societies of Europe, 2019). This will be most evident in the context of war crimes, because they are directly related to armed conflict (David, 2011).

Besides, individual criminal responsibility arises for their commission, and cases are tried both in national and international courts (Schwarz, 2018). However, this research shows that the problems of limiting individual rights in criminal proceedings on a much wider range of actions than just war crimes should be analysed.

This study established that the vast majority of specialists pay attention to ensuring observance of individual rights in criminal proceedings when carrying out traditional investigative actions. We share the position that there are significant threats to encroachment on human dignity, a disproportionate violation of the inviolability of private life, and the use of torture in the course of detention and interrogations (Office of the High Commissioner for Human Rights, 2003; Myjer *et al*., 2009). During martial law, those detained during criminal proceedings are particularly vulnerable to abuse by the state, which is interested in quickly obtaining information or admitting guilt (P.H.P.H.M.C. Van Kempen, 2014).

This vision seems, however, limited. It is appropriate to share the thesis that covert (operational) measures also pose serious challenges to the protection of individual rights during martial law. This especially applies to obtaining information in the form of digital evidence (Freeman, 2018) and its processing using the latest technologies (Dupont *et al*., 2018).

The consideration of the actors that counteract violations of individual rights in criminal proceedings during martial law is a separate aspect of studies. It is possible to agree with the allocation of: a) representatives of the state - prosecutors, who should monitor potential and actual violations (Office of the High Commissioner for Human Rights, 2003); b) lawyers, whose physical presence and communication is considered the most important way to prevent cases of unjustified coercion (Carrera *et al*., 2021); c) civil society institutions, which create pressure on the authorities in order to protect human rights (Jeßberger and Steinl, 2022). At the same time, we support the position that an organized civil society provides greater transparency regarding accountability (D'Alessandra and Sutherland, 2021).

However, this study draws attention to the activities of professional lawyers' associations, in particular, counsels. They actively identify threats of violation of individual rights not only in law enforcement practice, but also at the level of legal regulation.

It is appropriate to agree with the comments regarding modern technologies, first of all, platforms for conducting court hearings remotely. The importance of this context is emphasized by the fact that the courts have the discretion to determine the balance between the fundamental values of the law in each specific case (Freeman, 2018).

The main concerns are related to the inadequate level of confidential communication between lawyers and their clients, which affects the effective participation of the defence in the trial (Carrera *et al.*, 2021).

We share a position on the victimological dimension of the analysis of the problems of observing individual rights in criminal proceedings during martial law (Lohne, 2020). Modern justice is a communicative process that provides interaction with crime victims and the general population (Eskauriatza, 2021). Our position is that the importance of bringing the perpetrators to justice cannot be underestimated, as these crimes are committed during martial law.

In general, the following positions on the directions for improving the protection of individual rights in criminal proceedings during martial law can be shared: a) the development of appropriate regulatory support that complies with international standards (Schwarz, 2018); b) institutional support for conducting criminal proceedings, in particular, the creation of an impartial judicial and investigative organization to consider the claims of victims of large-scale crimes (Schmitt, 2022); c) information support for the participation of interested persons in remote measures (Carrera *et al.*, 2021); d) improving knowledge of the possibilities of digital technologies for collecting evidence and their application in the areas of conflicts (Freeman, 2018); e) development of rules for the media that regulate collection and storage of materials of journalistic investigations on violations of individual rights in criminal proceedings (D'Alessandra and Sutherland, 2021).

In general, these considerations can be the basis for the implementation of legal, organizational and procedural mechanisms to increase the degree of protection of individual rights in criminal proceedings during martial law.

Conclusions

The conducted research provided grounds for drawing a number of conclusions regarding the main threats to the observance of individual rights in criminal proceedings during martial law.

It was established that martial law is a type of special legal regime and a consequence of an armed conflict. Martial law entails significant changes in the field of criminal justice, as well as criminal procedure legislation.

Various crimes are committed during martial law, and the time of their commission is their common feature. A summary of the results of the introduction of martial law in Ukraine with regard to changes in legislation is provided.

Threats to the observance of individual rights in criminal proceedings were identified depending on the stage of criminal prosecution. The actors engaged in the prevention of violation of individual rights are classified. The appropriateness of creating international ad hoc groups to work with crime victims was noted. Prospects for improving the protection of individual rights in criminal proceedings require the involvement of international assistance in the detection and investigation of international crimes related to an armed conflict.

The appropriateness of developing standard procedures for attracting international assistance for carrying out criminal proceedings during martial law with further use of the results as evidence in national and international courts is emphasized. It is proposed to develop international recommendations for national law enforcement and judicial bodies on this issue.

Prospects for further research in this area include a comprehensive support for the regulatory and law enforcement achievements regarding the involvement of international assistance for the detection and investigation of crimes during martial law.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 502-511
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Administrative, financial, criminal-legal and theoretical-methodological aspects of regulating social relations in government bodies

DOI: https://doi.org/10.46398/cuestpol.4176.29

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Abstract

The purpose of the research was to define the theoretical, administrative and civil law aspects of the regulation of social relations. Consequently, the article specifies the means of social regulation, which include components of legal, moral, corporate and customary, etc. type. It has been shown that legal regulation of social relations is defined as an intentional action on the behavior of people and social relations with the help of legal (juridical) means. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. By way of conclusion it has been proved that since the object of legal regulation is presented as social relations, legal regulation is determined by some objective and subjective factors. As contributions, the following factors of social relations have been determined: level of economic development of society; social structure of society; level of maturity and stability of social relations; level of legal culture of citizens; level of certainty of the subject of social relations, means and methods of legal regulation.

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Recibido el 14/12/22 Aceptado el 26/01/23

Keywords: social relations; legal regulation; state model; legal phenomena; legal norms.

Aspectos administrativos, financieros, penal-jurídicos y teórico-metodológicos de la regulación de las relaciones sociales en los órganos de gobierno

Resumen

El objeto de la investigación fue definir los aspectos teóricos, administrativos y de derecho civil de la regulación de las relaciones sociales. En consecuencia, el artículo precisa los medios de regulación social, que incluyen componentes de tipo: legal, moral, corporativa y de costumbres, etc. Se ha demostrado que la regulación legal de las relaciones sociales es definida como una acción intencional sobre el comportamiento de las personas y las relaciones sociales con la ayuda de medios legales (jurídicos). La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. A modo de conclusión se ha probado que, dado que el objeto de la regulación jurídica se presenta como las relaciones sociales, la regulación jurídica está determinada por algunos factores objetivos y subjetivos. Como aportes, se han determinado los siguientes factores de las relaciones sociales: nivel de desarrollo económico de la sociedad; estructura social de la sociedad; nivel de madurez y estabilidad de las relaciones sociales; nivel de cultura jurídica de los ciudadanos; nivel de certeza del tema de las relaciones sociales, medios y métodos de regulación legal.

Palabras clave: relaciones sociales; regulación jurídica; modelo de Estado; fenómenos jurídicos; normas jurídicas.

Introduction

Society is characterized by a certain degree of organization and regularity. This is caused by the need to reconcile the needs and interests of an individual and a certain community of people (large or small social groups).

To achieve such agreement, social regulation (i.e. purposeful action on people's behavior) is carried out. Regulation can be both external in relation to a person (someone influences him/her in some way) and internal (self-

regulation). In the course of its development the society has developed a diverse system of means and methods of regulating people's behavior. Means answer the question of how people's behavior is regulated, and methods determine how this purposeful action is carried out.

1. Literature review

The means of social regulation include, first of all, social norms: legal, moral, corporate, customs, etc. But the norm is never the only means of influencing people's behavior, since such means also include individual orders, authoritative commands, measures of physical, mental and organizational coercion, etc. **(***Kopeichykov, 2002*).

Based on this, legal regulation can be defined as a purposeful effect on people's behavior and social relations with the help of legal (juridical) means (*Petryshyn, 2002*). Based on this definition, it is appropriate to conclude that regulation is only an action in which sufficiently marked goals are set. For example, in order to regulate the use of land, ensure its preservation, and improve efficiency of land use the legislative body adopts a law on land use. And the action of land legislation being the basis for legalization of goals set can be determined as legal regulation.

And if influence of a legislative act or its norms causes consequences that are not provided for by the legislation, and in some situations are contrary to the goals of the legislator, then such an action cannot be considered a legal regulation. So, under influence of land legislation, the price of land plots has grown, the number of speculative land transactions carried out for profit as well as unproductive use of land resources has increased.

The negative impact of the land law on social relations cannot be determined as legal regulation, since it was not a part the legislator's goals, but was intended to regulate life of the society, to ensure the fair, reasonable nature of the use of such a value as land.

Therefore, the purpose of the article is to determine theoretical, administrative, and civil law aspects of regulating social relations.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding the theoretical, administrative, civil law aspects of regulating social relations.

With the help of the epistemological method, the essence of preventing professional deformation among penitentiary personnel was clarified,

thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of theoretical, administrative and civil law aspects of regulating social relations was determined.

In order to get an idea about the extent of professional deformation among penitentiary personnel during the last five years, we analyzed statistics, which is not, unfortunately, based on all canons of statistical generalization, since we were not able to access all blocks of information. However, thanks to the existing data, we managed to analyze theoretical, administrative and civil law aspects of regulating social relations.

3. Results and discussion

An action carried out by non-legal means cannot be considered a legal regulation. Thus, influencing people's consciousness and behavior through the mass media, through propaganda, agitation, ethical and legal education and training cannot be referred to legal regulation as a special legal organizing activity. Influence over social relations and on people's behavior caused by special legal means and methods, in its turn, affects spiritual, ethical, ideological aspects of a person's life.

Law cannot regulate all social relations, all social connections between members of the society. Therefore, at each concrete historical stage of social development, the sphere of legal regulation must be defined with a sufficient level of precision (*Petryshyn, 2002*).

In conditions of a narrowed sphere of legal regulation in the society, there is a threat of arbitrariness, chaos and unpredictability in those areas of human relations that can and must be regulated with the help of law. And in cases of unjustified expansion of the sphere of legal regulation, especially at the expense of centralized state-authority action, created are conditions for strengthening of totalitarian regimes, regulation of people's behavior, which leads to social passivity, lack of initiative of members of the society.

The sphere of legal regulation should include those relationships that have the following characteristics (*Petryshyn, 2002*): reflection of individual and general social interests of society members; realization of mutual interests of their participants, each of whom narrows his/her own interests in order to satisfy interests of others; agreement-based formation of implementation of certain rules and recognition of their obligatoriness; compliance with rules obligatoriness of which is supported by a sufficiently effective legal force.

The nature and type of social relations, components and subject of legal regulation determine the degree of intensity of legal regulation, that is, the breadth of legal action, the degree of bindingness of legal orders, forms and

methods of legal coercion, the degree of detail of orders as well as intensity of legal action on social relations (*Oliinyk, 2001*).

In spite of different approaches to its definition, a certain understanding of the essence of legal regulation has been formed in literature sources. The term "regulation" comes from the Latin word "regulo" (rule) and means ordering, adjusting, bringing something into line with something else (*Oliinyk, 2001*). That is, legal regulation is an action on social relations with the help of certain legal means, including primarily legal norms. In the conditions of forming the basis of a legal state, the role and importance of legal regulation of social relations acquires special relevance.

It is about those social relations, which cannot function without the use of legal means (economic, political, and socio-cultural). However, not everything in social relations is regulated by law. For example, the following aspects are not regulated by law: in the sphere of economic relations - production processes; in the sphere of political relations - development of party programs and statutes; in the spiritual and cultural sphere - religious relations, etc. (*Oliinyk, 2001*).

Legal regulation presupposes normalization, legal consolidation and protection of social relations through the use of legal means. The regulatory influence of law on social relations consists in the fact that, law in its norms constructs a model of mandatory or permitted behavior of various subjects of these relations.

Most authors understand legal regulation a set of techniques and means of legal influence over behavior of subjects of social relations. According to S.O. Sarnovska, certain legal regulation of social relations is carried out precisely from the moment of publication of the respective normative legal act (Sarnovska, 2003). A somewhat different point of view is held by P.M. Rabynovych, who believes that the rule of law begins to regulate behavior of subjects not from the moment the rule of law is issued, but from the time of occurrence of legal facts provided for by this rule (*Rabinovych, 2001*).

Since the subject of legal regulation consists in social relations, legal regulation is determined by some objective and subjective factors. Such factors may include the following ones:

- level of economic development of the society;
- social structure of the society;
- level of maturity and stability of social relations;
- level of legal culture of citizens;
- level of certainty of the subject, means and methods of legal regulation (*Kravchuk, 2002*).

Most modern scientific works are devoted to legal regulation, and therefore to its spheres and boundaries, as one of the types of legal influence. In this regard O.M. Melnyk notes that some authors equate the concepts of legal influence and legal regulation, although boundaries of these concepts do not coincide. Others do not take into account different forms of legal regulation.

Hence, we have the statement of some scientists that legal regulation begins with adoption of a legal norm and is confined to it, and opinion of others that it starts with the entry into force of the norm or with occurrence of a legal fact provided for by the respective norm of law. At the same time, research of the issue of the sphere of legal influence is not only of theoretical, but also of practical significance, because having defined the sphere of legal influence, we will be able to answer the question about what relations are subjected to such influence and we will establish the limit of legal influence (Villasmil Espinoza *et al*., 2022).

The sphere of legal influence, as well as the sphere of legal regulation, cannot remain constant. In this aspect, Onishchenko note that changing the scope of legal regulation is a complex process in which opposite trends (expansion and narrowing of legal regulation) coincide (*Onishchenko, 1995*).

The scope of legal regulation can expand due to the emergence of new relationships of social reality (those previously unregulated by law). Narrowing of this sphere occurs due to society's refusal to use the law and due to replacing legal regulation with other means of social regulation. Such a tendency is caused by the social nature of legal norms, their interrelationship with norms of social regulation.

In this regard, Orzikh (2009: n/p) notes that: "the scope of the regulatory influence of law is limited to the normatively established variants of person's behavior in each typical situation" and "the wider the range of these variants is, the more meaningful legal freedom of an individual is, and the wider the framework of the sphere of regulatory influence becomes" (*Orzikh, 2009: n/p*).

According to P.M. Rabinovych, the sphere of legal regulation can be defined as a social space actually regulated by law, or one that can be regulated by law. But such social space is always limited (*Rabinovych, 2001*).

In Ukraine, the sphere of legal influence is in constant and rather contradictory movement in accordance with the pace of legislation formation and improvement However, many legal norms do not find their consistent application and implementation. At the same time, legal awareness of Ukrainian citizens still remains at a low level, and activities of state bodies often do not meet the standards of a law-governed state.

Unfortunately important changes in law, often have a chaotic nature, so they remain disordered and lack a system-defined connections.

Thus, changes in the sphere of legal influence, as well as those in the sphere of legal regulation, depend on a significant number of factors, among which the following ones can be singled out:

- degree and level of public assignment of law;
- changes in the legal system as a whole;
- priority of public and individual interests;
- progressive changes in the society associated with emergence of new social relations;
- increase or decrease in the level of legal awareness and legal culture of the society;
- progressive changes in the current legislation in the country, both in the direction of expansion and reduction of the regulatory framework;
- expanding rights and freedoms of citizens and creating favorable conditions for their implementation (Tylchyk *et al.*, 2022).

Problems in the sphere of legal influence are inextricably linked with the need to study the issue of legal influence limits. Any influence or regulation cannot be performed without boundaries and indefinitely, and therefore such influence must have a certain limit; if this limit is crossed such influence acquires new features and turns into another substance. So, S.V. Bobrovnyk emphasizes that limits of legal regulation constitute an optimal completeness of legal mediation of social relations, due to the need for state influence over spheres of social life, which cannot be regulated otherwise than with the help of law (*Bobrovnyk, 2001*).

When analyzing the above first of all it is necessary to clarify the essence and meaning of the "limit" category for the purpose of researching the notion of "legal influence limits". Given the fact that there are several types of definitions in science, first of all, it is necessary to give a scientific analysis of the concept of legal influence limits and choose the most optimal approach.

In the process of forming a definition due to the closest genus and species difference, it breaks up into two relatively independent cognitions: definition of the meaning of the very concept of "limit"; establishment of the most significant distinguishing features of legal influence limits from all other subtypes of limits (Matviichuk *et al.*, 2022).

It should be noted that the word "limit" is used for such entities (phenomena) that can be imagined in clear or unclear, but always specific units, parameters or characteristics. Thus, in the process of researching the issue of legal influence limits, we consider limiting characteristics of the action of law, real and potential possibilities of its influence over social relations and interests (Leheza *et al*., 2022).

Considering the above, in our opinion, it is possible to distinguish two main approaches to understanding legal influence limits: an objective approach related to objectively existing conditions that do not depend on the will of social subjects or the state, cannot be changed at their will and are capable of limiting legal influence in a certain way.

Such conditions may include certain regularities of social development (for example, cultural ones, economic ones, etc.), laws of development of nature; a subjective approach, which consists in one's own worldview, self-assessment by social subjects of their capabilities and legal capabilities. Thus, it is in the process of own perception, assessment and representation that the subjective approach to understanding legal influence limits is revealed.

It should be noted that this approach to characterizing the marginal indicators of legal influence depends on the level of legal awareness and legal culture of a particular society at a certain stage of its development. Therefore, the mechanism of legal influence as a whole will depend on how adequately law in its essence will be perceived.

Like any theoretical category, "legal influence limits" do not receive a full-fledged theoretical study without characterizing their main features. As noted by O.M. Melnyk legal regulation limits are determined by non-legal factors. They come from the very nature of human activities, they are determined by culture and civilization as well as by the existing system of relations, economic, historic, religious, national and other circumstances (Melnyk, 2000).

A peculiar place among subjective factors influencing determination of legal influence limits is taken by the dominating in the society and the state legal consciousness which is tightly related to certain common philosophic and world outlook views of the society and can determine limits of influence over legal awareness of a definite social subject. It is law that acts as a certain level of personality's freedom in the society, determines limits of such freedom and sets responsibility for violating the respective limit.

Factors of subjective nature determining legal influence limits may also include propaganda of law, legislator's intentions, motivation of law and legal innovations as far as they do not perform direct regulation and never initiate definite legal relations, but they have an influence over subconsciousness of subjects of law and so determine possible limits of their behavior (Halaburda *et al*., 2021).

Similarly to objective factors, subjective factors are not exhaustive and may change under influence of objective reasons. Such changes are presented as narrowing or vice versa expanding possible legal influence limits (Kobrusieva *et al*., 2022).

Conclusions

So, legal regulation demonstrates interference of the state into vital activity of the society in general as well as that of each separate personality. This interference in the modern democratic society must have its limits, i.e. limits of dictatorial interference of the state and its bodies to the system of social relations. And violation of these limits by the state, application of prohibited methods of influence over social relations should be viewed as interference of the state to insubordinate spheres of social regulation.

In a modern democratic state, the nature and types of these means are determined by a complex of factors; among these factors we can first of all highlight patterns of development and principles of the legal system, as well as the level of declared and actually effective rights and freedoms of human and citizen established both in national legislation acts and international acts ratified by the legislative body of that state.

In addition to that, legal, democratic and social state should recognize priority of rights, freedoms and legally protected interests of a separate person over its own interests. Despite declarativity of this statement it has a significant importance for choice of priority guidelines and means for legal regulation of social relations.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 512-527
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Peculiarities of judicial consideration of causes related to domestic violence: comparative analysis

DOI: https://doi.org/10.46398/cuestpol.4176.30

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Abstract

The article is devoted to the analysis of the features of legal protection of victims of domestic violence, with the purpose of identifying the positive experience that has been proved in practice and, therefore, is worth following in Ukraine as in other countries to prevent this form of violence. To achieve this purpose, general and special scientific research methods were used, in particular dialectical, historical-legal, systematic, comparative legal methods. In this regard, international experience in dealing with cases related to domestic violence was also studied using the examples of European countries and Canada and the United States. The legal provision for the protection of persons who have suffered domestic violence was also considered. As a contribution of the research, the problems of legal provision of judicial protection of victims of domestic violence in Ukraine were revealed and, at the same time, suggestions were made to improve the legislation regulating the killing. It is concluded that it is necessary to strengthen the position of the victim of domestic violence by giving her the opportunity to claim compensation for moral damages within the framework of a given criminal proceedings.

Keywords: judicial protection; domestic violence; right to judicial guarantees; protection against domestic violence; victims of domestic violence.

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Recibido el 29/11/22 Aceptado el 15/01/22

Peculiaridades de la consideración judicial de las causas relacionadas con la violencia doméstica: análisis comparado

Resumen

El artículo está dedicado al análisis de las características de la protección jurídica de las víctimas de violencia doméstica, con el propósito de identificar la experiencia positiva que se ha probado en la práctica y, por lo tanto, vale la pena seguir en Ucrania como en otros países para prevenir esta forma de violencia. Para lograr este propósito se utilizaron métodos de investigación científica generales y especiales, en particular métodos dialécticos, histórico-jurídicos, sistemáticos, jurídicos comparados. En este sentido, se estudió además la experiencia internacional en el tratamiento de casos relacionados con la violencia doméstica utilizando los ejemplos de países europeos y de Canadá y Estados Unidos. También se consideró la provisión legal de protección de las personas que han sufrido violencia doméstica. Como un aporte de la investigación, se revelaron los problemas de la provisión legal de protección judicial de las víctimas de la violencia doméstica en Ucrania y, al mismo tiempo, se hicieron sugerencias para mejorar la legislación que regula la mataría. Se concluye que es necesario reforzar la posición de la víctima de violencia doméstica dándole la oportunidad de reclamar una indemnización por daños morales en el marco de un proceso penal determinado.

Palabras clave: protección judicial; violencia intrafamiliar; derecho a las garantías judiciales; protección frente a la violencia intrafamiliar; víctimas de violencia domestica.

Introduction

The problem of domestic violence is becoming more and more relevant in all countries and in Ukraine in particular. The reason for the increase in the number of cases of domestic violence around the world is, among other things, quarantine and forced self-isolation. According to the data of the national hotline of the public organization “La Strada”, since the beginning of the COVID-19 pandemic in Ukraine, the number of calls to the hotline has increased by at least half time. Victims of domestic violence need help and protection, including legal protection. Undoubtedly, one of the most effective means of protection against domestic violence is protection in court. Moreover, the judicial review of this category of cases has its own peculiarities.

At the same time, in many countries, a significant number of issues remained unsettled by legislation. This especially applies to the issues of judicial resolution of cases related to domestic violence and the realization of the right to a fair trial in cases related to domestic violence, as well as enforcement of court decisions on issuing restraining orders. This encourages comparative research in this area.

The purpose of this scientific article is to determine and justify main features of judicial consideration of cases related to domestic violence in different countries with the goal to make suggestions for improving the relevant legislation in Ukraine.

1. Materials and methods

To achieve the goals and solve the tasks set in the article, general scientific and special research methods were used. Dialectical method was used to determine the conceptual and categorical apparatus, definition of the concept of the right to a fair trial. Historical-legal method was used to research the history of the formation of legislation on prevention and protection from domestic violence in Ukraine. With the help of systematic method, the structure and constituent elements of the right to a fair trial in cases related to domestic violence were determined.

The comparative legal method was used to establish the features of judicial protection of victims of domestic violence in individual countries, the legislative provision of this type of protection, as well as legislation in the field of combating domestic violence, and the identification of positive experiences and weaknesses in this area; institutional method - to study the functioning of various institutions which function in the field of protection of victims of domestic violence; analysis and synthesis - to study the basic principles of legal regulation of protection of victims of domestic violence in European countries, Canada and the USA; system method - to systematize and generalize the source base of research. Using a predictive method proposition to improve the legislation of Ukraine in the field of prevention and countermeasures against domestic violence and legal protection of victims of domestic violence were made.

2. Results and Discussion

The problem of domestic violence has been studied by many scientists. Thus, Lesko in her dissertation research studied the administrative and legal protection of children from domestic violence (Lesko, 2019). Samchenko in her dissertation paid attention to the protection of minors from domestic

violence, but emphasized the criminological characteristics and prevention of domestic violence (Samchenko, 2011). Kovalyova studied administrative and legal responsibility for committing domestic violence (Kovalova, 2018).

Slukhayenko studied the criminological characteristics of domestic violence. The author claims that creating a criminological portrait of a criminal makes it possible to prevent violence in the future (Slukhayenko, 2020). Lischuk investigated the issue of protecting women from violence with the help of criminal legal norms (Lischuk, 2020).

Problems of combating domestic violence were also studied (Funta *et al.,* 2020) emphasizing the need for the cooperation of subjects implementing measures in the field of prevention and counteraction of domestic violence.

However, the realization of the right to a fair trial in cases related to domestic violence still remains relevant and urgent and requires deep scientific analysis.

In order to ensure the protection of victims of domestic violence, it is necessary for the state to ensure the right to a fair trial. The right to a fair trial in cases related to domestic violence requires the presence of the following components: the creation of an opportunity to protect rights in court, access to effective legal remedies for victims of domestic violence, compensation for the damage caused.

According to the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law, which will resolve a dispute regarding his/her civil rights and obligations or establish the validity of any criminal charge brought against him/her.

The judgment is announced publicly, but the press and the public may not be admitted to the courtroom during all or part of the trial in the interests of morality, public order or national security in a democratic society, if the interests of minors or the protection of the privacy of the parties so require, or to the extent, which is recognized by the court as strictly necessary when, under special circumstances, publicity of the proceedings may harm the interests of justice (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

In 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Prevention and Combating Domestic Violence", which entered into force on January 7, 2018. This law defines the basic principles of preventing and combating domestic violence, the main directions of implementation of the state policy in the field of prevention and combating domestic violence, regulates the issue of determining the entities that carry out measures in the field of prevention and combating domestic violence, tasks and measures for the prevention of domestic violence.

The adoption of the Law "On Prevention and Combating Domestic Violence" is an important step in the direction of combating such a shameful phenomenon as domestic violence. Domestic violence is no longer considered a private matter that is not talked about, but is recognized as a dangerous social problem that must be countered at the national level. To eradicate domestic violence, the Law introduced new approaches and new tools to counter this negative social phenomenon.

The law introduced new special measures to combat domestic violence, namely: an urgent restraining order against the offender; a restraining order against the offender; preventive registration of the offender and carrying out preventive work with him/her; sending the offender to undergo a program for offenders (Article 21 of the Law).

Urgent restraining order against the offender (obligation to leave the place of residence (stay) of the injured person; ban on entering and staying at the place of residence (stay) of the injured person; prohibition of any contact with the injured person) is issued by police officers for a period of 10 days. Preventive registration of the offender and carrying out preventive work with him/her is also carried out by the relevant police office at the place of residence (stay) of the applicant.

Since January 2019, not only administrative, but also criminal liability is provided for domestic violence in Ukraine. According to Article 126-1 of the Criminal Code of Ukraine, domestic violence is punishable by community service (for a term of 150 to 240 hours), arrest (for a term of up to 6 months), restriction of liberty (for a term of up to 5 years) or imprisonment (for term up to 2 years).

To qualify this article of the Criminal Code, it is necessary to prove the systematicity of domestic violence. Scientists (Funta, 2016; Gulac *et al.*, 2022; Kondratenko *et al.*, 2020; Ladychenko *et al.*, 2019; Oleksenko *et al.*, 2021; Sobol *et al.*, 2022) and others prove their position that systematicity should be understood as three or more acts of domestic violence. The introduction of criminal liability for domestic violence is definitely a positive step, as understanding the possibility of criminal liability serves as a deterrent for the offender.

According to the Law of Ukraine "On Prevention and Combating Domestic Violence" in civil proceedings, the court may issue a restraining order against the offender who committed domestic violence, which determines one or more measures to temporarily limit the rights of the offender or impose obligations on him:

1. prohibition to stay in the place of common residence with the injured person;

2. removal of obstacles to the use of property that is the object of the right of common co-ownership or personal private property of the affected person;
3. restriction of communication with the affected child;
4. prohibition to approach within a specified distance to the place of residence, work, other places frequently visited by the affected person;
5. prohibition to search for the injured person personally and through third parties, if he/her is voluntarily in a place unknown to the offender, to pursue him/her and communicate with him/her in any way;
6. prohibition to conduct correspondence, telephone conversations with the victim or contact him/her through other means of communication personally and through third parties (Law of Ukraine, 2018).

The positive side of Ukrainian legislation is the establishment of limited terms for consideration of cases on the issuance of a restraining order. Thus, according to part 2 of Article 350-5 of the Civil Procedure Code of Ukraine, the court must consider the case of issuing a restraining order no later than 72 hours after the application is submitted to the court, which contributes to ensuring such an important component of the right to a fair trial as "a reasonable period of consideration of the case". The positive side is also that, according to the Law of Ukraine "On Court Fees", the applicant is exempted from paying the court fee for submitting an application for the issuance of a restraining order.

Court costs for consideration of such cases are reimbursed by the state. It certainly also contributes to the realization of the right to a fair trial for victims of domestic violence. At the same time, a gap in Ukrainian legislation regarding the settlement of the following issue should be noted. The decision to issue or refuse to issue a restraining order is made on the basis of an assessment of the risks of committing domestic violence.

However, there is no form of risk assessment that can be used by judges. Undoubtedly, judges can use the form for assessing the risks of committing domestic violence, developed for police officers when establishing the need to issue an urgent restraining order, which is defined by the order of the Ministry of Social Policy of Ukraine and the Ministry of Internal Affairs of Ukraine of 13.03.2019 No. 369/180 "On approval of the Procedure for conducting an assessment of risks of domestic violence." However, approving a form for judges to assess the risks of committing domestic violence would make their work much easier and allow for a more objective assessment of the situation.

According to Part 2 of Article 350-8 of the Code of Civil Procedure, the court notifies the authorized subdivisions of the National Police of Ukraine at the place of residence of the applicant about the issuance or extension of a restraining order no later than on the day following the day of the decision, in order to arrest the person in respect of whom the restraining order has been issued or extended prescription, for preventive registration, as well as regional, district in the cities of Kyiv and Sevastopol state administrations and executive bodies of village, settlement, city, district councils in cities at the place of residence (stay) of the applicant (Civil Procedural Code of Ukraine, 2004).

After receiving the notification, the National Police body must place the offender on preventive registration, ensure control over the offender's behavior and carry out preventive work in order to prevent further violence in the family. However, it is not established at the legislative level what is understood under the control over the offender's behavior and what is understood under preventive work with him/her, and exactly how it should be carried out. As a result, this requirement of the law is not fulfilled in practice.

Therefore, without a doubt, it is necessary to enshrine at the legislative level the definition of control over the behavior of the offender, to reveal what is the preventive work of police officers with the offender and in what way they should be carried out, since without proper legal regulation of this issue, this type of special measure of combating domestic violence has a declarative nature. In addition, there is a problem of refusal of public and private executive services to enforce court decisions on the establishment of restraining orders, which also requires legislative regulation.

According to Article 128 of the Criminal Procedure Code of Ukraine, a person who has suffered moral damage as a result of a criminal offense has the right to file a civil lawsuit against the offender during criminal proceedings, before the trial begins. In our opinion, it is necessary to strengthen the position of the victim of domestic violence by giving her/him the opportunity to claim compensation for moral damage also within the framework of criminal proceedings, and not only within the framework of civil proceedings.

The issue of ensuring a sufficient number of institutions that provide assistance to women who have experienced domestic violence has not been fully resolved. It is necessary to expand the existing network of social services for victims of domestic violence. The goal is to provide support for those individuals who, after leaving an abuser, start life "with a clean slate" and without financial resources, or who do not have access to financial resources, or who for other reasons find themselves without affordable housing.

It is also necessary to develop standards for work with victims of domestic violence, as well as standards that apply to the work of crisis centers, for example in the form of a code of ethics. The need to respect the secrecy of the address of the place of residence of a person who has become a victim of domestic violence must be reflected at the legislative level as well.

Let's consider the peculiarities of legal protection of victims of domestic violence in Canada and the USA, which belong to the Anglo-American legal family. In these countries, considerable attention is paid to the protection of victims of domestic violence, so studying their experiences is useful.

Canada is a federal state. Therefore, protection against domestic violence is carried out at two levels: federal and provincial. At the federal level, there is no single regulatory law aimed at preventing and combating domestic violence. Such laws have been passed in some provinces that provide protection to victims of domestic violence. In particular, statutory civil remedies include emergency intervention orders, which may entitle only the victim to stay at home and use the family vehicle. Preventive measures may also include prohibiting the offender from communicating with or contacting the victim or family members.

The judicial system in each of its provinces also has its own characteristics, for example, in some provinces cases of domestic violence are heard by special courts or judges who specialize in the consideration of this type of cases, and in others by general courts that lack specialization (Fouley, 2018). Importantly, the creation of specialized courts to deal with domestic violence cases has received favorable reviews from both the public and academics.

The creation of specialized courts to deal with this category of cases indicates the state's condemnation of such a shameful phenomenon and the fact that domestic violence is a social problem, and not only the problem of the victim of domestic violence. The creation of specialized courts to deal with domestic violence cases has a number of advantages. First, a uniform approach to solving domestic violence cases is ensured, improves the quality of judicial implementation, increases the protection of the rights of victims of domestic violence. Secondly, a quick resolution of this category of cases is guaranteed, which allows for faster and more effective response to cases of violence.

Domestic violence cases are heard in a courtroom specially equipped for hearing this category of cases. Courts also have special rooms where lawyers representing the parties (offender and victim), social workers and psychologists gather. If the offender has pleaded guilty to domestic violence, he/her is asked whether he/she agrees to undergo a psychological and social rehabilitation program and to compensate the harm caused to the victim.

If the person who committed domestic violence does not admit his/her guilt, the court considers the case. Employees of public organizations involved in combating domestic violence, police and social service workers are often involved in the judicial review of cases. The offender is not deprived of the right to peaceful settlement of the dispute during the trial, but in this case the offender will be forced to pay higher court costs.

In Ontario, there are 47 specialized family courts which offer family mediation and provide information services. In Ontario, mediation is provided even in the case of domestic violence (Schwartz, 2022).

Here it should be noted a debatable point about whether mediation should be used in cases involving domestic violence. A certain group of experts argue that domestic violence leads to an inequality of power between the abuser and his/her victim, which the mediator cannot balance, and this inequality, according to them, precludes mediation. The victim, in their opinion, is not able to make free decisions concerning him/her, but also children, property, etc. Moreover, in most cases, the ability of the abuser and his victim to make joint decisions is lacking. Domestic violence also threatens the legality of mediation.

The result of successful mediation should be the conclusion of a mutually beneficial agreement (mostly in written form). It is therefore a legal act to which the provisions of the criminal code or a special law apply. In the case when one party commits violence or psychological abuse on the other side, then the validity of the agreement concluded between them under such conditions can be successfully doubted.

It can therefore be concluded that both parties went through mediation in vain, because the condition of free agreement (without coercion) in the mediation process on the relationship of both parties involved is highly improbable and the agreement may be invalid (Žofčák, 2014). In addition, the use of mediation in domestic violence cases is contrary to the Council of Europe Convention on the prevention of violence against women and domestic violence. Protection of the rights and interests of victims, their personal and public safety should be given priority when solving domestic violence cases.

An emergency protection order for victims of domestic violence can be issued by a provincial court judge. The issuance of such an order can be carried out without notifying the offender, if the judge concludes that as a result of the violence, the applicant has reason to believe that the offender will continue to commit violence and the seriousness of the situation requires immediate protection of the victim.

A feature of the USA is the presence of a developed and effective system for preventing domestic violence. Having a mandatory response strategy is worth following. The country has more than five rapid response services

(hotlines) for combating domestic violence: a general line for domestic violence and special lines for sexual violence, protection of victims against rape (National Hotlines, 2022). Medical facilities are required to report any incidents of violence. In some states, citizens must inform law enforcement agencies about cases of child abuse (Lesko, 2019).

More than 30 US states have their own laws that prohibit or restrict convicted sex offenders from living near places visited by children. In addition, a specific distance is fixed at which persons under control are prohibited from approaching the protected object (Kharlamova *et al.*, 2021).

As in Canada, domestic violence cases are handled by specialized courts in the United States. A useful experience of the USA is the creation of the Model Code on Domestic and Family Violence, which, although not a law in the general sense, serves as an example of the development of its own legislation by individual states. The five chapters of the Model Code include General Provisions, Criminal Penalties and Procedures, Civil Orders for Protection, Family and Children, and Prevention and Treatment (Model Code, 1994). In our opinion, the development of such a code would be useful in Ukraine and other European countries.

On the basis of the police of European states, there are specialized groups for combating domestic violence, which have been working successfully for a long time. On their basis, interdisciplinary cooperation between various bodies is carried out. The purpose of creating these specialized groups is to expand this good practice and introduce it to the judicial system.

An important tool of their activity is interdisciplinary cooperation and the exchange of information and experience between interested entities, establishing contacts between relevant institutions, expressing their own requirements regarding the form or quality of work of individual institutions, providing information on the competence and capabilities of individual entities. The creation of such specialized groups is a new practice and, in our opinion, Ukraine should follow this experience. It is also necessary to create a system of permanent education based on interdisciplinary cooperation.

The task consists mainly in the systematic and long-term education of those professionals who, in the performance of their official duties, most often come into contact with persons who are at risk of domestic violence. This applies primarily to doctors, medical personnel, teachers, educators and pedagogical workers, social workers, judges and representatives of the state, including police officers. The goal is to provide workers in these professions with the information necessary to recognize domestic violence and to provide qualified assistance in the event of domestic violence.

According to the Criminal Code of Slovakia № 301/2005, for the beginning of criminal proceedings against a person who committed

domestic violence, the victim's permission is not required. The great positive moment of the new Criminal Procedure Code is to reduce the terms of investigation of family crimes. Thus, according to § 204 of the Criminal Procedure Code, it is possible to bring the offender before the court up to 48 hours after committing domestic violence, which significantly reduces the possibility of the offender escaping and imposing punishment (including imprisonment) more quickly (Law of the Slovak Republic, 2005).

The principle that the right to protection of life and health has priority over the protection of property rights is also reflected in the Civil Code of Slovakia. § 142 of the Civil Code establishes the court's right to make a decision on limiting the right of one of the spouses to use a joint residence. At the same time, it is important to cancel the provision that obliged to provide a place of residence for the partner who committed violence in the family.

A significant positive effect in the fight against domestic violence was given by the development of the Procedures of police officers in the case of family violence within the framework of the "Alterna" project of the Slovak crisis center "Dotyk" (Slovak crisis center Dotyk, 2022).

This technique was distributed in all police departments. The purpose of this methodology was to help police officers who have the first contact with persons who have experienced domestic violence in their work. Police assistance always depends on a specific case. At the initial stage of domestic violence, police officers can help the victim and the perpetrator to classify the offense and advise to resolve the conflict with the help of support organizations.

At a later stage, when a woman is ready to submit a statement about the commission of a criminal offense, the police officer is obliged to accept the statement and act in the interests of the victim of domestic violence. The Methodology draws attention to the fact that it is undesirable for police officers to have any delays, it is necessary to accept the statement on the spot.

The Methodology examines in detail the sequence of activities of police officers after arriving at the crime scene, contact with both parties, the sequence of information gathering and problem solving by police officers. Police officers are obliged to inform the victim of domestic violence not only about her rights, but also about the possibility of obtaining further help and support. Part of the methodology is also the obligation to provide contacts of organizations that provide assistance to victims of domestic violence.

In January 2007, Law No. 135/2006 " On Prevention of Domestic Violence " came into force in the Czech Republic (Law of the Czech Republic, 2006). With the adoption of the above-mentioned legal act, the Czech Republic, like other European countries, joined the intention to take a comprehensive approach to solving the problem of domestic violence.

The law outlined the main directions of implementation of state policy in the field of combating and preventing domestic violence, established legal boundaries for solving the problem of domestic violence by introducing special measures to combat domestic violence, including by temporarily evicting the perpetrator from the apartment shared with the victim.

The law also regulates the conditions for providing legal, psychological, and social assistance to victims of domestic violence in crisis centers, as well as cooperation between state bodies, municipal bodies, and public organizations which activities are aimed at combating domestic violence and helping victims of violence.

In order to implement the provisions of the Law "On the Prevention of Domestic Violence" in the Czech Republic since 2007, crisis centers have been operating that provide social and psychological assistance to victims of domestic violence. If there is a threat of repeated domestic violence, according to the Law, legal aid is provided to persons at risk of violence by evicting the perpetrator from the apartment shared with the victim.

In order to apply the legislation in practice, systematic training measures were implemented for police officers, social workers, judges, doctors, employees of social and legal child protection bodies, administrative commissions, local self-government bodies and other professionals who have contact with victims of domestic violence. These training measures had significant positive effect.

§ 199 of the Criminal Code of the Czech Republic provides for a criminal offense, which is classified as "violence against a person living in a shared apartment"; § 354 provides for the criminal offense of "dangerous stalking," which often becomes a "domestic violence" offense after the victim of domestic violence leaves the abuser. § 141 of the Criminal Code establishes the possibility of mitigating the punishment for murder by taking into account the condition of the murder by a person who has been a victim of domestic violence for a long time (Law of the Czech Republic, 2009).

On January 1, 2009, Law No. 273/2008 "On Police" (Law of the Czech Republic, 2008) entered into force, which amended the Law "On Prevention of Domestic Violence", based on the experience of implementing the legislation in practice during the year. The eviction of the offender from the apartment shared with the victim of domestic violence came to be understood as the exercise of the powers of police officers, that is, it is not a question of a decision issued in administrative proceedings, but is understood as an actual action.

Thus, according to Law No. 273/2008 "On the Police", the procedure for eviction of an offender from a shared residence has been significantly simplified for police officers, since they are no longer forced to make a formal decision with all its components, including justification, and the need for

a complex decision of administrative body on assignment procedure, as well as the need to investigate compliance with the terms of the offender's eviction in appeal proceedings has disappeared.

A positive feature of the above-mentioned changes is also the elimination of the risks of procedural offenses, and the simplification of the work of police officers makes it possible to focus in practice on the correct determination of qualifying signs of domestic violence.

Conclusions

A special feature of Canada and the USA is the presence of specialized courts to resolve domestic violence cases. Such a system has positive feedback from the public and scientists, as it contributes to a more qualified and quick resolution of cases.

Having studied the practice of combating domestic violence in the countries of Eastern Europe, we found the following positive experience: actual assistance to victims of domestic violence by ensuring the availability of specialized social services; work with offenders; educational work for employees who have contact with victims of domestic violence; disseminating information about the state of domestic violence in order to prevent it and change society's attitude to domestic violence, as well as about the bodies and services to which victim can turn for help in the event of violence in the family.

The value of the Czech experience in combating domestic violence lies in its systematicity. The main directions of measures include: legal reform on this issue, improvement of law enforcement agencies, development of social services; educational programs, rehabilitation programs. The Czech experience is relevant not only in the introduction of mandatory psychological programs for offenders and educational programs in schools to work with students on the topic of promoting benevolent and tolerant coexistence of family members, but also in the development of teaching methods for the mentioned issues.

A positive experience of Slovakia should be considered the development of the Methodology of actions of police officers in the case of domestic violence, which was developed in the framework of the "Alterna" project of the Slovak crisis center "Dotyk", which was distributed to all police departments. One of the most important parts of this methodology is the contacts of organizations that provide assistance to victims of domestic violence.

Undoubtedly, the adoption of the Law of Ukraine "On the Prevention and Counteraction of Domestic Violence", the introduction of criminal

liability for the commission of domestic violence and the introduction of amendments to a number of normative legal acts aimed at regulating domestic violence issues is a positive step in the fight against such a negative phenomenon as domestic violence. At the same time, a significant number of issues remained unresolved. This especially applies to the issues of judicial resolution of cases related to domestic violence and the realization of the right to a fair trial in cases related to domestic violence, as well as enforcement of court decisions on issuing restraining orders.

There is a need to develop a form for assessing the risks of re-committing domestic violence, as it is done for police officers when establishing the need to issue an urgent restraining order. Also, at the legislative level, it is necessary to establish what the preventive work of police officers with the offender is and how it is carried out, since without proper regulatory and legal regulation of this issue, this type of special measure of combating against domestic violence is declarative in nature and is not applied in practice.

There is a problem of the refusal of public and private executive services to enforce court decisions on the establishment of restraining orders, which also requires legislative regulation. In addition, it is necessary to strengthen the position of the victim of domestic violence by giving them the opportunity to claim compensation for inflicting moral damage within the framework of criminal proceedings.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 528-539
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Inteligencia artificial y nuevas formas de gobierno en la era digital

DOI: https://doi.org/10.46398/cuestpol.4176.31

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Resumen

En el momento actual marcado por la impronta de la era digital y por los avances tecnológicos de la cuarta revolución industrial, la inteligencia artificial IA ha sido desarrollada en diferentes actividades humanas, tales como: la salud, el entretenimiento, la seguridad, las telecomunicaciones, el arte y el gobierno. En este sentido, el objetivo de este artículo fue analizar las capacidades de la IA en las nuevas formas de gobierno digital, entre las que destacan: las ciudades inteligentes, el gobierno abierto y la democracia 2.0. Metodológicamente se trata de una investigación documental, basada en algunos aspectos del método cartesiano. Además, se utilizó la técnica de las entrevistas abiertas a dos científicos sociales para conocer su opinión sobre los posibles problemas y beneficios que trae consigo el uso de la IA en las labores de gobierno. La información analizada permite concluir que, en el futuro próximo será muy común el empleo de la IA en distintitas actividades de gobierno, para incrementar la eficiencia y eficacia en la gestión pública y reducir las tradicionales prácticas de corrupción. No obstante, no se descartan los problemas que la IA puede tener en términos tecnológicos y políticos para el ser verdadero de la democracia.

Palabras clave: inteligencia artificial; gobierno digital; democracia tecnológica; era digital; metaversos políticos.

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Recibido el 14/11/22 Aceptado el 08/01/23

Artificial intelligence and new forms of governance in the digital age

Abstract

In the current moment marked by the imprint of the digital era and by the technological advances of the fourth industrial revolution, artificial intelligence (AI) has been developed in different human activities, such as: health, entertainment, security, telecommunications, art and government. In this sense, the objective of this article was to analyze the capabilities of AI in the new forms of digital government, among which the following stand out: smart cities, open government and democracy 2.0. Methodologically, this is a documentary research, based on some aspects of the Cartesian method. In addition, the technique of open interviews with two social scientists was used to know their opinion about the possible problems and benefits brought by the use of IA in government work. The information analyzed allows us to conclude that, in the near future, the use of AI in different government activities will be very common, in order to increase efficiency and effectiveness in public management and reduce traditional corruption practices. However, the problems that AI may have in technological and political terms for the true being of democracy are not ruled out.

Keywords: artificial intelligence; digital government; technological democracy; digital era; political metaverses.

Introducción

La inteligencia artificial es ciertamente un concepto polisémico que por su complejidad manifiesta posee muchas aristas susceptibles a diferentes definiciones, no obstante, todo indica que se trata en principio de una inteligencia no humana y, en algunos casos, supra-humana que tiene la capacidad para actuar de forma autónoma, evolucionar sistemáticamente y superar los límites intelectuales de la persona humana, de modo que se trata entonces de:

> (...) un tipo particular de inteligencia tecnológica que, aunque tiene su punto de inicio en las personas, que es su artífice y causa primaria, puede funcionar con independencia y autonomía frente a la misma, llegando incluso a superar en muchos aspectos las capacidades cognitivas y procedimentales de la humanidad (Brito *et al.,* 2019: 261).

En este orden de ideas, es normal que se formulen un conjunto de preguntas filosóficas sobre lo que puede llegar a significar una forma de IA madura en nuestras vidas, como condición de posibilidad para visualizar, prospectiva e hipotéticamente, las posibles aplicaciones políticas de esta

forma vanguardista de inteligencia en el futuro próximo de la humanidad en su conjunto: ¿Es la democracia una forma de gobierno que solo puede ser direccionada por la inteligencia de la persona humana? ¿Es razonable suponer que una inteligencia cualitativamente superior pueda idear en cada momento algoritmos políticos para la gestión eficiente del conflicto social? ¿Cuáles son los principales riesgos de estar gobernados en algunos aspectos de la vida social por la IA? ¿Configura el ejercicio del poder de máquinas inteligentes necesariamente un futuro distópico, como ha querido vender en la cultura popular la ciencia ficción?

De algún modo, estas y otras preguntas similares son respondidas, aunque sea parcialmente en esta investigación con la urgencia que determina el momento actual, marcado por la impronta de la era digital, por los avances tecnológicos de la cuarta revolución industrial[6] y la inteligencia artificial, contexto en el cual, la IA ha sido desarrollada en diferentes actividades humanas, tales como: la salud, el entretenimiento, la seguridad, las telecomunicaciones, el arte y el gobierno, entre otras. En este sentido, el objetivo de este artículo fue analizar hipotéticamente las capacidades de la IA en las nuevas formas de gobierno digital, formas entre las que destacan: las ciudades inteligentes, el gobierno abierto y la democracia 2.0.

Por lo demás, este artículo se divide en cuatro secciones desarrolladas con el propósito de responder a los requerimientos del objetivo postulado. Concretamente, en la primera, se discute el concepto general de IA y, nuestro concepto particular, a la luz de los aportes de la literatura revisada sobre IA y gobierno; en la segunda, se describe los aspectos metodológicos que hicieron posible el procesamiento de las fuentes documentales recabadas; por su parte, la tercera sección se constituye en el punto medular de los argumentos que identifican a los autores, al revelar los beneficios y problemáticas inmanentes a la IA y las nuevas o renovadas experiencias de gobierno digital. Por último, se presentan las principales conclusiones de la investigación estrechamente vinculadas a los resultados obtenidos.

6 "El concepto de Cuarta Revolución Industrial lo acuña en 2016 Klaus Schwab, el fundador del Foro Económico Mundial, en una obra homónima. Así que nada mejor que acudir a sus páginas para encontrar una definición: "La Cuarta Revolución Industrial genera un mundo en el que los sistemas de fabricación virtuales y físicos cooperan entre sí de una manera flexible a nivel global. Sin embargo, no consiste solo en sistemas inteligentes y conectados. Su alcance es más amplio y va desde la secuenciación genética hasta la nanotecnología, y de las energías renovables a la computación cuántica. Es la fusión de estas tecnologías y su interacción a través de los dominios físicos, digitales y biológicos lo que hace que la Cuarta Revolución Industrial sea diferente a las anteriores"" (Iberdrola, 2023: s/p). Conviene matizar que esta revolución es un proceso que tiene su epicentro en los países hegemónicos del llamado norte global y que ha impactado paulatinamente, en mayor o menor medida, a todas las sociedades humanas.

1. Literatura revisada sobre Inteligencia Artificial y Gobierno

La integración de diversas formas de IA a la gestión y servicios públicos que ofrecen cotidianamente gobiernos federales, regionales y locales, es al día de hoy una realidad en aumento en los países del norte global, en este sentido empresas como Intel, destacan que:

> El gobierno y el sector público podrán obtener ventajas excepcionales al integrar la IA en todos los aspectos de su trabajo. El uso de IA en el gobierno debe tener en cuenta la privacidad y seguridad, la compatibilidad con los sistemas heredados y las cambiantes cargas de trabajo… Para el sector público, incluyendo a los gobiernos federal, estatal y local, la inversión en IA ofrece tremendos beneficios. La IA tiene potencial para ayudar a las organizaciones a trabajar de forma eficiente, gestionar costes y realizar grandes avances en investigación (Intel, 2022: s/p).

Desde los antiguos griegos quienes desarrollaron las primeras discusiones racionales sobre política, entendida como la vida de la *polis* o de la comunidad de ciudadanos, la noción de política tiene esencialmente implícito la búsqueda del bienestar de las personas, mediante la satisfacción de sus necesidades materiales y colectivas; no obstante, la dirección de la comunidad siempre fue, en el pasado y en el presente, un asunto exclusivamente humano.

En el presente histórico queda claro que el vertiginoso avance científico y tecnológico de algunas sociedades humanas han producido deliberadamente fenómenos como la nano-robótica, la ingeniería genética y la IA, con una capacidad formidable no solo para transformar el decurso de la civilización en un antes y un después, sino, además, para transformar también a la condición humana en su esencia y existencia ontológica, tal como suponen los transhumanistas. En consecuencia, estos cambios estructurales permiten suponer que en un futuro próximo el ejercicio del gobierno –con todo lo que ello implica en términos de saber y poder– será una actividad ya no exclusiva de la persona humana, sino también, de otras formas de inteligencia dotadas de capacidad y conciencia para la toma autónoma de decisiones de interés público.

En este orden de ideas, fue realmente ilustrativo la lectura hermenéutica e intertextual de los siguientes artículos científicos por sus aportes directos o indirectos al tema que nos ocupó: (Cabello, 2022; Voronkova *et al*., 2022; Trusova *et al*., 2021). En el primer caso Cabello (2022), expone de forma coherente las posibilidades para el desarrollo sostenible que ofrece el modelo organizacional de Ciudades Inteligentes, como condición de posibilidad para reducir las asimetrías sociales, mejorar de forma integral las condiciones de vida de miles de personas y, al mismo tiempo, diseñar más y mejores espacios de democracia y participación ciudadana mediante la ecología de la información pública. Si a esta visión de ciudades inteligentes se le suman las herramientas que ofrece la IA en materia de comunicación,

información y desarrollo de plataformas digitales de servicios públicos, los resultados proyectados son cuanto menos prometedores.

Por su parte, Voronkova *et al.*, 2022 demuestran que la IA esta inexorablemente relacionada con la concepción posmoderna de la sociedad que: por un lado, pone en tela de juicio los grande meta-relatos de la modernidad como: el marxismo, el cristianismo o la democracia liberal, entre otros, para estructurar algunos espacios –materiales y simbólicos– de certeza y estabilidad que permitían apalancar el avance continuo de las personas y sus comunidades de referencia. Por el otro, al fragmentar los saberes y tradiciones que sustentan a todo *status quo* crean las condiciones de posibilidad para legitimar o, al menos normalizar, la emergencia de formas de gobierno post-humanas que vendrían a mejorar en teoría, todas las limitaciones y contradicciones de los gobiernos antropocéntricos característicos de la modernidad, con un saldo desmedido de corrupción administrativa, violencia y exclusión social.

Por último, conviene recordar que al decir de Caldevilla (2016), la noción de democracia 2.0 quiere significar al conjunto de universos digitales entre los que destacan: Twitter, Instagram, Telegram, TikTok, Facebook o Twitch, entre otros, fundamentalmente –las llamadas redes sociales–, los cuales vienen, por un lado, a instrumentalizar una nueva cultura política caracterizada por el acceso económico a mucha información contrastada en cada momento por la opinión autónoma y critica de los participantes en las redes y; por otro, por la construcción de nuevas formas de participación política basadas en un modelo de comunicación horizontal que, llegado el caso, tienen un profundo impacto político en los aparatos decisionales de las estructuras democráticas de poder. Ya que los actores políticos sienten que su acciones, gestiones y omisiones, esta sometidas continuamente al escrutinio público y que la legitimidad de las mismas depende en buena medida de los niveles de aceptación optimados en las redes.

2. Metodología

Los resultados obtenidos en esta investigación fueron la consecuencia dialéctica de una metodología híbrida que combino en igualdad de condiciones el pensamiento filosófico y científico. En lo filosófico fue crucial la utilización parcial del llamado método cartesiano entendido como una operación intelectual que despliega al pensamiento racional y escéptico por cuatro etapas o momento particulares:

- No admitir *a priori* como verdadera ninguna cosa (duda metódica), para: "(…) evitar cuidadosamente la precipitación y la prevención, y no comprender en mis juicios nada más que lo que se presentase tan clara y distintamente a mi espíritu, que no hubiese ninguna ocasión de ponerlo en duda" (Descartes, 2010: 47).

- Dividir cada una de las dificultades, esto es, sujetos, objetos o ideas, en cuantas partes sea posible para su mejor examen y contrastación.
- Conducción ordena del pensamiento, de lo simple a lo más complejo, de los abstracto a lo concreto, de lo hipotético a lo real.
- Recuento general de las categorías examinadas (Inteligencia artificial y nuevas formas de gobierno en la era digital) para garantizar en todo momento que no se está omitiendo nada verdaderamente relevante sobre el tema.

En cuento a la dimensión científica de nuestra metódica, esto es, lo que trasciende a la especulación filosófica propiamente dicha, se hizo uso de la técnica de investigación documental, apoyada en la revisión de fuentes veraces obtenidas en artículos científicos de alto impacto, textos académicos y notas de prensa sobre el tema, en inglés y en español. Además, para recabar información primaria se realizaron dos entrevistas abiertas a destacados investigadores internacionales en el ámbito de las ciencias sociales y humanas para conocer su opinión calificado sobre el tema de estudio. Concretamente las entrevistas se desarrollaron con arreglo al siguiente guion.

Cuadro No. 01: Guion de preguntas abiertas.

Preguntas	Objetivo del articulo	Variables	Dimensiones	Indicadores	Observaciones
¿Es la democracia una forma de gobierno que solo puede ser direccionada por la inteligencia de la persona humana?	Analizar hipotéticamente las capacidades de la AI en las nuevas formas de gobierno digital, entre las que destacan: las ciudades inteligentes, el gobierno abierto y la democracia 2.0.	Filosofía política.	Nuevas Tecnologías y democracia en el siglo XXI.	Toma de decisiones racionales. Ejercicio del gobierno democrático.	
¿Es razonable suponer que una inteligencia cualitativamente superior pueda idear, en cada momento, algoritmos políticos para la gestión eficiente del conflicto social?		Filosofía política.	Nuevas Tecnologías y democracia en el siglo XXI.	Algoritmos políticos. Eficiencia y eficacia en la gestión pública.	
¿Cuáles son los principales riesgos de estar gobernados en algunos aspectos de la vida social por la IA?		Filosofía política.	Problemas objetivos de la democracia.	Riesgos, problemas y contradicciones de las nuevas o renovadas formas de gobierno.	

¿Configura el ejercicio del poder de máquinas inteligentes necesariamente un futuro distópico, como ha querido vender en la cultura popular la ciencia ficción?		Filosofía política.	Análisis prospectivo de los sistemas políticos.	Futuro de la democracia. Nuevos actores políticos.	

Fuente: elaborado por los autores con arreglo al objetivo general de la investigación.

Como se aprecia en el cuadro No. 01, las preguntas formuladas en el guion poseen implícitamente un sustrato más profundo en términos de: variables dimensiones e indicadores, que orientaron el desarrollo de la investigación, claro está, sin ninguna pretensión de medición o cuantificación matemática. Además, fue necesario implementar una especie de triangulación dialógica, en sentido hermenéutico e inter-textual, que permitió enlazar en las conclusiones, la opinión de los expertos, las fuentes documentales y la posición de los autores de la investigación, en una totalidad dialéctica en la confluyeron saberes objetivos y sesgos subjetivos como sucede en todo proceso de condicionamiento social del conocimiento (Nikitenko *et al*., 2022).

3. Beneficios y problemáticas de la Inteligencia artificial aplicada a las nuevas experiencias de gobierno en la era digital

En entrevista realizada al reconocido filósofo e investigador ucraniano Roman Oleksenko[7] pudimos captar su visión crítica de la IA como herramienta para el fortalecimiento de la política en general y de la democracia 2.0 en particular, en aras de mejorar las experiencias de gobierno abierto. En este sentido, ante la primera pregunta sobre si la democracia es o no, un gobierno exclusivamente humano, responde que: "Sí afirmamos que la democracia es el poder del pueblo, entonces un "objeto intelectual artificial" no puede estar en este proceso, ya que no es un ser espiritual, no tiene la capacidad de pensar lógicamente y tomar decisiones, sino solo de responder de acuerdo a los algoritmos que fueron la base de su programación" (Oleksenko, 2023: 01).

Ante la misma pregunta, el profesor Reyber Parra[8] quien es un destacado historiador latinoamericano opinó, en contraste con Oleksenko, que lo

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avances tecnológicos actuales permiten suponer que fácilmente la persona humana puede desarrollar –y de hecho ya lo ha hecho– otras formas de inteligencia como la IA, que tienen las capacidades y condiciones objetivas para contribuir con el direccionamiento político de las sociedades del siglo XXI, en términos de toma de decisiones racionales, cuestión que supone además un completo eficaz con las formas de Estado y de gobierno de tipo democrático, de cara al verdadero interés común (Parra, 2022: 01).

Por su parte, al responder la segunda pregunta sobre si es razonable suponer que una inteligencia cualitativamente superior como la IA pueda idear, algoritmos políticos para la gestión eficiente del conflicto social, Oleksenko (2023) afirm**ó** categóricamente que la inteligencia artificial puede hacer una predicción basada en la experiencia que tiene almacena en su base de datos, es decir, sobre la base de la información que se le ofreció previamente. No obstante, cree también que por muy poderoso que sea una proyección estratégica de esta naturaleza, la resolución de la conflictividad social debe ser, en último término, un campo de acción enteramente humano.

Como en la primera pregunta Parra (2022) se mostro mas favorable a los posibles aportes de la IA al desarrollo de la democracia, en consecuencia, afirmó que esta forma de inteligencia digital, cibernética y tecnología si puede ofrecer respuestas útiles a los imperativos que demanda en cada sociedad la gestión del conflicto social y, aunque en un primer momento su campo de acción va a depender de las variables de la programación antrópica que marcan la pauta primaria de su software, su capacidad de aprender y avanzar sistemáticamente le permitirá, en cada momento, ofrecer respuestas más sofisticadas y eficientes a los problemas que se le plantean en materia política, económica o filosófica, de cara a lo que significa la vida de la polis y la convivencia humana.

Cuando se le pregunto a Román Oleksenko ¿Cuáles son los principales riesgos de estar gobernados en algunos aspectos de la vida social por la IA? Respondió de forma clara que el problema fundamental que visualiza es que la inteligencia artificial puede reemplazar a los humanos en todos los campos de la vida social, incluida la política y la democracia, de hecho, afirmo además que este fenómeno de *deshumanización de la civilización* lo estamos comenzando a ver ahora y: “Eso da miedo” (Oleksenko, 2023: 01).

Seguidamente, Parra (2022) ante la tercera pregunta formulada opinó que el principal problema que se evidencia tiene que ver con una posible incapacidad tecnológica de los algoritmos de la IA para evolucionar continuamente al calor de los problemas y situaciones dinámicas que plantea la real política, de modo que en muchos aspectos imaginables la IA podría ser también una tecnología en esencia y existencia insuficiente para apalancar el funcionamiento optimo de las democracias del siglo XXI.

Finalmente, ante la cuarta y **ú**ltima pregunta formulada sobre si ¿Configura el ejercicio del poder de máquinas inteligentes necesariamente un futuro distópico, como ha querido vender en la cultura popular la ciencia ficción? Oleksenko (2023) sostiene que, aunque no hay suficiente evidencia histórica en este momento para ofrecer una respuesta definitiva a esta y otras cuestiones similares, la interrogante representa al menos filosóficamente una duda razonable, de modo que lo más sensato es entonces usar los dispositivos de IA únicamente para simular el escenario político, pero no se debe permitir nunca tomar decisiones vinculantes a las maquinas inteligentes.

En este mismo orden de ideas, Parra (2022) supone en sintonía con Oleksenko (2023) que es un futuro distópico ocasionado por la impronta política de la IA, es potencialmente posible, aunque sea indeseable. Todo dependerá de los algoritmos iniciales con que se haya programado a estas formas emergentes de inteligencia, de su capacidad para aprender nuevas cosas sin el tutelaje humano y de su hipotética conciencia y voluntad para estructurar un proyecto político e ideológico contario al interés de la humanidad, situación que vendría a contravenir las llamadas leyes de la robótica de Isaac Asimov. "En realidad el ser humano debe tener el control de las acciones de la IA. Por lo tanto, la inteligencia humana debe incorporar los correctivos necesarios para la marcha eficiente de la inteligencia artificial en materia del interés público" (Parra, 2022: 02).

Conclusiones

Luego de analizar las capacidades de la IA en las nuevas formas de gobierno digital, entre las que destacan: las ciudades inteligentes, el gobierno abierto y la democracia 2.0, surgen algunas cuestiones básicas que bien conviene precisar:

1. Todo indica que los criterios académicos que se definen en torno al alcance y significado de este tema, están realmente polarizados en torno a una posición crítica que ve en esta forma avanzada de inteligencia una amenaza real para la condición humana al desplazar a la persona de su rol protagónico en el devenir histórico o; por el contrario, aquellos partidarios de la IA que ven en este fenómeno una herramienta crucial para el progreso de la humanidad en su conjunto, de modo que como sostienen Arbeláez-Campillo *et al.,* (2021), urge la propagación de una tercera posición más objetiva y equilibrada más allá del rechazo o de la apología.
2. La relación existente entre gobierno abierto, democracia digital, nuevas formas de gobierno e IA, es evidente y en muchos sentidos prometedora. Por lo tanto, el potencial político y democrático de

esta tecnología dependerá exponencialmente de la creatividad para diseñar programas y entidades –tangibles o digitales– o sistemas que se adapten a los requerimiento, necesidades y aspiraciones de la sociedad civil organizada y, particularmente, a las iniciativas de gobierno abierto, interesadas en hacer de la transparencia en la gestión pública el eje transversal de toda acción del gobierno que busca no ser discrecional.

3. Guste o no, en el futuro próximo será muy común el empleo de la IA en distintitas actividades de gobierno, para incrementar la eficiencia y eficacia en la gestión pública y reducir las tradicionales prácticas de corrupción. Pese a esto, no se descarta *a priori* los problemas que la IA puede tener en términos tecnológicos y políticos para el ser verdadero de la democracia.

Sin duda al hablar sobre el *ser verdadero de la democracia* nos adentramos a una discusión filosófica que trasciende, por mucho, los propósitos de esta investigación; sin embargo, la visión cartesiana que sirvió de sustento al método de este trabajo permite efectuar, al menos de forma lógica, la siguiente afirmación: no hay verdades definitivas en torno al potencial de la IA en los dominios de la política, de modo que es imposible para los autores de esta investigación, determinar en este momento si en un futuro próximo la IA producirá la superación definitiva del gobierno del pueblo al construir una especie de tecnocracia post-humana donde maquinas inteligentes en la forma de algoritmos, tomaran las principales decisiones con base no ha la voluntad general de la hablaba Rousseau, sino a criterios cuánticos de utilidad, economía y viabilidad instrumental, entre otros.

Tampoco es posible dividir hasta sus últimas posibilidades todos los elementos que conforma el concepto y la realidad del fenómeno IA, no obstante, de forma provisional podemos decir que se trata de una entidad tecnológica que se compone por el momento de autonomía y capacidad para aprender de una forma tan vertiginosa que desde ya ha superado al test de Turing, que busca develar la naturaleza de un interlocutor no humano mediante una conversación basada en preguntas simples. ¿Es descabellado pensar entonces que la IA puede desarrollar su propia ontología para definir su ser más allá de los parámetros políticos de la voluntad humana, en la que tiene su causa primaria? Esto es una posibilidad futura de la que no habría mucho más que decir, más allá de la especulación.

De cualquier modo, al conducir nuestro pensamiento ordenadamente sobre los usos de la IA en la política y, más aún, en la democracia, se pierde de vista las diferentes posibilidades abstractas y concretas, materiales y digitales, que podrían lograr desarrollarse, bien sea en términos de herramientas tecnológicas al servicio de una ciudadanía informada e inteligente dispuesta a participar más activamente en la construcción de

sus propias realidades, más allá de la tradición acción de las instituciones políticas tradicionales y de sus actores de poder, o incluso, en la creación de formas hibridades de gobierno de franco carácter transhumanista y postdemocráticas en la que se combinen, en igualdad de condiciones, la voluntad humana con la autonomía decisional de una forma de IA con capacidades de ser y hacer políticamente por ahora inimaginables.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 540-555
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Customs Policy as a Tool for Developing Ukraine's Export Potential

DOI: https://doi.org/10.46398/cuestpol.4176.32

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Abstract

The purpose of the article was to study the elements of the legal regulatory mechanism in the field of customs policy and its impact on the development of export potential, to clarify the essence of export potential and to study effective financial and non-financial measures to support exports. The research methods used were: monographic analysis, analysis and synthesis, systemic, comparative and legal, generalization and forecasting methods. The need to develop effective measures aimed at the development of export potential has been substantiated. It has been shown that the rapid reorientation of Ukrainian exporters to Western markets is possible only in terms of establishing an effective customs policy and well-chosen financial measures of export support. It is concluded that improvement of customs policy tools and implementation of European law standards into the national legal system are the only possible ways to develop Ukraine's export potential and increase overall exports. It is emphasized that the formation of modern customs policy of Ukraine should be based on modernization, attraction of investments and integration of information technologies.

Keywords: customs policy; export potential; export policy; export policy; foreign economic activity; export support measures.

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Recibido el 16/11/22 Aceptado el 25/01/23

La política aduanera como herramienta para desarrollar el potencial exportador de Ucrania

Resumen

El propósito del artículo fue estudiar los elementos del mecanismo de regulación legal en el campo de la política aduanera y su impacto en el desarrollo del potencial exportador, aclarar la esencia del potencial exportador y estudiar medidas financieras y no financieras efectivas para apoyar las exportaciones. Los métodos de investigación usados fueron: análisis monográfico, análisis y síntesis, sistémico, comparativo y legal, generalización y métodos de previsión. Se ha fundamentado la necesidad de desarrollar medidas efectivas encaminadas al desarrollo del potencial exportador. Se ha demostrado que la rápida reorientación de los exportadores ucranianos hacia los mercados occidentales solo es posible en términos de establecer una política aduanera eficaz y medidas financieras de apoyo a la exportación bien elegidas. Se ha llegado a la conclusión de que la mejora de las herramientas de la política aduanera y la implementación de las normas de la ley europea en el sistema legal nacional, son las únicas formas posibles de desarrollar el potencial de exportación de Ucrania y aumentar las exportaciones generales. Se hace hincapié en que la formación de la política aduanera moderna de Ucrania debe basarse en la modernización, la atracción de inversiones y la integración de las tecnologías de la información.

Palabras clave: política aduanera; potencial exportador; política de exportaciones; actividad económica exterior; medidas de apoyo a la exportación.

Introduction

As we know, state policy includes financial, price, tax, customs, investment, labor and employment policy, social protection, education, science and culture, nature protection, environmental safety and nature management. Customs policy as a part of state policy is based on the existing political ideology, analysis of the economic situation and ways of state's development (Teremetskyi, 2012).

The effectiveness of customs policy depends on economic cooperation with other countries in the field of organization and implementation of customs activities to solve both economic, organizational and legal issues. Cooperation with the European Union (hereinafter – the EU) with the aim of integration into European standards, norms and rules of trade is currently one of the most important directions in the development of

Ukraine's customs policy. Active participation within international trade is extremely important for the state, since it makes it possible to increase the country's income level through the attraction of foreign currency. Therefore, the proper level of export-import operations is important in the country's foreign economic relations.

Since effective foreign economic activity is an important factor in stimulating the country's economic development, customs policy instruments should be important levers for supporting export-import operations and creating the most favorable conditions for the development of the economy precisely because of the increase in exports.

The strategic role of export is that it expands national borders and stimulates the development of national competitive producers and the inflow of investments into the country due to additional sales markets. It is exports that help to attract additional income in foreign currency to the country and at the same time to increase the national income. Therefore, one of the strategic tasks of each state is to support and stimulate the development of its exports.

A balanced and smart customs policy is a prerequisite for achieving effective management of foreign economic activity aimed at solving problems that block the increase in export potential.

Qualitative economic growth of the country is primarily possible due to the implementation of export operations by its business entities. Nowadays, successful economies are based on effective export activity, which is one of the most important components of the balanced development of the country's economic system in the whole.

The country's opportunities to reproduce its competitive advantages within world markets will reveal the country's export potential, therefore it is important to analyze domestic and international approaches to realizing export activities with the aim of forming financial and non-financial tools to support domestic exporters. Similar studies will help to apply the legal instruments of customs policy, which can assist to increase the volume of exports as quickly and efficiently as possible on the basis of the experience of international countries.

The impact of exports on the implementation of foreign economic activity is determined through the supply of competitive products and services, the use of modern technical inventions and management ideas, as well as the attraction of foreign investments. Therefore, the attraction of investments into national economy, improvement of logistics processes, introduction of modern information technologies into customs operations, effective use of financial and non-financial tools for supporting Ukrainian exporters are the key factors to increasing exports and improving the state of economic processes in the country.

1. Methodology of the study

The authors of the article have used dialectical and general scientific, special methods of scientific research. Thus, the method of monographic analysis assisted to clarify a range of problematic issues related to the promotion of the country's export potential, which were researched and published by scholars in scientific publications.

The method of analysis and synthesis made it possible to generalize information on the understanding of the concept of "export potential of the country" and to form the authors' point of view in regard to its essence, while studying those legal instruments of customs policy that were able to contribute to the increase of exports.

The elements of the customs policy mechanism, which are currently used to increase the country's export potential, were critically studied due to the method of theoretical generalization. The comparative and legal method made it possible to carry out a comparative and legal analysis of the customs policy tools used in the practice of the countries with the most successful economies to stimulate the country's export potential. The systemic method made it possible to conduct the study of the export potential of the country as a dynamic system consisting of separate subsystems and elements.

The forecasting method made it possible to research the tendencies in the development of export potential to increase exports and to improve the country's economic indicators. The method of generalization made it possible to draw conclusions on the basis of the conducted research.

2. Analysis of recent research

It should be noted that there are enough works of scholars focused on studying the export potential. However, most of the works were written temporally before the strengthening of the integration processes of Ukraine towards the EU. Besides, they are related only to a separate branch of the economy and do not comprehensively study the country's export potential.

Therefore, the legal toolkit of customs policy is being improved not only due to the development of economic processes and transformations in the economy in general, but also due to the integration of Ukraine into the European community and bringing our legislation into compliance with EU norms. This state of affairs, in particular, indicates the relevance and necessity of conducting research on the chosen issue.

Scientific article by Lavriv (2016) is focused on studying theoretical aspects of the formation of export potential. The issue of the impact of export potential on the development of the economic complex of regions

in terms of the activation of European integration processes was studied in the scientific work of Kozik (2015). Specific features and main directions of state regulation of export activity were studied in the scientific article by Lositska (2019).

Financial mechanisms of state support for export production were researched in the scientific work of Skok (2016). The issue of the transformation of Ukrainian foreign trade at the current stage was studied in the scientific work of Kulytskyi (2015). Poklonsky *et al.,* (2021) studied the importance and prospects of Ukraine's foreign economic policy towards Latin America in 2021. Based on the results of the conducted studies by the mentioned scholars we believe it expedient to direct scientific research on clarifying the essence of the concept of "export potential" and the influence of legal means of customs policy on stimulating its development.

3. Results and Discussion

3.1. Theoretical foundations of studying the export potential of the country in terms of the formation and implementation of the customs policy

It is well-known that study of conceptual and theoretical principles is the most important stage in the process of formation and development of any scientific area. It also facilitates the optimization for the solution of practical tasks and increasing the efficiency of any professional activity (Berezhniuk, 2019). It is also applied to customs policy, which is a complex and specific social phenomenon that requires general theoretical and concrete practical study (Kormych, 2000).

Customs policy is a type of state policy, the main task of which is to ensure the protection of national interests and national security of Ukraine in political, economic, social, environmental and other spheres. Conceptually, customs policy is based on the unconditional observance of the principles for ensuring national interests and is carried out through the implementation of relevant doctrines, strategies, concepts and programs in the internal and external spheres of state activity in accordance with the current legislation and international legal acts.

The basis of the customs policy is foreign trade policy, which is the system of measures for the development of the country's economic relations with foreign partners. It covers the substantiation of the volumes of turnover, geographical distribution and commodity structure of exports and imports. Foreign trade policy by its content is the policy of international relations, which both covers trade relations and extends to other foreign relations of a specific state (diplomatic, economic, scientific and technical, cultural, transport, etc.) and its citizens.

At the same time, the role of foreign trade in this process is special – its implementation is the basis of customs policy (Kiyda and Shevchenko, 2020). The customs policy is aimed at regulating social relations that arise in the process of actual movement of goods and transport means across the customs border and should ensure the compliance with uniform rules for crossing the border.

The unity of the state customs policy and the perspectives for the development of relations in this area are ensured by the formation of its main forms and tools on the basis of such basic foundations as the principles of customs policy. The main principles of customs policy should include: the principle of the rule of law, the principle of legality, the principle of balancing the interests of the state, individuals and legal entities in customs relations, the principle of inadmissibility of double taxation, the principle of the unity of customs regimes and the principle of transparency and publicity (Ivanov, 2018).

Therefore, the customs policy should be considered as the system of principles and directions of state activity in the sphere of protecting customs interests and ensuring customs security, regulating foreign trade and protecting the domestic market, developing the economy of Ukraine and its integration into the world economy.

One of the key directions of the customs policy is the creation of appropriate conditions for foreign economic activity and trade liberalization, which is a prerequisite for the development of export potential. However, one should first analyze the concept of "export" in order to reveal the concept of "export potential".

The concept of "export" is interpreted in the Customs Code of Ukraine as a customs regime, according to which Ukrainian goods are in free circulation outside the customs territory of Ukraine without obligations regarding their re-import (Verkhovna Rada of Ukraine, 2012). If we consider export as one of the factors affecting economic growth and integration of the country into the world economy and trade, then it acquires features of potential (that is, economic opportunities that can be used for the needs of society and its well-being) (Lavriv, 2016).

There are many definitions of the concept of "export potential" in the scientific literature, which are mainly based on revealing its economic essence. In general, export potential is an independent and significant component of foreign economic opportunities of regional economic systems, whose main roles to ensure the realization of competitive advantages of domestic products and to increase their volumes on foreign markets (Kozik, 2015). Most scholars consider the essence of export potential as one of the indicators of economic and production efficiency, which make it possible to assess the ability of manufacturing enterprises to produce

competitive goods that meet international standards and can be alienated at international markets.

Agreeing with this, we would like to add that the export potential of the country is the main resource for increasing the efficiency of foreign economic activity and the main stimulating factor of the national economy to produce export-oriented products.

Besides, the country's export potential has an extensive system, since it consists of the export potentials of all enterprises of a certain industry in a specific region of the country. Therefore, the export potential is inherent both to a certain enterprise and to a branch of the economy, a region within the country, national economy, group of several countries that realize this potential through the development of foreign trade, primarily exports (Lavriv, 2016). Thus, the country's export potential totally consists of regional potentials, which are characterized by certain specific features of development and specialization, and therefore have different potential (Tymofieienko, 2014).

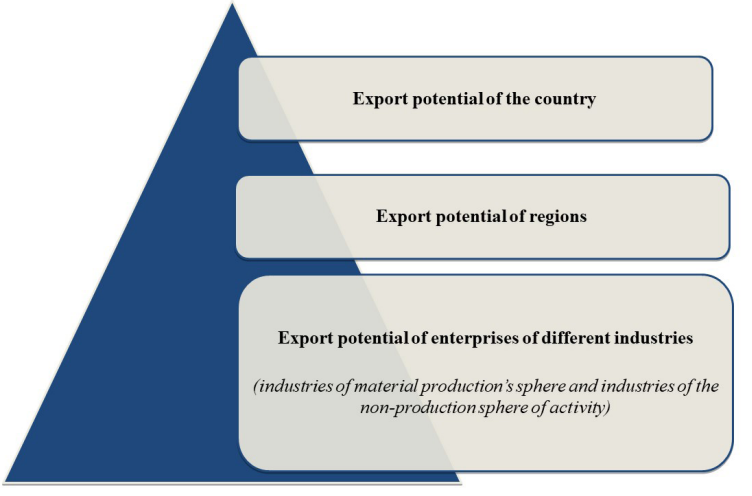

Figure No. 01: Compiled by the authors based on the source (Lavriv, 2016).

Export potential balances between production and economic potential. However, it acts in the field of customs policy rather as a goal and ways to achieve it. The legal toolkit, which makes it possible to increase the efficiency of production and, accordingly, the export potential is used within the framework of the formation and implementation of the customs policy.

The trade and political role of the customs policy in today's world regarding the development of interstate integration relationship and ensuring the competitiveness of Ukraine acquires special importance, therefore it requires constant analysis and improvement. Considering the importance of the issue of stimulating export activity, the customs policy regarding exports also needs to be improved.

Since the goals of state regulation of customs activity in Ukraine include the development of the sphere of export activity, it is necessary to analyze those legal instruments that will help to achieve this goal. Such instruments of the customs policy usually include: legislative framework, tariff and non-tariff regulation, financial measures, tax and credit slackening for entities of foreign trade activity.

Some authors believe that the instruments of the customs policy also include financial (budgetary grants and awards, financing of public services, institutions and infrastructure, preferential export loans, insurance of export contracts, provision of state guarantees to ensure the exporter's obligations, financing of expenses for the implementation of scientific, scientific and technical works) and non-financial (government support programs, tax benefits, information support, diversification of sales markets, improvement of the investment climate) tools (Sakhatskyy and Ksonzhyk, 2016).

In addition, export support tools should also include: 1) creation of a favorable regulatory environment in the field of export activities; 2) development of a legislative framework focused on the needs of exporters; 3) favorable credit policy in matters of export development (decreasing the cost of credit resources, balanced exchange rate policy, maintenance of price stability); 4) protection of the internal market in accordance with WTO and EU rules and requirements; 5) creation of an export insurance system; 6) organizational support for the development of exports (exhibition activities, economic departments as part of foreign diplomatic institutions of Ukraine); 7) informational and consulting support for exports State support for Ukrainian exports (2022) (Ministry of Economic Development and Trade of Ukraine, 2022).

Thus, it can be stated that the achievement of an effective customs policy regarding international trade is possible only with the help of successful application of export management mechanisms. However, there is a global reorientation of Ukrainian exporters to the markets of EU countries in connection with the political situation in the country, which requires effective support from the state. Besides, the activities of exporters are also complicated by the imperfection of national legislation in the field of foreign economic activity and the irrational customs policy, which supports and stimulates domestic exports at an inadequate level.

Such processes as the reorientation of Ukrainian exporters to Western sales markets are accompanied by bringing Ukrainian products to the EU sanitary, ecological and technical requirements, obtaining special permits from the EU for the supply of certain types of products, the need to modernize the logistics system and to improve domestic legislation in the field of currency regulation and foreign economic activity. The specified processes are complex, therefore, the use of positive experience of countries that occupy leading positions within international trade is particularly useful for improving the mechanisms and instruments of the customs policy in terms of regulating export activities.

3.2. International experience of stimulating the development of export activity through increasing the efficiency of customs policy

According to the world experience, the most efficient and effective strategy for integrating the economic system into the world economy is a combination of the structural transformation of the national economy with its focus on active export growth (Bikulova and Bondarenko, 2014). Exporting countries, which are leaders within international trade, achieved such results primarily with the help of a highly effective foreign economic policy of the state. In particular, we talk about the successful application of customs and legal mechanisms for managing export activities.

Therefore, one of the priorities of the customs policy is the state support and assistance to domestic enterprises in increasing export volumes and access to foreign markets combined with proper legal protection of their economic and trade interests abroad. The implementation of international experience in regard to the application of state export support tools has great potential for overcoming obstacles and obvious shortcomings in the domestic customs policy toolkit aimed at stimulating exports.

For example, the experience of China, the USA, Germany, and Japan in stimulating export activity demonstrates the active use of insurance and credit programs by these countries, as well as providing assistance to fundamental innovative research and consulting activities in the field of exports, etc. (Lositska, 2019). In general, the study of the experience of foreign countries regarding the implementation of an effective customs policy in terms of export regulation and stimulation indicates the use of similar mechanisms: provision of financial assistance in the form of loans or grants, informational support and studying new markets.

Therefore, the state system of support of export activity combines various measures of foreign trade policy, where the key measures are: 1) financial measures to support exports (provision of subsidies, insurance, crediting of exports); 2) non-financial measures (advisory, information and

organizational support for exporters); 3) state export support programs (special nationwide and regional programs); 4) investment and innovation development (stock market, investment banks); 5) creation of representative offices of national companies abroad; 6) creation of institutions supporting export activities (for example, export credit agencies).

It is also worth noting the special role of the program of international financial organizations and the program of international technical assistance for SMEs in Ukraine in the field of export and internationalization, which are primarily aimed at promoting the growth of competitiveness of small and medium-sized businesses with the aim of more successful exports.

Most of them relate to improving the organization of export activities, increasing the skills of personnel, assisting in exhibitions or trade missions, etc. For example, assistance from the European Bank for Reconstruction and Development to increase the trade support program for export-oriented companies, which is implemented in Ukraine by the EBRD through Ukrgasbank. The United States Agency for International Development (USAID) and its "Competitive Economy of Ukraine" Program is also one of the most active in the field of export support.

This Program provides financing of trade missions and educational programs for Ukrainian exporters. The German assistance program "Deutsche Gesellschaft für Internationale Zusammenarbeit" provides access to the most up-to-date information in the field of trade through online platforms (primarily in the mechanical engineering and creative industries sector). The United Nations Industrial Development Organization (UNIDO) actively promotes the export and internationalization of SMEs in Ukraine through the implementation of projects and programs aimed at increasing the competitiveness of enterprises by implementing the modern management standards and technical regulation of product quality (Analytical Center Industry4ukraine, 2020).

Therefore, the stimulation and development of exports occurs in two main ways: through the formation of a favorable macroeconomic climate and the creation of necessary export incentives for manufacturers and exporters (Kulytskyi, 2015). Thus, the offered above measures to stimulate export activity are subject to research in order to be implemented into domestic practice taking into account national specifics.

3.3. Priority areas of support and development of Ukraine's export potential

Support for export-oriented sectors of Ukraine's economy requires significant attention, especially in wartime. The entire economy suffers from the war, and almost every sector needs state support and effective customs policy. However, sectors that have the greatest export potential

need special attention from the state, because they are able to improve economic indicators and stabilize the economy. It is obvious that the state should offer effective measures to support the relevant sectors.

In addition, there is a rapid reorientation of exports to Western markets. Therefore, exporters often face logistical problems, complications in export promotion or encouragement for export promotion, and, in fact, problems in exporters' production activities due to the increase in production of goods that can be exported. It is the reason that these problematic issues need to be solved by top state institutions on a fast-track basis.

There is usually a small number of land checkpoints across the state border among the challenges related to improving logistics to support exporters and to speed up export operations, (Mazaraki and Kharsun, 2018). Therefore, increasing their number will speed up the time required for export-oriented goods to cross the border and relieve already existing checkpoints. In particular, we are talking about launching new road and railway crossings, because the traffic capacity of many checkpoints across the state border does not allow to quickly implement the necessary volume of goods turnover.

Transportation by railway will require special attention and resources, since the railway track and sorting stations need to be modernized and replacing goods wagons from broad to European track gage. Ukraine is interested in the fastest and most effective implementation of projects for the development of logistics routes and the construction of a new transport corridor to the ports of Poland and Lithuania. Besides, the expansion of river exports through the Danube will make it possible to speed up export operations of agricultural products. Both Ukraine as an exporting country and its international partners are interested in this.

The temporal implementation of customs operations at checkpoints across the state border of Ukraine also needs optimization. Joint customs, phyto-sanitary, veterinary and other types of control will help to speed up customs procedures and, accordingly, will speed up border crossing. Such solutions will facilitate speeding up export operations and reducing logistics costs for exporters.

It is possible to help in optimizing the work of customs with the help of introducing modern information technologies, which have a significant potential to increase the efficiency of the work of customs authorities in terms of improving traffic capacity. International experience of introducing artificial intelligence systems into customs activities in Turkey, the USA and many other countries is useful (Mikuriya and Cantens, 2020). It is worth studying all permit procedures related to the implementation of foreign economic activity and simplifying them as much as possible by using modern digitalization capabilities (Muzhev, 2016).

The next problem is related to the encouragement of exports and can be solved by applying certain financial instruments within the framework of an effective customs policy. This includes, for example, the special regime that was introduced by Ukraine's partner countries and related to the cancellation of customs duties and quotas (Regulation (EU) 2022/870). Within the framework of financial instruments of influence on increasing export efficiency, we should also optimize export and pre-export insurance of contracts in the field of foreign economic activity.

Donor financing of export promotion projects and preferential lending for exports should be increased (Skok, 2016). Such actions will significantly strengthen the export-oriented component of the customs policy and contribute to the involvement of Ukrainian enterprises into international production series.

It is also important to reduce the tax burden on export-oriented sectors that have suffered significant losses in regard to military operations (primarily metallurgy, engineering, and the chemical industry). Such decisions should refer to the exemption from paying rent for the extraction of ore used in the production of domestic metal and temporary exemption from paying the environmental tax. In addition, it is worth removing quotas for the import of raw materials for the chemical industry, since the shortage of raw materials due to the impossibility of ensuring their supply from domestic enterprises actually stops the industry.

It is also advisable to review the decision on taxation of gas production in Ukraine, especially during the ban on its export. The policy regarding fuel and energy resources should be primarily aimed at preserving the competitiveness of national enterprises and increasing the economic and energy security of Ukraine (Andrusiv *et al.*, 2021).

The toolkit of the customs policy has the opportunity to significantly increase the country's export potential by updating the current legislation in terms of promoting exports and supporting exporters. Therefore, the formation of modern customs policy of Ukraine, which is based on effective management decisions regarding foreign economic activity, should be oriented on close cooperation with partner countries and demonstrate the ability of the existing customs system to be changed towards the modernization and integration of information technologies.

Conclusions

We note as a conclusion that the development of the export potential of any country is proportional to the efficiency and effectiveness of those legal elements of legal regulation mechanism that are used in its customs

policy. The more effective export promotion measures are applied, the more rational the country's customs policy will be and the more exports will grow.

We believe that special attention should be paid to those sectors of the economy that have the greatest export potential and are capable of improving economic indicators. Ukraine should have both effective measures for the rapid reorientation of exports to Western markets and ways to solve logistical problems, financial and non-financial measures to support exporters in order to increase the production of goods that can be exported. It is possible to develop Ukraine's export potential and increase its exports due to the improvement of customs policy tools and the implementation of European law norms into the national legal system.

At the same time, it is necessary to use the positive experience of countries that occupy leading positions within international trade. Besides, the formation of modern customs policy of Ukraine should be based on effective management decisions regarding foreign economic activity and pursue the goal of close cooperation with partner countries by demonstrating the ability of the existing customs system to be changed in the direction of its modernization, investment attraction and integration of information technologies in the customs sphere.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 556-567
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

State policy to support the promotion of agricultural clusters as a factor for sustainable development

DOI: https://doi.org/10.46398/cuestpol.4176.33

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Abstract

The article examined the prospects of state support for cluster support in the agrarian sphere and thus considers the factors causing external changes, along with the readiness to merge enterprises and the possibility of their stimulation by the state. Likewise, this article determines the stability of economic links of agro-industrial clusters and considers the impact of international agro-industrial clusters as one of the forms of business organization in the Ukrainian economy. Also, the legislative basis of the state policy is considered, differentiated by the degree of state participation and functions in the cluster structures of the agrarian sphere. The theoretical and methodological basis of the research was the dialectical method of cognition and a systematic approach to the study of clustering in the agrarian sector; in addition, a comparative analysis of cluster-type joint agricultural enterprises and traditional integrated structures was carried out. It is generally concluded that the lack of regulations of the creation of a production cluster organization, as an autonomous economic association of enterprises, makes it impossible for the time being to extend its existing potential and develop new specialized programs of state support.

Keywords: cluster technologies; agrarian sphere of development; agro-industrial policy; economic policies; sustainable development.

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Recibido el 22/11/22 Aceptado el 05/01/23

Política estatal de apoyo al impulso de clúster en el ámbito agrario como factor de desarrollo sostenible

Resumen

El artículo examinó las perspectivas de apoyo estatal al clúster en la esfera agraria y, por lo tanto, considera los factores que provocan cambios externos, junto a la disposición a fusionar empresas y la posibilidad de su estímulo por parte del Estado. Igualmente, este artículo determina la estabilidad de los vínculos económicos de las agrupaciones agroindustriales y considera el impacto de las agrupaciones agroindustriales internacionales como una de las formas de organización empresarial en la economía ucraniana. Asimismo, se considera la base legislativa de la política estatal, diferenciada por el grado de participación y funciones del Estado en las estructuras de conglomerados del ámbito agrario. La base teórica y metodológica de la investigación fue el método dialéctico de cognición y un enfoque sistemático del estudio de la agrupación del sector agrario; además, se llevó a cabo un análisis comparativo de las empresas agrícolas conjuntas de tipo clúster y las estructuras integradas tradicionales. En líneas generales se concluye que la falta de reglamentos de la creación de una organización de clúster de producción, como una asociación económica autónoma de las empresas, hace que sea imposible por el momento extender su potencial existente y desarrollar nuevos programas especializados de apoyo estatal.

Palabras clave: tecnologías de clúster; ámbito agrario de desarrollo; política agroindustrial; políticas económicas; desarrollo sostenible.

Introduction

The reforming Ukrainian land relations requires restructuring of the entire system of the agricultural production organization. At the same time, the development of the agricultural clusters is a great importance, which will contribute to the creation of high-tech and knowledge-intensive associations with a closed production cycle and a high level of added value in the final product. It also leads to the creation of new jobs of various qualifications, and the development of social and industrial infrastructure in rural areas. It is important to note that this issue becomes particularly acute in the analysis of ways to restore the Ukrainian economy in the post-war period.

Currently, there is no definition of the concept of "cluster", its types, features of the creation and functioning in Ukrainian legislation. In particular, the concept of "cluster" as a territorial association of enterprises

is absent in the Economic Code of Ukraine (Economic Code of Ukraine, 2003).

There are the drafts of the regulations on the foundations of state policy formation in the field of economic clustering, such as "Concept of Creating Clusters in Ukraine", "National Strategy for the Formation and Development of Cross-Border Clusters", etc. These drafts are remained developed, but not approved.

The current regulations regarding the principles of the state agrarian policy do not provide the regulation of the agrarian clusters activities. Only the Concept of Creating Clusters in Ukraine (Ministry of Economy of Ukraine, 2008) determines that inter-farm organizational and management structures can be formed in agriculture in the form of self-governing economic associations of cooperative management and cluster regional cooperation in the organizational and legal forms of societies, associations, and economic interest grouping.

At the same time, supporting the development of the clusters, particularly in the agricultural sector, is one of the priorities of the regional economic policy. The development of the agricultural clusters is recognized as one of the most important directions in the development strategies of many regions.

1. Literature Review

The concept of a cluster was first highlighted in the works of Marshall (1890) and Porter (1979), where the main attention of the scholars is devoted to researching the advantages and positive aspects of creating clusters. Since then, this concept has been considered in various spheres of production, including the agriculture sphere.

The theory and practice of analyzing various aspects of the creation and activity of clusters as a promising form of economic development over the past ten years has been thoroughly studied by both foreign and domestic scholars. And this interest is due, first of all, to the role and influence that clusters have recently gained in the economy of many countries of the world after the devastating consequences of the global financial crisis of 2008 and the slowdown in the pace of globalization. Many scientists now consider clustering as an alternative model for the future development of the world economy, which can provide solutions to many problems of humanity in the process of transition to the paradigm of sustainable development (Recommendations of the International scientific and practical conference, 2014).

Domestic scholars have recently paid considerable attention to the problems of the agrarian reform and the development of various forms of management, as well as they paid attention to the clusters' formation in the Ukrainian economy, in particular, the clusters in the agricultural sector. The main aspects of the theory of agrarian clusters development were reflected in the works of the followings: Zhilkin *et al.* (2021); Mazneva (2015); Shpykuliak and Tyvonchuk (2012); Popovych *et al.* (2021) and other scholars. In most of the mentioned scholars' works, they consider the main theoretical and practical aspects on the formation of clusters in the context of the activation of innovative activities in the agricultural sector. At the same time, there remains the question of researching the essence of clusters as a promising organizational and economic form of effective agricultural production in the system of sustainable development, which seems to be an urgent issue for the modern stage of solving the problems faced by global and domestic agrarian science.

The founder of the agricultural holding *UkrLandFarming*, Oleg Bakhmatyuk convinced that it is possible to develop the Ukrainian land market by looking at dozens of models of market opening. However, when choosing the final option, it is not necessary to blindly adopt the experience of implementing specific models in European countries. The same model cannot work equally well, for example, in Estonia and Ukraine, because these countries are characterized by significant differences in natural and climatic conditions, soil types, and economic factors (Bakhmatyuk, 2022).

According to Bakhmatyuk (2022), it is optimal for the Ukrainian agricultural sector to develop an economic model of the land market with the division of the latter into three approximately equal clusters (the first is small plots of land, up to five hectares, family farms. Medium-sized landowners whose purpose is to saturate the domestic market of Ukraine with its products should represent the second cluster. The third cluster is a large producer whose work should be aimed at export).

2. Methodology of Research

The purpose of this research is to highlight the conceptual understanding of the cluster as an innovative organizational in the system of sustainable development on the example of the agricultural sector and to substantiate the scientific principles of ensuring its implementation at the regional level.

The theoretical and methodological basis of the research is a dialectical method of cognition and a systematic approach to the study of the clustering of the agricultural sector.

When performing the research, we have applied a set of general scientific methods and techniques:

- a monographic – in relation to domestic and foreign publications on this issue;
- a system approach based on the principles of system analysis and synthesis – to justify the interrelationship of sustainable development, the efficiency of agricultural production and the cluster model;
- an abstract-logical – for theoretical generalization of research results and determination of measures to ensure the implementation of the cluster model of agrarian development;
- an economic analysis – studying the efficiency of agricultural production.

3. Results and Discussions

The need for economic protection of Ukraine's national interests in the agricultural sector and ensuring food security is possible through the maximum use of national resources and the achievement of industry competitiveness. However, the scientifically based system of economic growth of the agro-industrial complex, focused on solving national problems, unfortunately has a purely declarative nature.

The investments in fixed capital in agriculture are insufficient for the intensification of production and its dynamic development. The agrarian sphere is characterized by low investment attractiveness (Law No. 1116-IX). The restraining factors are the long-term nature of investment, the lack of a full-fledged competitive environment, the availability of alternative options for investing financial resources in attractive industries. Analysis of the structure of investments in fixed capital shows that this structure has practically not changed in recent years: the share of investments in agriculture is relatively small and significantly inferior to other industries.

Cluster technologies can change the situation. Their use will add not only the positive dynamics of the agro-industrial complex, but also give the impetus for the development of the entire economic system, taking into account national priorities and social responsibility.

The cluster form of the agricultural science organization determines the possibility of creating a system in which all participants are interested in the real success of both themselves and the entire association. At the same time, authorities can act as coordinators; promote the implementation of mechanisms for regulating complex periods of formation and development thanks to legislative and material support.

It is necessary to realize that sustainable economic growth cannot be ensured only by market mechanisms. It must be based on three system-forming elements: the market, state regulation and social stability. With the support of the state, cluster technologies in the agrarian sphere will enable the activation of market mechanisms and ensure the socio-economic dynamics of the agricultural sector (Kovalchuk, 2019).

The agro-industrial cluster is a territorially localized, innovatively oriented integrated structure based on an agreement on the cooperation of independent business entities. The purpose of the structure is to form a strategic platform for the development of agro-industrial production. According to many economists, the regions where clusters are organized become leaders in economic development.

The creation of agro-industrial clusters is especially relevant for those regions where agro-industrial production provides a significant share of the gross regional product. Cluster structures are more in line with new economic conditions, contribute to increasing the competitiveness of the region's agricultural industry, and ensure its innovative development.

The clusters activate entrepreneurship, as a high degree of specialization, stimulates the creation of new firms focused on a certain market niche, and due to the predominance of horizontal integrated connections, it reduces the barriers to «entry» of new participants in cluster formations.

The economic stability of the organizations included in the cluster is achieved due to access to resources, transfer of knowledge and technologies, partnership relations, formation of a special configuration of ownership rights to various objects, which ensures their more effective use. In turn, increasing the stability of economic subjects of the region's agro-industrial complex creates a basis for its overall positive dynamics.

Tax revenues to the budgets of various levels are increasing, the material and technical base is improving, and the investment attractiveness of the region is increasing (Kovalchuk, 2021). It should also be noted the importance of the comprehensive knowledge obtained due to the connection in the cluster of fundamental science, research and development works, production, sales and sale of finished products.

The traditional management due to the division of the regional economy into industries is losing its effectiveness, as interrelationships of firms and organizations that have an inter-industry nature come to the fore. Therefore, it is necessary to manage connections, which allows us to provide a cluster approach. At the same time, the efficiency of interaction, of not only technologically related organizations increases, but also partnership relations between business, the state, trade associative structures, research and educational institutions arise (Law No. 2404-VI, 2010).

The approach to the development of regional agriculture, based on clusters, is gaining more and more recognition in our country. Awareness of the need for innovative development of the agricultural sector, the desire to ensure the balance of the regional economic system based on the restoration of industrial and economic ties, to maximize the use of the economic potential of the territories, are intensifying the efforts of local authorities to form various types of regional agrarian clusters.

However, currently in domestic legislation there is no definition of the concept of "cluster", its types, features of creation and functioning. In particular, the concept of "cluster" as a territorial association of enterprises is absent in the Commercial Code of Ukraine.

There are the drafts regulations on the formation of the foundations of state policy in the field of economic clustering, such as "Concept of Creating Clusters in Ukraine" (Ministry of Economy of Ukraine, 2008), "National Strategy for the Formation and Development of Cross-Border Clusters" (Ministry of Regional Development and Construction of Ukraine, 2009). These drafts are remained developed, but not approved.

The current regulations regarding the principles of the state agrarian policy do not provide the regulation of agrarian clusters activities. In particular, in the Law of Ukraine "On State Support of the Agriculture of Ukraine" (Law No. 1877-IV, 2004) and in the Concept of the Development of Rural Territories (effective until 2025), approved by the Cabinet of Ministers of Ukraine No. 995 dated September 23, 2015, the concept of "cluster" is absent in principle, there is no normative – a system basis for the development of clustering in the agricultural sector (Cabinet of Ministers of Ukraine, 2015).

Only the Concept of Creating Clusters in Ukraine (Ministry of Economy of Ukraine, 2008) determines that inter-farm organizational and management structures can be formed in agriculture in the form of self-governing economic associations of cooperative management and cluster regional cooperation in the organizational, and legal forms of societies, associations, and economic interest grouping.

At the same time, support for the development of clusters, including in the agricultural sector is one of the priorities of the regional economic policy. The development of agricultural clusters is recognized as one of the most important directions in the development strategies of many regions.

Unfortunately, cluster technologies in the agro-industrial complex of the regions are not used on the scale that could ensure the dynamic development of this vital branch of the economy.

The economic stability of the regional agro-industrial complex is possible only on the basis of innovative development of all spheres included

in the complex, modernization of the processing and agrarian sector of the agro-industrial complex, introduction of energy-saving equipment and technology, activation of intellectual resources, optimal combination of market mechanisms and state regulation of the economy. All these factors can be used within the framework of the cluster approach to the development of the agro-industrial complex.

One of the most important stages of the development of the international economy is the formation of sectoral and inter-sectoral integration. The Agrarians see integration as an opportunity to form a strong market-stable structure capable of resisting interregional and international competition, the basis of which should be scientific and industrial integration.

The cluster form of the agricultural science organization determines the possibility of creating a system in which all participants are interested in the real success of both themselves and the entire association. At the same time, authorities can act as coordinators; promote the implementation of mechanisms for regulating complex periods of formation and development thanks to legislative and material support.

The cluster form of agricultural science is especially relevant for high-risk areas of agriculture, the products of which are more elastic and seasonal in nature. The agricultural research and production cluster should define such a network of interrelated organizations that would concentrate in one geographical area research centers, agricultural institutes, production companies, suppliers of equipment, technologies, raw materials, materials and other organizations that complement each other in achieving economic and scientific effect, and strengthen the competitive advantages of individual companies and, therefore, the cluster as a whole by combining horizontal and vertical integration.

As a result of such integration, agricultural science has the opportunity to have scientific laboratory sites on the territory of specific producers of products and to build relations with both producers and other participants of the cluster based on the principles of continuous search for improving the quality and quantity of produced products.

The role of regional authorities in the success of the cluster form of agricultural science organization is significantly large. The authorities should stimulate the formation of such cluster systems, first of all, through their preferential lending, taxation, legal support and support (Kovalchuk, 2020).

The experience of using clusters in foreign countries shows that this approach is the basis for a constructive dialogue between representatives of the business sector and the state. It allows to increase the effectiveness of the interaction of the private sector, the state, trade associations, research and educational institutions in the innovation process.

In Canada, considerable attention is paid to the cluster approach to the organization of scientific research. In the agri-food sector, one of the most famous regional innovation clusters is the cluster of agricultural biotechnology in the Canadian province of Saskatchewan. At the initial stage of the development of the cluster in the 80s of the last century, research and implementation work related to issues of genetics and plant selection (grains, oilseeds, legumes, forage grasses), as well as animal health and nutrition.

Currently, there is work on the use of biotechnology in the field of bioenergy, environmental protection, and improving the health of the population, which has become widespread. The cluster began to serve as a basis for the development of the bioeconomy of the province and increase the competitiveness of this region.

Ukraine's European integration aspirations actualize the appeal to the effective experience of state support for the principles of cluster development of European Union (EU) countries, in particular, the EU's Common Policy "On the Development of Regional Clusters". Currently, all EU countries are implementing the decisions of the Lisbon Summit in 2000 "On the Widespread Implementation of Programs for the Development of Regional Innovation Systems (RIS)" based on the cluster model of production.

The main goal of this decision was the intention to reduce Europe's lag behind its main competitors on world markets – the USA and Japan – by 2010 by implementing the strategy for the development of the knowledge economy, as well as the implementation of the innovative development model in the participating countries through the creation of the European Research Area (ERA). In addition, in February 2007, the European Clustering Manifesto was approved at the summit in Brussels, and on January 21, 2008, the European Cluster Memorandum was adopted at the summit in Stockholm - Europe's action plan for ensuring the growth of competitiveness (Food and Agriculture Organization of the United Nations, 2017).

It should be noted that, although there is no unified model of state support for cluster development in European countries, all countries have their own state programs for cluster development.

Conclusions

The lack of regulations of the creation of a cluster organization production of a cluster as a self-governing economic association of enterprises makes it impossible to spread to its existing and develop new, specialized programs of state support.

As a result, there are only isolated examples of the practical creation and functioning of agricultural clusters in Ukraine, which are mainly the initiative of commodity producers and are based on the experience borrowed by them from the global practice of cluster development.

The development of agricultural clusters in Ukraine is complicated by the following factors:

- military actions on the territory of Ukraine, in particular in the most developed agrarian regions;
- the imperfection of the legislative framework for the functioning of clusters and, as a result, the lack of support for cluster initiatives of agricultural enterprises from the state;
- lack of trust between state authorities and business, as well as between individual companies, reluctance of companies to disclose and share internal information due to the possibility of abuse and dependence on more powerful partners;
- the weakness of the existing agricultural clusters due to the low level of competition in the domestic market, the absence of «aggressive» suppliers and demanding consumers;
- the possibility of losing the right to receive benefits and subsidies by an agricultural enterprise in case of any organizational or production changes (including when joining a cluster);
- lack of connection between science and education from agricultural production: agricultural enterprises do not act as customers for scientific and innovative products, and the products of research institutions do not find their buyers among commodity producers;
- lack of foreign investments and venture capital, which are an important source of cluster development in developed countries.

The formation of agrarian clusters in Ukraine in the post-war period will give impetus to the development of new approaches in the organization of production, and the improvement of the qualifications of workers in the sector.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 568-591
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Protection of consumer rights in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4176.34

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Abstract

The article analyzes the conceptual foundations of the formation of a system of protection of the rights and legitimate interests of consumers. With the help of the dialectical method, a complex of general and special scientific methods, the essence of civil legal protection of consumer rights and organizational, legal and economic aspects of consumer protection have been clarified. The necessity of development and approval of unified standards for rendering financial services to consumers has been demonstrated. The main directions of formation and implementation of the policy of consumer rights protection in the field of trade and provision of financial services, with emphasis on digitalization of relevant legal relations, have also been determined. In the conclusions, the desirability of developing and consolidating, at the normative level, the Comprehensive Program for the Implementation of the State Policy on the Protection of the Rights of Financial Services Consumers for 2023-2027 is substantiated. Finally, arguments were presented to complement the legislation in the field of consumer relations with other normative legal acts in order to guarantee the protection of consumers' rights.

Keywords: consumers; goods and services; protection of rights; restoration of violated rights; legal guarantees.

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Recibido el 10/10/22 Aceptado el 26/12/22

Protección de los derechos del consumidor en Ucrania

Resumen

El artículo analiza los fundamentos conceptuales de la conformación de un sistema de protección de los derechos e intereses legítimos de los consumidores. Con la ayuda del método dialéctico, un complejo de métodos científicos generales y especiales, se ha aclarado la esencia de la protección legal civil de los derechos de los consumidores y los aspectos organizacionales, legales y económicos de la protección de estos. Se ha demostrado la necesidad de desarrollar y aprobar estándares unificados para la prestación de servicios financieros a los consumidores. También se han determinado las direcciones principales de la formación e implementación de la política de protección de los derechos del consumidor, en el campo del comercio y la prestación de servicios financieros, con énfasis en la digitalización de las relaciones legales relevantes. En las conclusiones se fundamenta la conveniencia de desarrollar y consolidar, a nivel normativo, el Programa Integral para la Implementación de la Política de Estado en la Protección de los Derechos de los Consumidores de Servicios Financieros para 2023-2027. Finalmente, se presentaron argumentos para complementar la legislación en el campo de las relaciones de consumo con otros actos jurídicos normativos a fin de garantizar la protección de los derechos de los consumidores.

Palabras clave: consumidores; bienes y servicios; protección de derechos; restauración de derechos vulnerados; garantias legales.

Introduction

Modern consumer society cannot exist without trade and economic relations, buying and selling (Grechany, 2022). The military invasion of the territory of Ukraine by the Russian Federation, permanent financial and economic crises, COVID-restrictions significantly affected the financial capacity of the population, led to a significant increase in the number of works and services using the Internet, consumer loans, which increases the risk of violation of the rights and legitimate interests of consumers.

One of the most important principles of a market economy is to prioritize the interests of consumers along with the interests of individual economic entities and even the state itself, bringing the provision of public services as close as possible to their direct consumers (Oluyko *et al.*, 2022). Strict adherence to this principle is the main condition for the development of the internal market (Yanovytska, 2021). Any democratic state should strive to

strengthen the legal protection of consumers, ensure effective control over the quality and safety of products and all types of works and services, and improve legislation on the protection of consumer rights. The absence of a comprehensive system of state control in the specified area leads to the emergence of competitive advantages for unscrupulous business entities.

1. Methodology of the study

The methodological basis of the research was general scientific methods of cognition, the systematic application of which ensured the solution of the formulated tasks and the achievement of the goal of the dissertation work.

In particular, the application of the dialectical method made it possible to study the analysis of the conceptual foundations of the formation of the protection of the rights and legitimate interests of consumers at the state level, to determine the essence of the civil law protection of the rights and interests of consumers, to study the organizational, legal and economic aspects of the protection of consumer rights in the system of consumer relations; logical-semantic to determine the categorical apparatus: «consumer legal relations», «protection of the rights and interests of consumers»; comparatively legal – for the purpose of revealing the mechanism of appeals by consumers of goods and services to state authorities regarding the protection of violated rights and legitimate interests, development and approval of unified standards for the provision of financial services to consumers, etc.

The formal-logical method was used when studying the content of legislation in the field of consumer legal relations. The results of the dogmatic (logical) analysis were used in the formulation of the dissertation's conclusions and proposals, taking into account the requirements for the consistency, reasonableness and consistency of judgments within the framework of general theoretical and legal constructions using the conceptual apparatus of the relevant branches of science.

The system-functional method made it possible to consider the interrelationship and mutual influence of various elements of the mechanism for protecting the rights of service consumers, to propose promising measures to accelerate the digitalization of the economy of Ukraine. The comparative legal method was used to analyze foreign experience and activities of international institutions for the protection of the rights of consumers of goods and services.

2. Analysis of recent research

Protection of the rights of a citizen as a consumer is one of the most important features of a democratic society and the direction of protection of the constitutional rights of citizens. Scientific and technical progress, and the related economic development, actualized the need to update at the state level regulatory and economic mechanisms for the protection of consumer rights from low-quality goods, work results and services (Satir *et al*., 2020).

It must be stated that currently in Ukraine at the state level, an effective mechanism for the implementation and protection of consumer rights, as well as an accessible and transparent system of pre-trial settlement of consumer disputes and response to their results, has not yet been developed. This aspect requires joint efforts of science and practice and actualizes research in this direction.

Various aspects of ensuring the realization of consumer rights were the subject of scientific investigations at the level of monographic studies and scientific articles (Kregul and Radchenko, 2018; Satir *et al*., 2020; Yanovytska, 2021; Mulyar, 2019; Belova, 2020; Gorokhova, 2021).

The significance of these works in the field of protection of individual consumer rights is undeniable, however, the mechanism of application of the provisions of legislation on the protection of consumer rights causes numerous difficulties regarding: the consequences of violation of the terms of consumer contracts; assignment of property and/or moral damage; the consumer's choice of an effective means of protection, etc.

The detailed and imperfect legislative regulation of individual legal relations in the consumer sphere indicates an inadequate state of compliance with consumer rights. This indicates the relevance of the selected issues, and also confirms the need for a systematic analysis of a number of general theoretical and practical issues.

The purpose of the scientific article is to solve theoretical and practical issues related to the protection of consumer rights in Ukraine, as well as to formulate scientifically based conclusions of an applied nature, aimed at ensuring the protection of the rights of the specified category of persons.

Achieving the goal involves solving the following tasks: to study the international experience of consumer rights protection; to carry out an analysis of civil legal remedies for the protection of violated consumer rights; to determine the features of social and legal provision of electronic business in conditions of digitization; formulate proposals and recommendations for improving the mechanism of consumer rights protection in Ukraine in accordance with international standards and leading foreign practices.

3. Results and discussion

3.1. Regulatory and legal regulation of consumer legal relations in Ukraine

Consumer legal relations in Ukraine should be understood as social relations regulated by law, contractual terms and legal customs, arising between a consumer who purchases or intends to purchase a product (work, service) to meet personal, household and family needs by concluding a contract with the subject entrepreneurial activity (seller, executor, manufacturer, importer) or self-employed person.

The essence of civil law protection of the rights and interests of consumers is the possibility of them taking actual and legal actions aimed at protecting their violated rights and interests, the activities of state bodies and public organizations authorized by law to prevent, stop the offense and restore the violated rights.

The provisions of the Law of Ukraine «On the Protection of Consumer Rights» and in general legislation in the field of consumer rights protection are aimed at protecting the natural person - the consumer as the weaker party (Yanovytska, 2021), but the norms of the Civil Code of Ukraine, which take care of the rights of both individuals and legal entities, are hardly aimed at distinguishing in this case these subjects from the position of protecting their rights in the field of acquisition or the intention to acquire goods (works, services) to satisfy their own needs by concluding an appropriate contract with a subject of entrepreneurial activity or a self-employed person.

In our opinion, legal entities can also apply for the protection of their rights as consumers in accordance with the norms of the Civil Code of Ukraine and the Law of Ukraine «On the Protection of Consumer Rights», for example, to purchase quality goods (works, services) in order to satisfy their own needs.

There is no doubt that the executor is responsible for damage caused to the life, health or property of the consumer, which occurred in connection with the use of things, materials, tools, devices, equipment, devices or other means necessary for his performance of work, providing services, etc., regardless of the level of his scientific and technical knowledge, which makes it possible to establish their properties.

In developed countries and developing countries, legislation on the protection of consumer rights takes into account or is completely based on the main international legal document in this field – the Guidelines for the Protection of Consumer Interests, prepared by the Economic and Social Council of the United Nations and approved by the resolution of the General Assembly of the United Nations (1985).

The Guiding Principles include the right to: safety of goods to the basic rights of consumers; information; selection of goods; expressing one's thoughts; satisfaction of basic needs; reparation; education; healthy environment.

Taking into account the interests and needs of consumers in all countries, and considering that consumers should have the right to access safe products, and considering the importance of promoting fair, equitable and sustainable economic and social development, the Guiding Principles have recognized as their goal: to help countries in establishing and further ensuring proper protection of the population as consumers; promoting the creation of production and distribution structures capable of meeting the needs and requests of consumers; encouraging a high level of ethical standards for those involved in the production and distribution of goods and services for consumers; assistance to countries in the fight against the business practices of enterprises at the national and international levels, which negatively affects consumers; promoting the creation of independent groups of consumers; expansion of international cooperation in the field of consumer protection; encouraging the creation of market conditions that provide consumers with greater choice at lower prices.

In Ukraine, consumer relations are regulated by the following main legislative acts: the Constitution of Ukraine (Constitution of Ukraine, 1996); the Law of Ukraine «On the protection of consumer rights» (On The Protection Of Consumer Rights: Law of Ukraine, 2005); the Civil code of Ukraine (Civil Code of Ukraine, 2004); other normative legal acts (in particular, resolutions of the Cabinet of Ministers of Ukraine).

The Constitution of Ukraine defines the basic legal principles important for consumers. Yes, according to Art. 42 of the Constitution of Ukraine «The state protects the rights of consumers, monitors the quality and safety of products and all types of services and works, promotes the activities of consumer public organizations» (Constitution of Ukraine, 1996).

Article 50 defines that «Everyone has the right to an environment safe for life and health and to compensation for damage caused by the violation of this right. Everyone is guaranteed the right of free access to information about the state of the environment, about the quality of food products and household items, as well as the right to its dissemination. Such information cannot be classified by anyone» (Constitution of Ukraine, 1996).

It should be emphasized that the Law of Ukraine «About protection of Consumer Rights» (On The Protection Of Consumer Rights: Law of Ukraine, 2005); the Civil procedure code of Ukraine (Civil Code of Ukraine, 2004), like other normative acts on the protection of consumer rights, applies to all enterprises that serve the population, trade enterprises, enterprises in the service sector, enterprises that perform work, enterprises of household

services, public catering enterprises. That is, the legislation regulates all cases in which a citizen is a consumer (a person who purchases, orders, uses or intends to purchase or order goods (works, services) for personal household needs).

The consumer has the right to demand from the seller (manufacturer, contractor) that the quality of the goods purchased (work performed, service provided) meets the requirements of regulatory documents, the terms of the contract, as well as information about the goods (work, service) provided by the seller (manufacturer, contractor). The purchased product (work, service) must be of high quality and safe for the life and health of every person.

The Civil Code of Ukraine (2004) regulates the contractual relations that arise between the consumer and the seller (producer) during the purchase of goods. Chapter 54 of the Civil Code of Ukraine regulates the relationship between the seller and the buyer (consumer), the relationship of purchase and sale in cases of exchange of goods (Article 707), establishes the rights of the buyer in the event of the sale of goods of inadequate quality (Article 708) and the procedure and terms for satisfying the buyer's requirements on replacement of goods or elimination of defects (Article 709) and others (Civil Code of Ukraine, 2004).

The system of consumer law as a complex civil law institution, in addition to the Law «On protection of consumer Rights» (On The Protection Of Consumer Rights: Law of Ukraine, 2005), includes other legislative acts and their separate norms in the field of trade and other types of household services for the population. In particular, it is worth emphasizing the importance for consumer law of the Law of Ukraine «On protection from Unfair Competition» (On Protection From Unfair Competition, 1996), the Law of Ukraine «About advertising» (Law of Ukraine, 1996) and other regulatory acts that contain separate provisions that directly or indirectly contribute to the protection of consumer rights.

According to the decision of the Constitutional Court of Ukraine (The decision of the Constitutional Court of Ukraine, 2011), the consumer, as a rule, objectively lacks the knowledge necessary to make the correct choice of goods (works, services) from those offered on the market, as well as to evaluate contracts for their purchase, which are often have the form of a form or other standard form. Therefore, there is a risk for the consumer to buy goods or services that he does not need by mistake or even as a result of being misled.

Therefore, the state ensures special protection of the weaker subject of economic relations, as well as the actual, not formal, equality of the parties in civil legal relations, by defining the peculiarities of contractual legal relations and limiting the effect of the principle of freedom of civil

contract. This is done by establishing a special procedure for the conclusion of civil contracts, their dispute, control over the content and distribution of responsibility between the parties to the contract.

The Law of Ukraine «On Consumer Lending» (On Consumer Lending, 2016) provides for the following security mechanisms to protect borrowers as the weaker party: approval by the National Bank of Ukraine of the methodology for calculating the total cost of the loan for the consumer, the real annual interest rate under the consumer loan agreement; requirements for information provided to the consumer before concluding a consumer credit agreement; the list of information provided to the borrower during the term of the consumer credit agreement; the consumer's right to withdraw from the consumer credit agreement, early repayment of the loan; restrictions on the amount of penalties and fines under the contract; requirements for interaction with consumers and other persons in the settlement of overdue debt (requirements for ethical behavior).

In our opinion, the provisions of the Law of Ukraine «On Consumer Lending» generally correspond to the Charter of Consumer Protection (Resolution Of The Consultative Assembly Of The Council Of Europe, 1973), Directive 2005/28/EU on unfair commercial practices in relations between entrepreneurs and consumers in the EU internal market (Directive No. 2005/28/Ec Of The European Parliament And The Council, 2005). The Consumer Protection Charter provides for the prohibition of direct or indirect deception of consumers, including in the financial sector (Resolution Of The Consultative Assembly Of The Council Of Europe, 1973).

Scientists and practitioners have repeatedly emphasized the implementation of other legislative acts of the European Union (Directive No. 98/6, 1998; Directive No. 2005/28/EC, 2005; Directive No. 2019/771 Of The European Parliament And The Council, 2019) on certain aspects relating to contracts for the sale of goods, which makes changes to Regulation (EU) No. 2017/2394 and Directive No. 2009/22/EC and repeals Directive No. 1999/44/EC (Directive No. 2019/771 Of The European Parliament And Of The Council, 2019); Directive No. 93/13/EC (Directive No. 93/13/Ec Of The European Parliament And The Council, 1993); Directive No. 20 11/83/EU on consumer rights, which amends Council Directive No. 93/13/EEC and Directive No. 1999/44/EC of the European Parliament and the Council and repeals Council Directive No. 85/577/EEC and Directive No. 97/7/EC of the European Parliament and Council; Directive No. 2013/11/EC (On Alternative Resolution Of Consumer Disputes And Amendments To Regulation, 2013) on alternative resolution of consumer disputes and on amendments to Regulation (EC) No. 2006/2004 and Directive No. 2009/22/EC; Directive No. 2009/22/EU (On Some Aspects Relating To Contracts For The Sale Of Goods, Amending Regulation, 2009); Regulation (EU) No. 2017/2394 on cooperation between national bodies responsible

for the implementation of consumer protection laws and which repeals Regulation (EC) No. 2006/2004 (Regulation (EC) No. 2017/2394, 2017).

3.2. Social and legal security of consumer legal relations under the conditions of digitalization

The popularization and development of digital technologies, the use of the Internet, social networks, mobile applications have become part of the daily life of billions of people (Gorokhova, 2021), and consumer marketing has begun to focus on the digital environment, especially in social networks and mobile devices (Gorokhova, 2021).

Figure No 01: Growth dynamics of social networks from 2016 to 2021

(built by the author based on data from (Digital 2022, Global Overview Report, 2022)

Internet strategies have developed rapidly over the past decade. In response to modern challenges, users have adapted their behavior on the Internet. These changes have led to the development of new user habits and behaviors in a digital environment that is increasingly characterized by personalized strategies to attract new consumers. Therefore, research on consumer behavior should be aimed at studying and analyzing consumer behavior in the digital environment.

Social security of the economy and its integral component - business - is inextricably linked with social responsibility. Since this phenomenon is not widespread enough in Ukraine, a key role is played by traditional legal responsibility, including economic and civil law. At the same time, the application of such responsibility in the conditions of the digital economy becomes problematic with regard to “digitalized” phenomena, in particular

in relations with the participation of virtual enterprises and/or with the use of business sites (Internet stores, Internet trading platforms, etc.) (Belova, 2020).

Legal regulation of relations in the field of the digital economy, given their novelty, rapid development and the need to take into account world experience, is difficult to recognize as adequate to the real state of such relations and, accordingly, effective. This applies, in particular, to the procedural status and responsibility of virtual enterprises, the procedure for using business websites, the establishment at the legislative level of information support for citizens-consumers and other participants in digital economy relations regarding the procedure for their use, the control system of authorities, the possibility of online dispute resolution.

It should be noted that the dominant tendency to protect the rights of consumers of financial services in Ukraine, which is embodied in the latest legal acts, does not meet the modern challenges that arise every day in such "complex" markets, does not adequately protect the rights and legitimate interests of consumers and does not correspond to modern global trends in protecting the interests of the specified persons.

This, in particular, is due to the lack of sufficient legislative consolidation of the appropriate level of digitization of the activities of state authorities in terms of state supervision of the activities of financial services market entities, which directly affects the level of protection of the rights and legitimate interests of consumers (Pitsuria, 2020).

The use of digital technologies in the field of economy led to the emergence of new subjects and new resources, the legal status and legal regime of which the legislator does not have time to determine. It must be stated that today the relations involving virtual enterprises have not been regulated, which allows them (as well as their participants) to act virtually anonymously on the Internet, because they usually do not acquire the appropriate status, as is mandatory for business entities in the condition's analog economy.

In the field of the digital economy, in addition to traditional participants in economic relations (business entities with the status of an individual entrepreneur or legal entity, consumer-citizens and subjects of organizational and economic powers created as legal entities, consumer-citizens), so-called virtual enterprises are widespread as a group of individuals and/or legal entities that often uses one electronic resource - an electronic store or an electronic trading platform, but without registration of the organizational unity of such a group as a legal entity.

In the case of the use of the mentioned resources by the participants of such an enterprise, it is usually not easy to establish the person responsible for compliance with the requirements of the legislation (including the laws

"About electronic commerce" (About Electronic Commerce, 2015) and "On protection of consumer rights" (On The Protection Of Consumer Rights: Law of Ukraine, 2005), in particular, regarding the need to post relevant information (about the seller and characteristics of the product, terms of its return, etc.).

It is the gaps in the legislation regarding the specifics of the legal position and responsibility of virtual enterprises allow them to avoid the legalization necessary for functioning in the field of economy (despite the presence of it for some of the participants of the virtual enterprise) and, accordingly, bear responsibility for non-compliance with the requirements of the legislation, including regarding the disclosure of information provided for by the laws "About electronic commerce" (About Electronic Commerce, 2015) and "On protection of Consumer Rights" (On The Protection Of Consumer Rights: Law of Ukraine, 2005).

The analysis of the interpretation of the norms of the current legislation of Ukraine, the law of the European Union, the provisions of the scientific doctrine and the materials of law enforcement practice leads to a conclusion regarding the possibility and necessity of extending the provisions of the legislation of Ukraine on the protection of consumer rights to business entities.

This will make it possible to move away from the "narrow" legislative approach to the interpretation of the term "consumer" and extend the effect of special legislation to those persons who are actually consumers of any financial service. We are talking about legal entities and/or individuals to whom informational and contractual disproportion conditions may be applied in the consumption process, which puts them in the position of "weak side" under the contract in the field of consumer activity. In our opinion, this approach will make it possible to apply special methods of protection to (On the Protection of Consumer Rights: Law of Ukraine, 2005) over general ones.

So: the consumer of the financial service (individual or legal entity) usually takes the position of the "weak party" in the binding legal relationship with the financial institution; in order to protect the interests of the consumer in binding legal relations, when forming the terms of the contract, the financial institution must be guided by the principles of: fairness, good faith and reasonableness, the impossibility of imposing on the consumer an unjustified burden of clarifying the content of the contract, sufficient information, attentiveness and caution; the consumer of a financial service should be subject to the Law of Ukraine "About protection of Consumer Rights" (On The Protection Of Consumer Rights: Law of Ukraine, 2005), which requires making appropriate changes to its content.

However, proper protection of the rights and legitimate interests of consumers in modern conditions is possible only on the basis of electronic interaction between all participants in the process of providing and receiving relevant services.

It is worth emphasizing that changes in the legal regulation of the financial services market, as a common goal, in particular, are aimed at: creating an appropriate system for protecting the rights and interests of consumers of financial services; elimination of gaps and inconsistencies in the current system of legal protection of consumer rights; determining the competence of regulators of financial services markets (the National Bank of Ukraine and the National Securities and Stock Market Commission) and empowering them to protect the rights of consumers of financial services.

However, the indicated progressive legal acts do not actually establish at the proper level the role of the use of IT technologies in order to protect the rights and legitimate interests of consumers through the digitization of the process of state supervision.

Today, several areas can be singled out, the gaps in the regulation of which lead to numerous cases of violation of consumer rights in Ukraine, and the consumer at the same time finds himself virtually alone with the problems of the violated right. Thus, there are unresolved issues of consumer rights protection in the field of electronic commerce, there are no effective protection mechanisms against unfair trade activities, ineffective protection of consumer rights during product warranty service, etc.

According to the results of the analysis of consumer appeals about the violation of their rights, in particular, in the field of electronic commerce, the following was found: when buying products in online stores, consumers are provided with unreliable information about the product, its consumer properties, price, delivery conditions, the consumer's right to terminate the contract is violated, rejection of products and refunds; there are cases of a lack of information about a business entity sufficient for its identification, which makes it impossible to carry out state supervision measures in the event of a violation by the business entity of legislation on the protection of consumer rights.

It is worth paying attention to draft law No. 6134 (2021) registered in the Verkhovna Rada of Ukraine, which regulates relations between consumers of goods, works and services and business entities, regardless of the form of ownership, that produce, sell goods or food products, perform work or provide services, establish rights consumers, and also defines the mechanisms of their protection and the basis of implementation of state policy in the field of consumer rights protection.

The draft law, in particular, proposes: to define the principles on which the protection of consumer rights is based in accordance with the principles

of the European Union; to extend the effect of legislation to the field of food products in terms of consumer economic rights; to define the spheres to which this Law does not apply, in order to avoid duplication of control functions of state control bodies; determine the rights and obligations of consumers in electronic commerce.

Determine the list of information about the products and the business entity that it must provide when conducting electronic trade and the responsibility for the lack of such information, in addition, the responsibility of the business entity that provides trade marketplace services for placing goods for sale by other business entities; give the consumer the right to replace the product with the same or similar one, if the repair of the product purchased by the consumer requires more than fourteen calendar days; give the consumer the right to a price reduction or a refund if the product defect appears after repair, etc.

In our opinion, the legislation in the field of consumer legal relations should be supplemented with a provision on giving the State Production and Consumer Service the right to apply to the Internet service provider to restrict access to the websites of business entities that use unfair business practices and violate the legislation on the protection of consumer rights. Business entities should also be exempted from the obligation to create an exchange fund of goods, and the provision by business entities of documents confirming warranty obligations in electronic form should be introduced.

The goal of further reform and development of consumer services, in accordance with leading international practices, should be its focus on protecting the rights and legitimate interests of consumers, through the digitization of the specified processes, in accordance with the requirements of Regulation No. 910/2014 on electronic identification and trust services for electronic transactions within the internal market (Regulation (EU) No. 910/2014, 2014), Regulation 2016/679 of the European Parliament and the Council of (Regulation (EU) 2016/679, 2016) on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Directive 2015/2366 of the European Parliament and of the Council on payment services in the internal market (Directive 2015/2366, 2015). This proves that digitalization in the financial sector stimulates the development of a digital society in Ukraine.

Therefore, we state that, despite the individual transformations of regulatory and legal regulation, the existing system of protecting the rights and legitimate interests of consumers of financial services must undergo changes in view of the global and pan-European trends of the specified processes and find its embodiment in the direction of digitalization of relations that arise between state bodies authorities and consumers.

3.3. Main vectors of protection of the rights of consumers of financial services in Ukraine

The market of financial services is dynamically developing all over the world, as a result of which the number of consumers is constantly increasing, financial products are becoming more difficult to understand possible risks. They do not always have a sufficient level of information and knowledge when choosing a certain financial service, which often leads to unexpected financial obligations and risks that financial institutions take advantage of.

In view of this, improving the system of consumer rights protection in the financial services markets is one of the primary tasks of the state before consumers, which will further contribute to attracting public funds to the financial sector.

One of the important areas of cooperation between the European Union and Ukraine, provided for in the Association Agreement, is the strengthening of the protection of the rights of consumers of financial services.

The balance of rights and obligations of financial institutions and consumers of financial services is constantly violated as a result of legislative initiatives that strengthen the position of one party at the expense of the other, the practice of implementing financial services, which is formed without taking into account the need to respect other participants in the financial services markets, respect for their rights and interests (Kregul and Radchenko, 2018).

Taking into account the difficult situation in the sphere of ensuring the state consumer policy in the sphere of financial services, the improvement of the state regulation of administrative and legal protection of the rights of consumers of financial services, which is gaining more and more importance and spread in Ukraine, is of great importance.

The legislative exposition of the implementation of the directives of the European Union on the protection of the rights of consumers of financial services is contained directly in the normative legal acts and plans for the implementation of the norms of the European Union with the legislation of Ukraine (Kregul and Radchenko, 2018).

In Ukraine, the "Comprehensive program for the implementation of state policy in the field of protection of the rights of consumers of financial services for the period 2017-2022 was developed, the purpose of which was to focus foreign policy on integration into European structures and the specifics of the functioning of the system of state bodies that exercise administrative and legal influence in in the field of ensuring the protection of the rights of consumers of financial services in Ukraine and relied on the experience of European countries in this matter.

In general, the specified program provides for: the implementation and adaptation of national legislation on regulating the order and conditions of providing financial services to consumers, concluding credit agreements, etc. to the legislation of the European Union, in particular the Directives of the European Parliament and the Council of the EU; expanding the powers of the National Bank of Ukraine and the National Commission for Securities and the Stock Market in terms of strengthening the application of sanctions to financial institutions in case they violate the legislation on the protection of consumer rights; creation of a legal mechanism for pre-trial and out-of-court review of consumer complaints and resolution of disputes between financial institutions and consumers.

Establishment at the legislative level of requirements for proper informing of consumers before concluding contracts for the provision of financial services and for the reliability of information contained in advertising of financial services, additional requirements for the protection of personal data of consumers with the definition of responsibility for their violation; taking measures to strengthen control over advertising in financial services markets.

In the post-war period, the continuation of the formation of the system of state bodies in the field of consumer rights protection in Ukraine should take place on the basis of the development of an appropriate scientific theory, concept, strategy and program for the implementation of an adequate comprehensive policy, the presence of the necessary institutions, the use of means and methods of its provision.

In our opinion, the Comprehensive Program for next five years should reflect the following main directions of strengthening the state consumer policy in Ukraine: improvement of legislation on consumer rights protection, in particular regarding the scope and procedure of mandatory disclosure of information by financial and other institutions; intensification of processes of adaptation of national legislation on the protection of consumer rights to the legislation of the European Union; coordination of the work of bodies that carry out state regulation of consumer services and other central bodies of executive power regarding the protection of consumer rights; introduction of state regulation of the procedure for assessing the level of compliance by enterprises, institutions and organizations with consumer rights; creation of a modern institutional structure for the protection of consumer rights.

Taking into account the practice of the countries of the European Union (creation of associations for the protection of consumer rights, introduction of the ombudsman institute, another mechanism for pre-trial review of complaints and dispute resolution); creating a legal framework and promoting the introduction of a system of compensation mechanisms in financial services markets; implementation of state target programs for the

training of specialists in matters of consumer rights protection; formation, taking into account world practice, in the structure of bodies that carry out state regulation of financial services markets, separate units for the protection of consumer rights; activation of public awareness activities; providing information to the population through the mass media about the services of financial institutions and about possible consumer risks; introduction of educational programs for consumers.

Such a Comprehensive Program should become a guarantee of a clear systematic and consistent improvement of the state regulation of consumer rights protection in Ukraine and, thus, ensure the implementation of the state consumer policy, which is due to the need to take into account the consequences of the war on the territory of Ukraine, as well as the experience and manifestations of the global financial crisis in the national economy, with the aim of introducing effective mechanisms to protect it from the consequences, as well as ensuring reliable protection of consumer rights.

It should be noted that in recent years, Ukraine has been actively digitized, which to a large extent today allows the country to successfully fight in the digital space and information front. Despite the war, the struggle on the information front and in cyberspace, active work is being done on the development of a plan for the digital development of Ukraine in the post-war period with the aim of restoring the economy and rebuilding industry. Even in wartime, the IT sector has demonstrated its resilience to stressful situations.

The industry continues to fulfill contracts, export its services, provide foreign exchange earnings and support the economy. Thus, according to the data of the National Bank of Ukraine, in the 1st quarter of 2022, the IT industry, thanks to mobility, portability and the ability to work remotely, provided a record quarterly export of $2 billion for all years of its existence. She managed to keep 95% of the contracts.

The digital transition is a strategic direction for increasing the stability of the Ukrainian economy, which requires fundamental changes in the organization of processes in all sectors of the economy without exception. In order to ensure the economic stability of the IT industry of the state, it is necessary to have a specific growth strategy. This is not only about economic levers, but also about incentives for investment, development of education, etc.

Ukraine presented its vision of the digital future at the World Economic Forum in Davos - to transform 100% of public services into the online sphere, provide 95% of the population with high-quality Internet, teach digital skills and increase the share of IT in the gross domestic product (A digital skills platform will be created in Ukraine, n/d). We are launching

free training for entrepreneurs. Action.Business; (With the support of the Ministry of Digital Transformation, technological SET University is launching recruitment for training in cyber security / Ministry of Digital Transformation: official website, n/d). For this purpose, it is planned to further expand the capabilities of the Diya application, support Diya.

City, reform IT education, and develop the startup ecosystem. Today, in Ukraine, there is a special legal and tax space Diya.City with low taxes, the norms of English law and a new flexible form of cooperation between specialists and the company – gig contracts. Despite the fact that Diya.City started only at the beginning of February 2022, more than 250 companies have already become its residents (Bornyakov, 2022).

During the period of martial law in Ukraine, a number of important measures were implemented, aimed at implementing tools for the interoperability of digital documents with European ones, at creating personal digital identity wallets (European Digital Identity Wallet), which will contribute to the establishment of a single system of digital identification of persons in electronic format in Ukraine (What is a digital wallet and how does it legalize documents throughout the European Union? BIT.UA, n/d).

With the aim of digital integration of Ukraine into the EU and joining Ukraine to the «Digital Europe» program, to a single roaming space, to speed up the provision of digital content and digital services to consumers in wartime, the adoption of a corresponding draft law is being considered, which will contribute to the development of technologies in wartime with the involvement of strategic financing for the digitization of Ukraine (Draft Law No. 6576, 2022).

Reorientation in support of micro and small enterprises, which suffered the most as a result of armed aggression, continues. The Ministry of Digital Transformation of Ukraine, together with the Ministry of Economy and the Office for Entrepreneurship and Export Development, is launching the grant program «EU4Business: Competitiveness and Internationalization of SMEs» to help businesses on the Diya portal, which effectively affects the procedure for obtaining assistance for entrepreneurs (We are launching grants to help businesses on Diya portals). The new social service in «Diya» is also working well for the registration of social assistance for those who lost their jobs during the war.

In the conditions of the urgent need to regulate issues related to the protection of personal data during martial law, the importance of ensuring the rights of business entities in the field of electronic trust services is growing (Draft Law No. 7309, 2022). It is obvious that in the near future, before the conclusion of the agreement between Ukraine and the European Union on the mutual recognition of qualified electronic trust services, there will be a need to solve the problems of legal regulation of these issues in Ukraine.

The implementation of these measures will significantly speed up the digitalization of Ukraine's economy, expand the prospects for increasing the competitiveness and stability of the national economy. Preparation of the regulatory and legal environment for relevant changes will contribute to the attraction of investment resources from international donor countries for the recovery of Ukraine's economy.

Conclusions

The essence of civil law protection of the rights and interests of consumers (in particular, for: safety of goods; information; choice of goods; expression of their opinions; satisfaction of basic needs; compensation for damage; education; healthy environment) lies in the possibility of them taking actual and legal actions aimed at for the protection of their violated rights and interests, the activities of state bodies and public organizations authorized by law to prevent, stop offenses and restore violated rights.

In order to harmonize the legislation of Ukraine with the legislation of the countries of the European Union in terms of ensuring the protection of consumer rights, we see the need for the development and approval of unified standards for the provision of financial services to consumers, which should contain a list of documents necessary for the provision of the relevant financial service, the composition and sequence of actions of the consumer in the process of applying to of a financial institution, to determine the possibility (procedure, terms, authorized subjects) of appealing the decision of a financial institution in case of refusal to provide a service and other information specified by law.

In Ukraine, a comprehensive program for the implementation of state policy in the field of consumer rights protection of financial services for the period 20232027 should be developed and fixed at the regulatory level as a document that would determine the priority directions and tasks of implementing reforms in the field of ensuring the protection of consumer rights, ways and methods their achievements.

The content of this program should coordinate nationwide actions in the field of ensuring consumer safety in the field of financial services at the level of individual citizens, business entities, industries, sectors of the economy, as well as at the national, regional and global levels.

The comprehensive program should ensure the implementation of the state consumer policy, which is due to the need to take into account the consequences of the war on the territory of Ukraine, as well as the experience and manifestations of the global financial crisis in the national economy, with the aim of introducing effective mechanisms to protect it

from the consequences, as well as ensuring reliable protection of consumer rights.

Legislation in the field of consumer legal relations must be supplemented with a provision on granting the State Production and Consumer Service the right to contact the Internet service provider to restrict access to the websites of business entities that use unfair business practices and violate consumer rights protection legislation. Business entities should also be exempted from the obligation to create an exchange fund of goods, and the provision by business entities of documents confirming warranty obligations in electronic form should be introduced.

As of today and in the post-war period, it is worth adopting legal acts aimed at creating an effective system of administrative and legal protection of consumer rights in accordance with international standards. Such legislative acts are required to define a simple and accessible mechanism for consumers of financial services to apply to state authorities regarding the protection of violated rights and legitimate interests.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 592-610
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Genesis of public administration of sustainable development in the field of environmental security

DOI: https://doi.org/10.46398/cuestpol.4176.35

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Abstract

This article aims to theoretically complement scientific knowledge on the genesis of public administration in the field of environmental security. The research methodology is based on a procedure involving the formulation of a hypothesis, the search for means to verify it and the application of the results obtained. The results represent a scientific novelty: a substantiated proposal on the application of the dual genesis of the public administration of sustainable development in the field of environmental safety, as well as a presented list of the institutional norms and strategic documents governing its current state. The conclusions of the paper summarize the fundamentals and outline approaches to the systematization of the genesis of the public administration system, in the field of ecology as one of the spheres of sustainable development. The discussed theoretical achievements and retrospective can serve to develop and deepen the concept of sustainable development and simultaneously develop a list of institutional norms aimed at restoring the environmental security of Ukraine. Definitely, the restoration is necessary due to the large-scale military aggression of Russia and uncertainty about the types and scales of further environmental destruction.

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Recibido el 20/12/22 Aceptado el 28/01/23

Keywords: public administration; environmental safety; nature care; natural environment protection policies; sustainable development.

Génesis de la administración pública del desarrollo sostenible en el campo de la seguridad ambiental

Resumen

Este artículo pretende complementar teóricamente el conocimiento científico sobre la génesis de la administración pública en el ámbito de la seguridad medioambiental. La metodología de la investigación se basa en un procedimiento que implica el planteamiento de una hipótesis, la búsqueda de medios para verificarla y la aplicación de los resultados obtenidos. Los resultados representan una novedad científica: una propuesta fundamentada sobre la aplicación de la génesis dual de la administración pública del desarrollo sostenible en el ámbito de la seguridad medioambiental, así como una lista presentada de las normas institucionales y los documentos estratégicos que rigen su estado actual. Las conclusiones del trabajo resumen los fundamentos y esbozan enfoques para la sistematización de la génesis del sistema de administración pública, en el campo de la ecología como uno de los ámbitos del desarrollo sostenible. Los logros teóricos y la retrospectiva tratados pueden servir para desarrollar y profundizar en el concepto de desarrollo sostenible y, simultáneamente, elaborar una lista de normas institucionales encaminadas a restaurar la seguridad medioambiental de Ucrania. Definitivamente, el restablecimiento es necesario debido a la agresión militar a gran escala de Rusia y a la incertidumbre sobre los tipos y escalas de una mayor destrucción medioambiental.

Palabras clave: administración pública; seguridad medioambiental; cuidado de la naturaleza; políticas de protección del entorno natural; desarrollo sostenible.

Introduction

- **Relevance**

The relevance of the issue under research is determined by the place and role of ecology in the existing studies related to the sustainable development concept. The experience of developed countries shows that it is difficult for any state to implement an effective environmental policy. This statement

is applicable even for a prosperous economy (Zelinska *et al.*, 2021). This is why the environmental legislation ratified by the international community shall be improved not only at the legislative level, but also at the level of regulation of relations in the field of natural resource management, environmental protection and environmental security.

The relevance of this study is also emphasized by the practical importance of the system of public administration of nature management, compliance with the requirements of environmental legislation, establishing control over compliance with environmental security provisions, ensuring effective and comprehensive measures for nature protection, rational use of natural resources. In particular, some supervisory functions of the Ministry of Environmental Protection and the Ministry of Agrarian Policy of Ukraine are doubled (Samofatova *et al.,* 2019). This issue also needs an urgent solution.

Public administration of ecology as one of the important areas of sustainable development is reduced to the legal regulation of the relevant theoretical and practical issues. The subjects of such regulation are government bodies, local self-government bodies, public associations. Their activities are aimed at ensuring the effective use of natural resources, protection of the natural environment, ensuring environmental security by authorized persons (natural and legal entities) through the compliance with the environmental legislation, preventing probable deterioration of the ecological situation and protecting the rights of citizens to ecological living conditions.

The aim of the article is supplementing and theoretical generalization of scientific knowledge about the genesis of public administration in ecology as one of the most important areas of sustainable development. The research objectives provide for resolution of the issues regarding the identification of the stages of development of the public administration system in the environmental field, as well as determination of the main institutional norms that formed its genesis and created public administration relationships aimed at the restoration of ecology and prudent nature management.

- **Academic novelty**

The authors of this article were the first to propose a dual genesis of public administration of sustainable development in the field of environmental security of Ukraine, and make a list of institutional norms and strategic documents that determine its current state.

1. Literature review

In recent years, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine have quite regularly adopted laws and resolutions on environmental protection, but they were almost not implemented for a number of objective and, in some cases, quite subjective reasons (Shynkaruk *et al*., 2020; Salnikova *et al*., 2019).

The review of the Constitution and laws of Ukraine made it possible to identify a comprehensive list of obligations assigned to citizens, including those in the environmental field. Article 66 of the Constitution of Ukraine obliges every citizen "not to harm nature, cultural heritage and to compensate for any damage he or she inflicted" (Verkhovna Rada of Ukraine, 2020). Article 12 of the Law of Ukraine "On Environmental Protection" determines the obligations of citizens in the field of environmental protection (Verkhovna Rada of Ukraine, 2022c).

Zelenkov (2018) and Semenchuk (2013) are one of the most famous researchers in the field of public administration, who singled out the concept of public administration that was new at the time and focused on it. They determined that public administration is aimed at the realization of public interests and includes such components as governance (the subject is public authorities) and public management (the subject is public institutions) (Zelenkov, 2018; Semenchuk, 2013).

The well-known researchers who study another specialized concept "state environmental policy", "mechanism of public administration", its classification and main provisions include: Andriyenko and Shako (2016), Malysh (2011), Miahchenko (2010), Sakhaev and Shevchuk (1995), Kovbasyuk *et al.* (2010) and others. According to Andriyenko and Shako (2016), the state environmental policy is a component of the government policy, which reflects the totality of its goals and objectives in the field of ecology formed by the political system of the state in accordance with its social purpose and implemented through certain mechanisms.

According to Kovbasyuk *et al.* (2010), state environmental policy is a policy of society aimed at protecting the natural environment, rational use and reproduction of natural resources, preservation and development of the environment to ensure normal life and environmental safety of people.

As Malysh (2011) believes, state environmental policy is a set of tools and measures related to society's impact on nature and aimed at ensuring ecologically balanced development and civilized attitude. Environmental policy is supposed to mean a coordinating fundamental principle that forms and makes use if the resources of an enterprise (organization) in order to achieve goals in the field of rational nature management, environmental protection, and environmental security through political, economic, legal,

educational, and other measures (Malysh, 2011). Miahchenko (2010) defines the state environmental policy as a system of measures related to the prevention of adverse effects of society on nature.

Sakhaev and Shevchuk (1995) consider the state environmental policy as the development of future priorities with the aim to improve the health of the population and increase life expectancy, the reproduction of flora and fauna, the preservation of the ecological, genetic and material background, natural, historical heritage and culture. The study of Zhyharieva (2014) had evidenced that there was an active search for effective mechanisms and means of public administration in the field of environmental security of Ukraine.

Zhyharieva (2014) emphasizes the ecologisation of public administration, she notes that the concept of ecologisation means decision-making and the implementation of measures for achieving better results in any field or branches of society, while striving for preserving the quality of the environment and ensure environmental security.

Modern researchers as Bukanov (2020) and Radchuk (2020) deal with the mechanism of public administration. According to Bukanov (2020), the mechanism of public administration in the field of environmental policy is a system of tools with the following functional objectives: legal regulation in the field of environmental protection; structural-functional and organizational-management support for environmental control and monitoring; promotion of sustainable development of the state, society and territories.

Radchuk (2020) considers the concept of the mechanism of public administration as a set of political, economic, organizational, motivational and legal means of influence of the subject of administration (public authorities and local self-government bodies) on the objects of administration.

According to the shared opinion of these authors, the meaning of each of the mechanisms of public administration differs depending not so much on subjective academic views, but on the direction of its application in the system of public administration.

Vetvytskyi (2010), Lazor (2003) and others made a significant contribution to the study of aspects of public environmental policy and environmental legislation. In his work Vetvytskyi (2010) studies the state environmental policy as a set of means and measures used by the state to protect and improve the environment, to provide the effective combination of nature management and nature protection and ensure the normal life of citizens, which has two dimensions — normative and regulatory.

Lazor (2003) provides the definition where the administration in the field of ecology and natural resources means the influence of society on the environment, in particular on its protection, rational use and reproduction, and management as a process in the field of ecology and natural resources means the legitimacy of relevant institutions — state, self-governing and public — to perform certain functions.

Dombrovska *et al.* (2017) studied public administration from the perspective of social, economic, and ecological development. They pointed out that it is appropriate to consider a set of methods and tools of state influence in the field of environmental protection, rational nature management, development of the "green" economy and improvement of citizens' well-being as the mechanism of public administration in the field of security of social, ecological and economic systems.

So, the literature review revealed a number of definitions of the concept of "state environmental policy" provided by some researchers. Researchers consider this definition quite differently. Therefore, there is currently no single approach to the interpretation of this term.

2. Research methodology

The research design consisted of several stages and began with a hypothesis that describes a set of interrelationships between public administration phenomena related to the issue under research. Interrelationships of the definitions necessary for the academic definition of the public administration phenomena described in the article were also taken into account.

The ways of practical and scientific verification of the proposed interrelationships were planned when advancing the hypotheses. The research conducted on this basis was later used as the ground for interpreting its results. As the article is mostly theoretical and monodisciplinary in nature, the

hypothesis was supported by the study and systematization of existing theories, concepts and publications in the relevant field of public administration. The hypothesis was not refuted at this stage, and the course of implementation did not change during the work on the article.

The validity of the study was achieved based on the aim of the article.

The research objectives determined the need for a thorough sampling. The conceptual statements and academic publications chosen for further theoretical analysis enabled to fully represent the research results. The publications were selected with a view to the verification of the entire list of further conclusions on the issue under research.

The research design and approach to the sample were used to substantiate the historical foundations of public administration in one of the main areas of sustainable development, namely, in the field of environmental security of Ukraine. The literature review was used to review theoretical concepts and norms, and the method of data classification was used to identify the elements of ecology and mechanisms of public administration in this area.

3. Research results

Public administration in the field of environmental security of Ukraine dates back to August 24, 1991, when Ukraine gained independence. The declaration of independence of Ukraine was followed by the restoration of the entire system of public administration of the country, the formation of the legislative framework, the formation of new and the reformation of already existing power institutions. The system of public administration and the state machinery that existed at that time in Ukraine was based on the model of Soviet dogmas and did not comply with sustainable development, it required changes (Omarov, 2016).

In this regard, the authors are the first who proposed the genesis of the development of public administration in the field of environmental security of Ukraine, defined and considered its stages:

The first stage is legislative (1991-2011). This period included the stage of powerful law-making with the involvement of the leading Ukrainian researchers, which resulted in adoption of the regulatory legal acts of Ukraine, most of which are currently valid:

- Law of Ukraine "On the Environment" (1991) (Verkhovna Rada of Ukraine, 2022c);
- Law of Ukraine "On the Nature Reserve Fund of Ukraine" (1992) (Verkhovna Rada of Ukraine, 2021b);
- Law of Ukraine "On Protection of Atmospheric Air" (1992) (Verkhovna Rada of Ukraine, 2022);
- Resolution of the Verkhovna Rada of Ukraine "On the Red Book of Ukraine" (1992) (Verkhovna Rada of Ukraine, 1992) (was replaced by the Law of Ukraine "On the Red Book of Ukraine" (2002) (Verkhovna Rada of Ukraine, 2021c));
- Law of Ukraine "On Animal World" (1993) (Verkhovna Rada of Ukraine, 1993) (was replaced by the Law of Ukraine "On the Animal World" (2001) (Verkhovna Rada of Ukraine, 2021a);

- Law of Ukraine "On Environmental Expertise" (1995) (Verkhovna Rada of Ukraine, 1995) (was replaced by the Law of Ukraine "On Environmental Impact Assessment" (2017) (Verkhovna Rada of Ukraine, 2022b));
- Subsoil Code of Ukraine (1994) (Verkhovna Rada of Ukraine, 2022d);
- Forest Code (1994) (Verkhovna Rada of Ukraine, 2022a);
- Water Code (1995) (Verkhovna Rada of Ukraine, 2022e) and others.
- The Resolution of the Verkhovna Rada of Ukraine of 29 October 1992 approved the Regulation on the Red Book of Ukraine (Verkhovna Rada of Ukraine, 1992) as the main document governing the protection of animal and plant life. The Red Book of Ukraine is an official state document that contains a list of rare, vulnerable and endangered species of animal and plant life in the territory of Ukraine, as well as general information about the current state of these species and measures for their preservation. Species listed in the Red Book of Ukraine are protected on the entire territory of Ukraine, its continental shelf and exclusive marine economic zone. It is regulated by the Law of Ukraine "On the Red Book of Ukraine" No. 3055-III of 7 February 2002 (with subsequent amendments) (Verkhovna Rada of Ukraine, 2021c).

The first edition of the Red Book of Ukraine was published in 1980 in one volume entitled The Red Book of the Ukrainian SSR by Naukova Dumka publishing house. The first Red Book of Ukraine included 85 species (subspecies) of animals: mammals (29), birds (28), reptiles (6), amphibians (4), insects (18) and species of higher plants (151).

The second edition of the Red Book of Ukraine was approved by the Resolution of the Verkhovna Rada of Ukraine of 29 October 1992. It had two volumes, which were published with a two-year interval by Ukrainska Entsyklopedia publishing house: in 1994 — the Animal World volume, and - the Plant World volume in 1996. The second edition included 382 species of animals and 541 species of plants. Compared to the first edition, the number of animal species increased by 297, and the number of plant species increased by 390.

The third edition of the Red Book of Ukraine was published in 2009. It includes 826 species of plants: vascular plants (611), bryophytes (46), algae (60), lichens (52), fungi (57). The number of animal species in the third edition compared to the second edition increased by 160 species, while 191 species were included in the Red Book, and 31 were excluded, including 27 species of insects, 2 species of fish and 2 species of mammals.

On March 3, 2021, the Ministry of Environmental Protection and Natural Resources of Ukraine published an approved Order with an updated list of animal species listed in the Red Book of Ukraine (Order of the Ministry of Environmental Protection of January 17, 2021, approved by the Ministry of Justice on March 1, 2021, entered into force on March 12, 2021). The fourth edition of the collection of the Red Book of Ukraine is currently being prepared.

The Main Directions of State Policy in the Field of Environmental Protection, Use of Natural Resources and Environmental Security were approved during this period. According to the authors, this document initiated the public administration in the field of environmental security of Ukraine. It was approved by Resolution of the Verkhovna Rada of Ukraine No. 188/98-VR of 5 March 1998, which became invalid on January 1, 2020 (Verkhovna Rada of Ukraine, 1998).

This document defines not only the goal and priority objectives of environmental security, but also the mechanisms of their implementation, directions of harmonization and integration of environmental security of Ukraine. This document, which combines strategic goals with specific objectives, is the basis for the development of state programmes in the field of environmental protection and environmental security (Bardina, 2013).

The goals of the strategy of public management in the field of environmental security in that period were: institutional reform of the state system of environmental protection and use of natural resources, implementation of mechanisms and tools of environmental policy, implementation of priority national and state programmes with the aim of creating conditions for sustainable balanced development of the state; formation of the state system of environmental security regulation as an indispensable component of Ukraine's national security (Verkhovna Rada of Ukraine, 1998; Borysyuk, 2013).

The second stage is administrative (2011-2019). The emphasis on management decisions and on the organizational mechanism of public administration in the field of environmental security was made during this period.

The following regulatory legal acts were approved at this stage of the development of public administration in the field of environmental security of Ukraine:

Law of Ukraine "On Approval of the State Programme for the Development of Water Management and Ecological Improvement of the Dnipro River Basin Until 2021" (Verkhovna Rada of Ukraine, 2012);

Decree of the President of Ukraine No. 111/2021 "On the Decision of the National Security and Defence Council of Ukraine of 23 March 2021 "On

Challenges and Threats to the National Environmental Security of Ukraine and Priority Measures to Neutralize Them" (President of Ukraine, 2021);

Decree of the President of Ukraine No. 722/2019 "On the Sustainable Development Goals of Ukraine Until 2030" (President of Ukraine, 2019);

Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine Until 2020" No. 2818-VI of 21 December 2010 (hereinafter referred to as the 2020 Strategy) was also in force at that time, which became invalid on January 1, 2020 (Verkhovna Rada of Ukraine, 2010a).

The goals of the strategy of public administration in the field of environmental security in that period were the following: increasing the level of public environmental awareness, improving the ecological situation and increasing the level of environmental security, achieving a safe environment for human health, integrating environmental policy and improving the system of integrated environmental management, halting the loss of biological and landscape diversity and creating an ecological network, ensuring ecologically balanced nature management, improving regional environmental policy (Verkhovna Rada of Ukraine, 2010a; Rylach, 2018).

The Plan of the National Environmental Policy in Ukraine for 2011-2015 and the Plan of the National Environmental Policy in Ukraine for 2016-2019 were approved in accordance with the 2020 Strategy.

The third stage is the public values stage (2020-2030). This period is characterized by the manifestation of public management in the field of environmental security. It is based on the combination of solving economic and environmental problems in the process of reforming society, creating motivation, requests and conditions for solving environmental problems at the national, regional and local levels.

Law of Ukraine "On the Key Principles (Strategy) of the State Environmental Policy of Ukraine for the Period till 2030" No. 2697-VIII of February 28, 2019 (hereinafter referred to as Strategy-2030) (Verkhovna Rada of Ukraine, 2019) is in force. The item "Ensuring Ecologically Balanced Nature Management" of this document says that the Resolution of the General Assembly of the United Nations Organization "Transforming our world: the 2030 Agenda for Sustainable Development" was adopted in September 2015 (Bobkova *et al*., 2020a).

A national system of sustainable development goals was developed in Ukraine. It should provide a background for further planning of Ukraine's development, overcoming imbalances in the economic, social and environmental spheres; ensure such a state of the environment that will contribute to the quality of life and well-being of current and future

generations; create the necessary conditions for a social contract between the government, business and civil society to improve the quality of life of citizens and guarantee socio-economic and environmental stability; achieve a high level of education and public health protection; implementation of regional policy, which will be based on a harmonious combination of national and regional interests; preservation of national cultural values and traditions (Pushak *et al*., 2021; Bobkova *et al*., 2020b; Hulych, 2014).

The goals of the strategy of public administration in the field of environmental security in this period are: the formation of ecological values in society and the principles of sustainable consumption and production, ensuring the sustainable development of Ukraine's natural resource potential, ensuring the integration of environmental policy into the decision-making process regarding the socio-economic development of Ukraine, reducing environmental risks in order to minimize their impact on ecosystems, socio-economic development and health of the population, improvement and development of the state system of environmental management (Verkhovna Rada of Ukraine, 2019; Ivanchenkova *et al*., 2021).

In accordance with the Strategy-2030, the National Action Plan for Environmental Protection till 2025 is currently approved, Decree of the Cabinet of Ministers of Ukraine No. 443-r of 21 April 2021. About 250 national, national, international, sectoral and regional programmes financed from state budget have been developed and implemented in Ukraine. Of them, 137 are directly related to the environmental security (Zybareva *et al*., 2021; Khylko, 2017).

4. Discussion

Public administration in the field of ecology is based on a combination of forms and methods of direct and indirect management. The state exercises direct administration by establishing ecologically justified prohibitions, mutual obligations for waste disposal, requirements for material recycling. Indirect administration is exercised with the help of economic levers: customs duties, taxes, benefits, subsidies, financial action means, etc. (Zhulavsky and Gordienko, 2016; Verkhovna Rada of Ukraine, 2010b).

The administration in the field of ecology is reduced to regulation through the involvement of legal levers of social relations. The subjects of such regulation are public authorities, local self-government bodies, and partly public associations. Their activities are aimed at ensuring the effective natural resource management, environmental protection, and environmental security by authorized persons (individuals and legal entities) through compliance with environmental legislation, prevention

of possible deterioration of the environmental situation, and protection of citizens' rights to environmentally safe living conditions (Holynska and Bieloshapka, 2020).

According to Bukanov (2019), the goal of public administration in the field of environmental security is to achieve a satisfactory state of the natural environment by implementing an ecological system approach in all directions of the socio-economic development of Ukraine with the aim of ensuring the constitutional right of every citizen of Ukraine to a safe environment, preservation and reproduction of natural ecosystems, as well as balanced nature management.

The main task of the Concept of Sustainable Development of Ukraine is to ensure the integration of environmental policy into the strategy of socio-economic reforms. The concept of sustainable ecologically safe development was adopted by the world community at the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). Its main goal is to ensure a balanced solution of social and environmental issues, preservation of the natural environment and natural resource potential in the future.

The first principle of the Rio Declaration on Environment and Development states: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature." The sustainable development is supposed to meet the current needs without limiting the interests of future generations (Rylach, 2016).

Work is being carried out in Ukraine to create a unified state system for the use and reproduction of natural resources, aimed primarily at the development of the system of keeping natural resources cadastres, improving the regulatory and legal support for issuing permits and licenses for nature use. The areas of the nature reserve fund continue to increase despite the complications that arose during the creation of the nature reserve fund facilities in connection with the land reform.

The legislative framework in the field of environmental security and waste management is also being improved. The main goal of the environmental policy of Ukraine is to guarantee the environmental safety to Ukrainian citizens (Shcherbak *et al.*, 2020).

The authors hold that there is currently a significant anthropogenic load in the ecological field in Ukraine. It was caused by military operations as a result of the invasion of Russian troops from Russia and Belarus on a large part of the territory of Ukraine.

In this context, public administration in the field of environmental security should include a number of priority measures: providing the population with high-quality drinking water and food, introducing the

latest energy-saving technologies; protection of forests, agricultural lands, development of effective innovative business activity; use of alternative energy sources, etc.

So, we are currently witnessing the actual beginning of the third stage of the development of the public administration system in the field of environmental security. The authors advance a thesis that this stage may have the main feature associated with the restoration of ecology. This feature is decisive in the description of the promising issues of future institutional norms and strategic documents aimed at the restoration.

The study presented a retrospective of the development of institutional norms, their division into historical stages, a classic definition was provided. However, the uncertainty of the timing and scale of further environmental losses and destruction caused by Russia's military aggression on the territory of Ukraine hindered a complete description and characteristics of the public administration relations that will be built during the latest historical stage of the development of the concept of sustainable development.

Conclusions

The practical significance of the author's research is the summarized foundations and outlined approaches to the systematization of the genesis of the public administration system in in the field of ecology as one of the areas of sustainable development. The theoretical achievements and the retrospective covered in the article can be used in the future to develop and deepen the concept of sustainable development, as well as to make a list of institutional norms aimed at restoring the environmental security of Ukraine. The restoration is necessitated by Russia's large-scale military aggression and caused by the problem of uncertainty of the types and scales of further environmental destruction.

The analysis of the features of the historical retrospective of public administration in the field of environmental security carried out in the article gave grounds to determine that the corresponding genesis was formed under the simultaneous influence of two main factors. So, the genesis is dual and demonstrates both the specifics of government regulation and the specifics of the scope of application of security tools in the system of public environmental management.

Focusing on this aspect, the authors revealed that the main purpose of activity — the mission of using tools of public administration in the field of environmental security — is primarily the protection of society, the state, and the natural environment. The issues of strengthening the influence of public administration are urged in the current conditions by

the aggravated problems of environmental security and protection of the natural environment, which, along with other resource losses, have suffered significant wartime destruction and require urgent restoration.

The need for the restoration requires strengthening of the influence of the principles of sustainability and balance of socio-economic development in the post-war period, while determining the nature of the future third stage in the genesis of public management in the field of environmental security. This thesis determines the prospects for further research on the subject proposed in this article.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 611-626
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Trends in the development of civil law at the present stage

DOI: https://doi.org/10.46398/cuestpol.4176.36

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Abstract

The purpose of this article was to scientifically analyze the current trends in the development of civil law in the modern reality, on which follow the authors' proposals to improve its evolution and adaptation. The methodological basis of the study included philosophical approaches, as well as general and special scientific methods of knowledge that meet the main objectives and tasks set in the research. According to the results of the study, civil law today is different not only in the application and protection of rights, compared to the original approaches established by the developers of the current Civil Code and, special sectoral legislation, but also in the change in the paradigm of normative and legal regulation. Everything allows to conclude that, in summary, the authors offer specific recommendations for updating the provisions of the Civil Code of Ukraine, which I include also proposals for changes in civil law. Definitely, civic reflection on all the issues raised in this study makes it possible to consider the problems from a new point of view and to offer, accordingly, comprehensive options for their solution, taking into account the prominent place of the Civil Code in these processes.

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Recibido el 12/12/22 Aceptado el 20/02/23

Keywords: Civil Code of Ukraine; legal regulation; development of civil legislation; civil law; current legal trends.

Tendencias en el desarrollo del Derecho civil en la etapa actual

Resumen

El propósito de este artículo fue analizar científicamente las tendencias actuales en el desarrollo del Derecho civil en la realidad moderna, sobre las que siguen las propuestas de los autores para mejorar su evolución y adaptación. La base metodológica del estudio incluy**ó** enfoques filosóficos, así como métodos científicos generales y especiales de conocimiento que cumplen con los principales objetivos y tareas establecidas en la investigación. De acuerdo con los resultados del estudio, el Derecho civil en la actualidad es diferente no sólo en la aplicación y protección de los derechos, en comparación con los planteamientos originales establecidos por los desarrolladores del actual Código Civil y, la legislación especial sectorial, sino también en el cambio en el paradigma de la regulación normativa y jurídica. Todo permite concluir que, en resumen, los autores ofrecen recomendaciones específicas para actualizar las disposiciones del Código Civil de Ucrania, lo que incluyo también propuestas de cambios en el derecho civil. Definitivamente, la reflexión cívica sobre todas las cuestiones planteadas en este estudio permite considerar los problemas desde un nuevo punto de vista y ofrecer, en consecuencia, opciones integrales para su solución, teniendo en cuenta el lugar destacado que ocupa el Código Civil en estos procesos.

Palabras clave: Código Civil de Ucrania; regulación jurídica; desarrollo de la legislación civil; derecho civil; tendencias jurídicas actuales.

Introduction

Fundamental principles of civil law development were laid down in the 1990s by the Constitution of Ukraine (2004) and gradual accession to a number of international acts in the field of civil law. At the same time, firstly, the current Civil Code of Ukraine has significantly expanded the number of provisions on property rights, as well as some provisions on the regulation of the institutions of law and property; book four contains a chapter devoted to the general provisions of intellectual property rights, which should also be called an achievement.

Secondly, since the adoption of the Civil Code of Ukraine civil legal relations have acquired a special regulation, for example, in a separate structural part of the Code - Book Four, fully defines the role and importance of intellectual property relations in the national legislation; and this, in turn, emphasizes their private law nature and complexity throughout the legislation in this area; thirdly, the location of the integral array of civil legal rules, almost all objects of ownership known n It is noteworthy that non-property and property rights most clearly coexist today.

Intangible property rights are now also just as important as, and sometimes even much more important than, material rights. The adoption of the code was aimed at further detailing and improving regulations in the civil law sector by adopting laws, and bylaws that would guide and develop modern legal mechanisms for the realization and protection of civil rights (Apetrei, 2014). The issue of introducing digital tools in civil courts in real life is also becoming increasingly relevant.

Well-known Ukrainian and foreign scholars, such as Azimov (1981); Matveev (2018); Dovgert (2019); Kuznietsova (2021); Kapitsa (2006); Yakubivskyi (2019); Nosik (2006); Kryzhna (1999); Bazhanov (2014); Svitnev (2010), and many other civilists and subject matter experts study problems and trends in improving and developing theory and legislation in civil law.

- **Research Problem**

This article offers summaries of positive trends in the development of civil law and identifying ways to update civil legislation, including the Civil Code of Ukraine, to develop modern legislation consistent with international standards and standards of the European Union.

- **Research Focus**

A civilistic view of all the issues raised in this study will allow to consider the problems from a new point of view and offer comprehensive options for their solutions, taking into account the leading role of the Civil Code of Ukraine.

- **Research Aim and Research Questions**

The purpose of this study is to analyze and study the prospects for improvement and changes in the development of civil law in modern realities and to highlight the authors' proposals for improving its evolution and adaptability.

1. Research Methodology

- **General Background**

The methodological basis of the study includes general philosophical approaches, as well as general scientific and special scientific methods of knowledge that meet the main objectives and tasks set by the authors. In the process of scientific research was used dialectical method of scientific knowledge, in the application of which the principles of development, objectivity, and comprehensiveness were taken into account. The dialectical method allowed to substantiate the regularities of legal understanding of the essence and role of the regulation of relations in civil law.

The anthropological approach clarifies the nature of the legal basis for the development of civil law. An important place in the process of studying the legal nature is taken by the synergistic method, which revealed the specifics of certain types of objects and rights. The use of methods and techniques of logic allowed to generalize the approaches to the disclosure of the legal nature of civil law presented in the doctrine.

The historical and comparative method became the basis for identifying the universal and different in the legal regulation of civil legal relations at the present stage. Through the method of complex analysis, an attempt was made to solve complex theoretical and practical problems with the help of interrelated sciences such as philosophy, computer science, sociology, etc. The method of system analysis is widely used in the study as the main in the process of researching the theoretical foundations of the regulation of civil relations.

In turn, the methods of generalization, synthesis, analysis, abstraction allowed to conduct research and justify the specifics of legislative regulation. A formal legal method was used to analyze the content of international documents containing standards of legal regulation of civil relations, the practice of the European Court of Human Rights, as well as national legislation of Ukraine. In conclusion, the study used the theoretical and predictive method, as a result of which proposals for the improvement and actualization of the civil legislation of Ukraine were developed.

- **Sample / Participants / Group**

The scientific and theoretical basis was provided by scientific research of domestic and foreign scientists. The documentary and actological basis was a statistical study, current legislation, and empirical base of research - generalization of judicial practices, reference publications, court decisions.

2. Research Results

The first real changes aimed at updating the legislation in the civil sector began in the 2000s and continue to this day. In recent years there have been some fragmentary, but really important clarifications on a number of objects of rights, improvement of the whole array of legislation, and practice of protection of these rights in court.

Meanwhile, the negative aspects manifested themselves in frequent cases of disagreement of these proposals, changes, and judicial practice with the doctrine of civil law, the concept of the current Civil Code of Ukraine, which explains the inability of the entire industry to undergo systemic transformation without taking into account the theoretical basis and ideology of civil law (Dovgert, 2017; Gorinov, 2022).

Despite the fact that the current Civil Code of Ukraine contains a significant list of norms regulating personal property and non-property relations, it does not contain systematic legal material on personal non-property rights to information and other information rights. Thus, consistent provision of positive regulation of the content of personal non-property information rights is not yet on the agenda.

The Civil Code of Ukraine does not contain provisions that would fully regulate relations with the specifics of new technologies, virtual environment, and the needs of the global information society, considering the place of personal non-property rights to information, proposals on the implementation and protection of personal non-property rights to information of individuals and legal entities. "This affects the regulation of civil rights, in particular the search for points of contact and differences in civil law regulation" (Everett, 2016: 182; Kuznietsova *et al*., 2021: 5-15).

Book Four of the Civil Code was based on the theory of exclusive intellectual property rights and, despite the existence of several other theories in this area, this theory has proven its importance, practical value and ability to solve the problems of copyright as the most developed institution both in individual cases and when used in contractual relations in the field of copyright and the protection of these rights; the discussion on the application of other theories or their combination has not provided grounds for changing the central theory, co Norms of the Civil Code of Ukraine is an integral system of provisions that are developed in accordance with unified principles and based on unified method of regulation of social relations.

It addresses the rules governing ownership relations based on equality, freedom of disposal, non-interference in the personal life of an individual; judicial protection of any violated civil right; fairness, good faith, reasonableness etc., which emphasizes the close relationship with

the practice of implementation of provisions Normative acts of the current legislation, containing civil law norms and regulating civil relations, regardless of whether they are purely civil or related, in their civil law part normative acts should be subject to the general provisions of the Civil Code of Ukraine.

The sub-branch of intellectual property rights contained in the Civil Code of Ukraine, currently allow to emphasize common features and differences in the regulation of civil information relations and intellectual property relations, which requires additional detailing in the Civil Code of Ukraine.

Some provisions of the Civil Code of Ukraine during its existence have proven to be effective both in theory and in practice, including through regulation at the level of special laws, but now there is a tendency to slow down this process. Therefore, some theoretical and practical problems are still relevant. The issue of compliance with the content of Article 421 of the Civil Code of Ukraine also needs theoretical reflection. According to this article, subjects of intellectual property rights are the creator(s) of an object of intellectual property rights (author, performer, inventor, etc.) and other persons possessing personal non-property and/or property rights of intellectual property in accordance with the present Code, other law or agreement.

The Civil Code of Ukraine distinguishes categories of "person" and "participant of civil legal relations": according to Article 2 of the Civil Code of Ukraine persons are natural persons and legal entities, and the category "participant of civil legal relations" includes natural persons and legal entities, and as the subjects of public law, it may be the state, the Autonomous Republic of Crimea, territorial communities, foreign states. Subjects of intellectual property rights are formally only the creator and other natural and legal persons to whom intellectual property rights belong.

The State, territorial communities, foreign states, or international organizations as the subjects of public law, according to the current version of Article 421 of the Civil Code of Ukraine, are not the subjects of property rights. To overcome this conflict, the doctrine proposes to apply an expansive rather than a literal interpretation of the text of the legislative act, interpreting the subjects of ownership rights not only as individuals and legal entities but also other participants of civil relations. Experts point to the need to eliminate this legislative gap.

Even before the pandemic, the many steps and complex documentation required to handle civil litigation cases made navigating the civil legal system difficult for people without the help of lawyers. Such individuals are perhaps the largest and most diverse group affected by litigation, and whether they are plaintiffs or defendants, they face many obstacles because of their incompetence in modern computer technology.

Civil plaintiffs who attempt to bring a lawsuit before the courts encounter a process that involves a basic level of legal knowledge, an understanding of legal terminology, and knowledge of the correct forms to submit and how to submit them, which are prerequisites for them (Mervartova, 2014: 422-427).

And the civil litigation system is at least as difficult for those who are sued. Defendants may not receive or fully understand notice of the lawsuit against them, which can result in a failure to appear in court and a default judgment in favor of the plaintiff. Also, litigants often have to endure long lines, try to fill out complicated forms on their own without legal assistance, or are unable to spend much time on such activities.

While the courts clearly recognize the need to be helpful to all litigants, they are based on principles and norms that are more developed by and for lawyers and have historically had difficulty meeting the needs of people without counsel, much less certain subcategories in this group People without representation who have limited or limited legal capacity face additional barriers to accessing the court system. Although court officials have long recognized the challenges faced by ordinary people and the potential of computer technology to address some of these obstacles.

3. Discussion

"Modern civil law emerged as a result of centuries of development" (Dalal and Chahal, 2016: 9-15). Still internationally, the philosophical characteristics and legal rights of the individual citizen are explained by public law, and the role of civil law is to provide the institutions and doctrines of civil society (Dobrilă, 2018). The distinctive feature of civil law is its possibility of horizontal execution in society directly against those who do not fulfill their duties and does not depend on the power acting "from the top down" in the field of public law.

Property relations, the sphere of civil circulation is increasingly moving to various kinds of electronic platforms. The process has been accelerated by the COVID-19 pandemic. The development and application of artificial intelligence technologies actualize the problem of ensuring human security from the negative impact of such technologies, minimizing threats to human life and health.

Because of the virtuality of artificial intelligence as a social phenomenon, a product, or a good created by a human, the application of traditional legal means of regulation of social relations connected with the application of artificial intelligence technologies does not give today a complete solution of a number of uncertainties arising at the market of goods, works, and services.

The use of modern means of communication in commercial and domestic activities has contributed to the formation of a fundamentally new sphere of legal relations associated primarily with the electronic exchange of data, in which various subjects of civil relations take part (Cui and Qi, 2021). Recently, one of the most relevant topics is the formation and development of the legal regime of electronic transactions. In this regard, there are many problems in the regulation of this sphere of civil legal relations.

Information is becoming the most important resource of society. Sectors of the economy directly related to information and telecommunications technologies are developing faster than traditional industries and are becoming dominant. The emergence of modern means of communication has significantly changed the forms and methods of civil transactions. Speed and convenience are the main advantages of electronic document flow. Efficiency plays a huge role and affects the outcome of transactions in a market economy. The introduction of new information technologies into practice leads to complication of legal support of the electronic transaction.

Transactions in electronic form are widespread in various spheres of civil circulation (Janku, 2014). First of all, it concerns purchase and sale transactions (settlement transactions, purchase of goods, works and services, exchange transactions, securities purchase and sale transactions, etc. (Mingaleva and Mirskikh, 2013; Yasmin, 2016).

However, due to insufficient adaptation of the conceptual apparatus of civil law transactions with the use of information technologies in practice, difficulties arose in the interpretation of the terms “oral” and “written” forms of the transaction on contracts in electronic form. Legislation in Western Europe and the USA allows concluding transactions in electronic form. For a transaction to be valid, counterparties must be present.

The legal nature of the electronic form of the transaction is defined in the legal literature as a kind of simple written form (Kornienko, 2015). However, this provision requires revision on the following grounds. Firstly, it can be concluded that not in all cases such a contract is concluded in writing with the use of information technology by the parties in the conclusion of contracts. The law establishes the formal attributes of the written form of the transaction, which must be complied with.

This problem stems from the fact that, when using information technology to negotiate the terms of a futures contract, the parties do not always conclude the contract in writing (e.g., via Skype, telephone, fax, etc.). Secondly, even if the parties comply with all the legal requirements regarding the written form of the transaction, the properties of the electronic form of the concluded contract may be so different from the traditional written form that there is reasonable doubt as to whether the electronic form and the written form of the transaction are the same.

It should be noted that there is no legal definition of "electronic transaction" at the level of national legislation of the world and international law, although in the EU and other European and world countries different legal acts partially regulate electronic transactions, including such concepts as electronic commerce, consumer protection in remote transactions, electronic signature, provision of services in electronic cash.

Internet technology and Internet rights are developing rapidly. New services and opportunities to enter into contracts online are appearing, and the number of online purchases and financial services is growing. There are 5.11 billion unique mobile users in the world today, 2% more than in 2021.

Among the issues requiring a thorough theoretical and practical analysis, an important place belongs to the definition of the concept of electronic transactions and the classification of electronic transactions (Kryzhna, 2019).

Participants of civil turnover face several problems when concluding contracts in the Internet space. First, it is difficult to establish the place of the conclusion of the contract. Secondly, there is the problem of proving the fact of the contract, as well as the immutability and storage of the data recorded in the contract. Thirdly, there is the problem of establishing the fact of receipt of the document from the counterparty. Fourthly, there is a possibility of hacking of confidential information about the terms of the contract.

An important attribute of the status of electronic transactions is the inability to perform them on certain objects (Everett *et al*., 2016; Rafie and Abbas, 2021). Thus, an electronic transaction cannot be concluded in a situation where the law requires mandatory notarization and/or state registration of the transaction. Thus, for example, most real estate transactions are excluded from e-commerce (Melnychenko, 2021: 9).

Restrictions on the subject composition of electronic transactions must also be established. For example, a party represented by a seller, supplier, etc. cannot, by default, be a natural person who is not registered as an entrepreneur, but sells goods, provides services, or performs work. This means that transactions concluded on the Internet (including through existing trading platforms) between two persons are not subject to the legislation on electronic commerce, unless the parties have agreed otherwise (Yakubivskyi, 2019; Prokopenko, 2021: 26).

It should be noted that any electronic communications related to the conclusion of an electronic transaction and hard copies thereof may be introduced into court as evidence.

There are also ongoing discussions about supplementing national legislation with requirements to protect scientific publications of works

that have fallen into the public domain (Rakhimjonov, 2021; Svitlak and Huts, 2022).

The problem is that a proper system of collective management organizations has not yet been created; the search for an appropriate legal model remains relevant. At the same time, the Law of Ukraine "On Efficient Management of Property Rights of Holders of Copyrights and (or) Related Rights" cannot be recognized as such, which gives adequate answers to all questions of activities of collective management organizations.

At the doctrinal level, the conflict of legal regulation in the field of intellectual property is still being discussed, which should be adopted in favor of the Constitution and the Civil Code of Ukraine. In particular, under Article 429 of the Civil Code of Ukraine, which regulates the distribution of intellectual property rights to objects created under the employment contract (property rights to such objects belong jointly to the employer and the employee, who created such objects unless otherwise provided by the employment contract) and special laws on intellectual property, which contain provisions stating that the exclusive ownership of the work or official invention belongs, unless otherwise provided by the employment contract Thus, part 2 of Article 1114 of the Civil Code of Ukraine establishes the provision that the fact of transfer of exclusive proprietary rights to objects of intellectual property is subject to state registration.

Such exclusive rights include rights to objects of patent law, for example, the layout of an integrated circuit and trademarks; these rights enter into force from the moment of their registration, and the agreement on the transfer of ownership rights to such objects is considered valid from the moment of its state registration. Special legislation contains other requirements for state registration of agreements on the transfer of rights to industrial property objects, establishing the optional nature of such registration.

It is necessary to eliminate the conflict, taking into account the provisions of the Civil Code of Ukraine. The problem is that the provisions of Chapter 41 of the Civil Code of Ukraine "Intellectual Property Rights for Innovation Proposal" and Chapter 38 "Intellectual Property Rights for Scientific Discovery" are somewhat outdated: rationalization was aimed at improving already known technical, technological or organizational solutions, was mass and available, but now inventors can use other ways to protect the results of their technical work, to patent as an invention or utility model, design as an innovative proposal (it is in the case of patenting that the owner of the protection document receives real intellectual property rights).

Due to the lack of special legislation, the legal protection of scientific discoveries in Ukraine is not provided at all, and the provisions of Chapter 38 of the Civil Code of Ukraine are not actually implemented. It was repeatedly

proposed to include scientific discovery in the objects of information rights since even this category is defined through the concept of information, and its regulation in the fourth book was intended to emphasize its importance as a result of obtaining information of exceptional importance, to indicate the name of the person (persons) who made the discovery, and/or gives a name at their own discretion, specially enshrining the rights, which can be fully realized through the institution of rights to information.

Thus, it can be implemented, including in view of trade secrets, in Book One, in determining and attributing discovery to the objects of civil rights of Article 200 of the Civil Code of Ukraine.

Also, Article 418 of the Civil Code of Ukraine (definition of intellectual property rights) states that intellectual property rights are "the right of a person to the result of intellectual, creative activity or other objects of intellectual property rights, as defined by this Code and other laws". Thus, the concept of "intellectual property" is defined through the concept of "intellectual property object", which does not give the right idea of the category in question and requires the attention of the legislator.

Civil lawyers also note the need to resolve the conflict between the provisions of Article 430 of the Civil Code of Ukraine and Article 1112 of the Civil Code of Ukraine: for example, under Article 430 of the Civil Code of Ukraine, intellectual property rights to the object created on commission belong jointly to the creator and the client, unless otherwise provided by the contract, and under Article 1112 of the Civil Code of Ukraine, the contract for creation on commission and use of the intellectual property must contain provisions on the methods and conditions of use of the intellectual property. Thus, the intellectual property rights as such are not transferred to the customer but must be specified in the contract. Current legislation does not contain details of this legal provision.

The legal literature suggests using a special provision of Article 1112 of the Civil Code of Ukraine on par with the wording of Article 430 of the Civil Code of Ukraine.

The introduced Provisions on the rejection of the division of indications of origin of goods into simple and qualified established the term "geographical indication", which introduced changes in the subjects of the right to a geographical indication, etc., but other law this category applies only to the protection of intellectual property rights to geographical indications, so, need clarification.

A number of technical errors repeatedly pointed out by both scholars and practitioners should be eliminated: 1) the provisions of Part 4 and provisions of Part 6 of Article 488 of the Civil Code of Ukraine, regulating the effect of ownership rights coincide literally 2) in accordance with Part 3 of Article 1122 of the Civil Code of Ukraine "the condition of the

contract, under which the user has the right to sell goods (perform work, render services) exclusively to a particular category of buyers (customers) or exclusively to buyers (customers) located (place of residence) in the territory specified in the contract". The legislator omitted the final phrase – "loses force", therefore, the elimination of this essential omission will allow Part 3 of Article 1122 to acquire legal meaning, etc.

Given the wording of Article 181 of the Agreement, the provisions of Article 429 of the Civil Code of Ukraine on the relationship to create computer programs in the performance of the employment contract shall be amended accordingly (namely, as stated in the Agreement: if the computer program is created by the employee in the performance of his duties) obligations or in accordance with the instructions of the employer, all exclusive property rights to the created computer program, unless otherwise provided by the contract belong to the employer).

In the field of patent law, attention is drawn to the provisions of the agreement relating to the protection of health and biotechnology inventions, in particular, the agreement contains the obligation to provide an additional period of protection for a drug or plant-protection product protected by a patent and which has undergone an administrative procedure. authorization - an additional safety certificate.

The provisions of Articles 197 and 198 of the agreement provide for the possibility to cancel the registration of a trademark if, within a continuous period of five years, it has not been put into use in the relevant territory for the goods or services for which it is registered, and there are no relevant reasons for non-use. In contrast to the provisions of the Agreement, the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" establishes a three-year period of non-use of the mark, which may constitute grounds for early termination of the certificate. The regime of the legal protection of industrial designs established under the Agreement differs from the regime of national law in terms of protection of industrial designs, because the agreement in addition to innovation also points to the individual level.

Consistent and critical understanding of the doctrine of civil law in the process of updating the Civil Code of Ukraine taking into account the achievements of the international community and international instruments will bring the Civil Code of Ukraine and legislation to a modern level with other leading countries. It is necessary, among other things, to understand that the systematization of special laws, especially at the level of any codes (such as the Industrial Property Code) should be rejected as contrary to the very idea of codification at the level of the Civil Code of Ukraine as the main document regulating these relations.

After the update, the Civil Code of Ukraine should remain the main codified act in the sphere of civil regulation, taking into account the obligations undertaken by Ukraine in the framework of the Association Agreement with the EU.

Conclusions and Implications

Considering that the above aspects, we can conclude that the execution of transactions on the Internet and the territory of Ukraine is becoming more widespread in recent times. The notion of electronic transaction given in the Law of Ukraine "On electronic commerce" is of little informative nature. The biggest difficulty in determining the validity of an electronic transaction arises in the identification of the parties.

Lack of information about the subject composition of the transaction actually makes the consumer powerless, and recent changes to civil legislation are fragmentary. The rapid pace of development of the latest technologies, constant changes in the forms and methods of such transactions require lawyers to fundamentally rethink traditional legal institutions and provisions of national legislation with reference to the practice of foreign countries.

The vital role of civil law today is to provide the basis for legal institutions, doctrines, and operations based on civil society, balancing private rights with legal duties and responsibilities. Civil law provides the legal basis for government regulation and a direct method of redress for damages caused by illegal acts. Civil law remedies relate to the protection of human rights and overcoming corrupt practices, providing a barrier to illegal actions and adding depth to state regulation.

The rapid development of artificial intelligence technology and robotics requires appropriate legal regulation of the emerging new social relations. Many issues need to be resolved now. In particular, we should think about solving the issues of who owns the copyrights to the works created by the robot. No less important is the personalization of responsibility for execution with the help of artificial intelligence technologies.

It is necessary to develop a system of legislative restrictions on the military use of robots, as well as an international system of control over the development of powerful artificial intelligence technologies, comparable in intelligence to the human brain.

To summarize, it should be noted that the branch of civil law does not require radical changes, except for a number of provisions on the nature of information objects and the correction of obvious errors. In addition, all provisions must comply with the spirit and principles of civil law, to be

analyzed for their effectiveness, feasibility, correct wording, and absence of conflicts.

The key issue is the need to preserve the role of the Civil Code of Ukraine as the embodiment of common methodological and doctrinal positions in the field of general principles of intellectual property regulation for all currently known objects of intellectual property rights, the possibility of combining other provisions, especially the general provisions of the Code and special laws, which allows to maintain the latter industry civilized approach to the content of intellectual property rights, common special remedies and common approaches to concluding agreements on the alienation of intellectual property rights.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 627-640
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Impact of the War on the Formation and Implementation of Tax Policy in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4176.37

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Abstract

The outbreak of full-scale war on the territory of Ukraine and the deterioration of the socio-economic situation have negatively affected all spheres of public life, including the formation of the part of the national budget. Therefore, the purpose of this publication was to determine areas for improvement of tax policy in Ukraine, identify problematic aspects and consequences of the impact of taxation on ensuring the functioning of the state, both during the period of martial law, and in the postwar period and its restoration. The authors of the article analyze the situation with the formation of tax policy and its implementation based on the systematic examination using dialectical, comparative and legal, statistical and other methods. Approaches to improve tax legislation in Ukraine are discussed. In addition, the need to bring the legislative framework in line with modern challenges, simplify tax procedures for taxpayers, reduce the level of tax burden on business entities, as well as the prospect of state support for investment projects to create favorable conditions, conditions for attracting significant investments to Ukraine aimed at creating new jobs and stimulating the economic development of the regions is substantiated.

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Recibido el 30/11/22 Aceptado el 24/01/23

Keywords: tax policy; implementation of the state tax policy; tax legislation; taxation; economic impact of the war.

Impacto de la guerra en la formación e implementación de la política fiscal en Ucrania

Resumen

El comienzo de la guerra a gran escala en el territorio de Ucrania y el deterioro de la situación socioeconómica han afectado negativamente todas las esferas de la vida pública, incluida la formación de la parte del presupuesto nacional. Por lo tanto, el propósito de esta publicación fue determinar áreas para mejorar la política fiscal en Ucrania, identificar aspectos problemáticos y las consecuencias del impacto de los impuestos para garantizar el funcionamiento del Estado, tanto durante el período de la ley marcial, como en la posguerra y su restauración. Los autores del artículo analizan la situación de la formación de la política tributaria y su implementación con base en el examen sistemático utilizando métodos dialécticos, comparativos y legales, estadísticos y otros. Se discuten enfoques para mejorar la legislación fiscal en Ucrania. Además, se fundamenta la necesidad de adecuar el marco legislativo a los desafíos modernos, simplificar los procedimientos fiscales para los contribuyentes, reducir el nivel de carga fiscal sobre las entidades comerciales, así como la perspectiva de apoyo estatal a los proyectos de inversión para crear condiciones favorables, condiciones para atraer inversiones significativas a Ucrania destinadas a crear nuevos puestos de trabajo y estimular el desarrollo económico de las regiones.

Palabras clave: política tributaria; implementación de la política tributaria estatal; legislación tributaria; tributación; impacto económico de la guerra.

Introduction

The formation of the Ukrainian tax system was accompanied by the constant reform of both tax payments and changes in the control agencies in the field of taxation and the search for new approaches to the improvement of tax legislation. The socio-economic transformations that took place in Ukraine determined the need for the formation of an effective tax policy as a prerequisite for improving the economic situation in the country.

Tax policy is an important tool for establishing and developing economic and social stability and is aimed at finding a balance between the state's capabilities in terms of providing it with financial resources through the tax mechanism and achieving priority socio-economic goals under certain conditions of the country's development (Izmailov *et al*., 2022: 83). According to Pechuliak, the purpose of the state tax policy is to ensure the balance of the state budget and to stimulate the economic development of the country (Pechuliak, 2005).

The state tax policy is a component of the socio-economic policy of the state, which should be oriented towards the creation of such a tax system that takes into account the individual interests of taxpayers based on the interests in preserving health and increasing well-being; stimulates the accumulation and rational use of the country's national wealth, contributes to the harmonization of the interests of the state and society, thereby ensuring its socio-economic progress (Barannyk and Piskova, 2015).

Unfortunately, the full-scale war launched by the Russian Federation against Ukraine complicates the socio-economic situation of our country, worsens all macroeconomic indicators, such as GDP, inflation rate, unemployment and others. Effective resistance to military aggression necessitates the need for the fastest possible restructuring of the entire system of state regulation of our country's economy, including its tax component.

The issue of tax policy in wartime plays a crucial role in the functioning of the state, because the well-being of both citizens and the state in the whole depends on its formation and implementation. Nowadays there is the need to find new opportunities to improve tax policy in Ukraine, whose primary task is to improve the administration of taxes, which are sources of budget revenues and important instruments of state regulation.

The implementation of an effective tax policy of Ukraine is an extremely important issue and becomes especially relevant in the context of the significance of its impact on all spheres of public life and ensuring the functioning of the state both during the period of the martial law and its post-war restoration.

The system and structure of state agencies that ensure the formation, implementation and control over the implementation of the state tax policy in Ukraine in terms of the martial law also need improvement.

Ukraine currently faces a complex of global problems, whose solution can be ensured only through the effective activity of public administration agencies, and the implementation of state functions cannot be successful without a stable and effective tax policy. Taxes have the largest share of budget revenues of both Ukraine and foreign countries.

Therefore, the implementation of an effective tax policy is an extremely important issue and becomes especially relevant in the context of the significance of its impact on strengthening all spheres of social life and ensuring public welfare, ensuring the rule of law, economic and political independence of the state and ensuring the sustainable socio-economic development of Ukraine (Krushelnytska *et al.*, 2021).

The purpose of this publication is to determine areas for improving tax policy in Ukraine, to identify problematic aspects and the consequences of taxation's impact on ensuring the functioning of the state both during the period of martial law and its post-war restoration. The formulated purpose indicates the relevance and expediency of conducting such research.

1. Methodology of the study

The authors of this study used the dialectical method of cognition and a complex of general scientific special methods of scientific research.

Methods of analysis and synthesis have assisted to clarify those issues that are currently being studied by scholars and are covered in scientific publications. The formation process of the institution of state tax policy in Ukraine, formation and stages of development of domestic legislation on the implementation of state tax policy have been studied with the help of the historical and legal method. Systematic analysis has been used while studying and researching the system of state agencies that ensure the formation, implementation and control over the implementation of tax policy in Ukraine.

The method of generalization made it possible to draw conclusions based on the conducted research. The logical research method has determined the sequence of presented judgments and conclusions. The application of the statistical method has made it possible to identify the dynamics of revenues to the budget from tax payments, to determine their role in the formation of the revenue part of budgets.

2. Analysis of recent research

Organizational and legal aspects of the implementation of the state tax policy in Ukraine were studied in the dissertation of Pechuliak (2005). A comprehensive and systematic analysis of the legal forms of implementation of the state tax policy of Ukraine, as well as studies of the concept, legal nature and attributive properties of the state tax policy from the standpoint of financial law was carried out in the dissertation of Chayka (2018).

The analysis of scientific and normative approaches to the definition of the tax policy was carried out in the scientific article of Maruschchak and Oleksiy (2021). The analysis of the priorities for the formation of the state tax policy in terms of the implementation of sustainable development goals was carried out in the monographic study of Krushelnytska *et al.* (2021).

The study of the current situation for the formation, implementation and development tendencies of the state policy of Ukraine in the context of the implementation of the law enforcement function of the state in the field of taxation was carried out by Teremetskyi in co-authorship with other scholars (2021).

Besides, scholars have analyzed specific features of involving civil society institutions into this activity. Certain issues of the law enforcement function of the state in the field of taxation (concept, content, structural elements) were analyzed by Teremetskyi and Dmytrenko (2020). Peculiarities of property protection in the decisions of the European Court of Human Rights in the field of taxation were studied by Kurylo *et al.* (2020).

However, a small number of scientific works are focused on studying the impact of the war on the formation and implementation of tax policy in Ukraine. We can distinguish among them scientific articles focused on: 1) the problems currently faced by Ukraine, its economy and business in connection with the introduction of the martial law (Zhuk and Hoi, 2022); 2) the analysis of the accounting and tax system in terms of the martial law (Kostyshyn and Yakovets, 2022); 3) the study of financial policy in terms of the martial law (Latkovskyi, 2022); the study of modern tools for supporting the financial stability of Ukraine in terms of war (Nieizviestna *et al.*, 2022); the improvement of the tax system as a component of Ukraine's international security (Izmailov *et al.,* 2022).

3. Results and Discussion

3.1. Specific features for the formation and implementation of the tax policy in terms of the martial law

The tax policy in accordance with the Art. 10 of the Commercial Code of Ukraine is one of the main areas of economic policy determined by the state and aimed at ensuring an economically justified tax burden on business entities, stimulating socially necessary economic activity of entities, as well as observing the principle of social justice and constitutional guarantees of civil rights at the taxation of their incomes (The Commercial Code of Ukraine, 2003, Article 10).

The state tax policy is defined on the official website of the Ministry of Finance of Ukraine as "state activity in the field of establishment, legal regulation and organization of tax payments and tax fees to the centralized funds of the state's monetary resources" (Official website of the Ministry of Finance of Ukraine). At the same time, the Tax Code of Ukraine is the main document regulating relations related to the establishment, change and cancellation of taxes and fees in Ukraine.

It defines the comprehensive list of taxes and fees that are administered in Ukraine, the procedure for their administration, taxpayers and fees, their rights and obligations, the competence of controlling agencies and the powers of their officials while carrying out tax control, liability for violations of tax legislation, etc. (Official website of the Ministry of Finance of Ukraine).

We share Chayka opinion that the state tax policy is one of the main areas of the state's financial activity, which is carried out by authorized agencies of state power in order to mobilize funds in the form of taxes and fees to the relevant budgets and is embodied in tax and legal norms, causes legally significant consequences for the subjects of tax legal relations and aimed at the reconciliation of public and private tax interest (Chayka, 2018).

At the same time, the subjects that participate in the formation and implementation of the state tax policy are the state authorities, which form the system where four main groups can be distinguished:

> 1) legislative power agencies (the Verkhovna Rada of Ukraine in the whole and a specialized committee within its apparatus – Committee on Tax and Customs Policy); 2) executive power agencies (the Cabinet of Ministers of Ukraine, the Ministry of Economy, the Ministry of Finance of Ukraine and the State Tax Service of Ukraine; this group also includes with certain warranties the State Treasury Service of Ukraine, which contributes to its implementation in cases clearly defined by the legislation, not having direct powers in the field of implementing state tax policy); 3) judicial authorities (the Constitutional Court of Ukraine and the system of administrative courts); 4) agencies with a special constitutional and legal status (the President of Ukraine and the Accounting Chamber) (Chayka, 2018: 21).

The martial law was introduced throughout Ukraine on February 24, 2022 by the Presidential Edict No. 2102-IX (Law of Ukraine "On Approval of the Edict of the President of Ukraine "On the Introduction of the Martial Law in Ukraine", 2022). We note that the content of the legal regime of the martial law, the procedure for its introduction and cancellation, the legal principles of the activities of state authorities, military command, military administrations, local self-government agencies, enterprises, institutions and organizations in terms of the martial law, guarantees of human and civil rights and freedoms and rights and legal interests of legal entities are defined by the Law of Ukraine "On the Legal Regime of the Martial Law" dated from May 12, 2015 No. 389-VIII (Law of Ukraine "On the Legal

Regime of the Martial Law", 2015).

Adaptation of tax legislation to new realities, as well as financial protection and support for both business representatives and domestic consumers, Ukrainian warfighters and all those who need it, is extremely important during the war. Tax incentives and deregulation for the economy are necessary in order to fill the state budget, preserve the solvency of the population, strengthen the economic stability of the state, as well as the ability to effectively resist the aggressor.

The Verkhovna Rada of Ukraine adopted a number of Laws of Ukraine amending the tax legislation precisely for restoring and ensuring the effective and uninterrupted operation of the state's economy during the war. In particular, the Parliament of Ukraine adopted a number of legislative amendments, the purpose of which is to simplify doing business, to promote the systematic payment of taxes, to reduce the tax burden, and to stimulate the effective economic activity of taxpayers in wartime.

Thus, Zhuk and others note that the government adopted a number of amendments to the tax legislation for the martial law period in order to support business, where the main ones are:

> Partial cancellation of inspections; exemption from liability for non-compliance with tax legislation; tax benefits for payers of the single tax and the single social contribution; abolition of fines in the field of application of accounting operations' registering devices. Adopted amendments will provide business entities with their further development and restoration of the economy in general (Zhuk and Hoi, 2022: 47).

Niezviestna and others note that a significant number of measures in the field of application of tax instruments, which had a deregulatory nature, is gradually being canceled. Such steps at the beginning of the war were forced and accepted as emergency support. However, they reduce the efficiency of the tax system in terms when the financial sector adapts to the newly formed circumstances of operation (Niezviestna *et al*, 2022).

Scholars, analyzing changes in the use of tax instruments to support the financial stability of Ukraine during the war, note the full recovery of the VAT electronic administration system; restoration of broad tax deregulations adopted at the beginning of the war in March 2022 and allowing them to be used only by those taxpayers who were directly affected by the war; introduction of a special mechanism for paying rent for the use of subsoil for natural gas extraction; cancellation of broad customs privileges granted at the beginning of the war, which began to harm the competitiveness of the domestic producers and exert additional pressure on the currency exchange rate; introduction of a simplified and accelerated mechanism for the implementation of customs control and registration of goods; updating the mechanism for crediting the excise tax on the retail sale of tobacco products to local budgets (Niezviestna *et al*., 2022).

At the same time, according to Izmailov and others, it is necessary to take the following urgent measures for the effective functioning of the tax policy in terms of military operations:

> To form a new institutional environment of taxation, favorable for the implementation of the principle of equality of all taxpayers under the law; prevent any manifestations of tax discrimination, the responsible attitude of taxpayers to the fulfillment of their obligations; increase the fiscal efficiency of taxes by expanding the tax base, improving administration and control, which will contribute to reducing the scale of tax evasion; to increase the regulatory potential of the tax system based on the introduction of preferences for the collection of taxes in special conditions; to develop a system of benefits for the import and sale of fuel and lubricants; to update the simplified taxation system and provide tax benefits; to cancel VAT for certain industries; to exempt property, things (helmets, bulletproof vests, medicines, etc.), humanitarian aid for defense purpose, etc., which are imported and supplied to the territory of Ukraine, from paying taxes and excise duties; to allow charitable assistance transferred to health care institutions or to a special account of the Armed Forces to be attributed to expenses without limits (previously such limits were set at 4% of profit); to allow to include tax credit amounts into the VAT, where tax invoices have not been registered yet, but primary documents are available; to exempt enterprises located on the territory of active hostilities from taxation; to establish a fair redistribution of financial resources from taxes; to change the ideology of its functioning and update the personnel potential of civil servants of Ukraine, etc. (Izmailov *et al.*, 2022: 86).

Important problems in the implementation of the tax policy of Ukraine during the introduction of the martial law in Ukraine can be considered the following: imperfection of tax legislation, ambiguous interpretation of law norms, different court practice; a high level of violations in the administration of taxes and fees, tax evasion, as well as the shadowing of the economy. The most acute problem of the tax policy is financial filling of the budget and optimization of expenses, especially in the current period of economic and political crisis.

We believe that the implementation of the tax policy during the martial law period should ensure the solution of the primary tasks of counteracting Russian aggression. In particular, it is necessary to ensure a balanced budget, to maintain a balance between the expenditure and revenue parts of the state and local budgets.

The main areas of the tax policy should be aimed at solving the primary problems of the martial law period, namely: reduction of the tax burden, in particular, on enterprises producing defense-oriented products; creation of new jobs in regions where hostilities are not taking place in order to ensure effective employment of internally displaced persons; reduction of the tax burden on operations for providing, transporting and receiving charitable assistance; increase in the competitiveness of Ukraine's economy and activation of the innovation-investment component of its development.

Desiatniuk and others believe that the improvement of the tax policy in the context of the transformation of the national economy should be aimed at solving such tasks as: building a stable, understandable and unified tax system; establishment of legal mechanisms for effective interaction of all its elements and participants within the single tax space; formation of an adequate tax system that will ensure the balance of national and private interests, promote the development of entrepreneurship, activate investment activity and act as a catalyst for increasing the national wealth of the country and the well-being of the population; reduction of the total tax burden; unification of the tax regulatory legal framework; improvement of liability procedures for non-compliance with legislation; simplification of tax payment declaration and administration mechanisms, etc. (Desiatniuk *et al*., 2021).

According to T. A. Krushelnytska and co-authors, the priority areas of the tax policy formation in terms of achieving the Sustainable Development Goals of Ukraine should be:

> A decentralized tax system that will ensure effective redistribution of aggregate income; expansion of the tax base and increase in tax rates for the use of natural resources while simultaneously raising the social standards of life of the population; reorientation of the tax policy for increasing the efficiency of direct taxes; promotion of unshadowing the economic activity; ensuring the fairness and equality of the tax system, its adaptation to EU norms and rules (Krushelnytska *et al*., 2021: 77).

Current legislative amendments are the reflection of the state of war in Ukraine and the tax policy is aimed at maximally restoring economic activity and promoting the development of small and medium-sized business. It is evidenced by the statistical data provided by the National Institute of Strategic Studies, namely: "receipts (balance) in January – September 2022 to the consolidated budget for payments controlled by the State Tax Service amounted to 811.7 billion UAH, which is more by 107.9 billion UAH or 15.3% than in January – September 2021.

In particular, the State Budget received 536.1 billion UAH, which is more by 74.8 billion UAH or 16.2%. Local budgets received 275.6 billion UAH, which is more by 33.1 billion UAH or 13.7% than last year. Receipts of the single contribution for the mandatory state social insurance in January – September 2022 amounted to 298.9 billion UAH, which is more by 48.5 billion UAH or 19.4% than in January – September 2021" (National Institute of Strategic Studies, 2022).

3.2. Impact of the tax policy on the sphere of investment activity

It is worth noting that the implementation of the tax policy provides opportunities for the state to influence the economy: stimulate the development of production, promote the accelerated growth of some

industries compared to others, change the investment climate and carry out structural restructuring.

It is the formation of an institutional environment that would stimulate economic development, the development of the mechanisms of the social-market economy, in order to ensure the sustainable socio-economic development of the country, which is an important priority of the tax policy in terms of the martial law.

We agree with Savitska, who points out that further improvement of the mechanisms of fiscal regulation of investment activities in Ukraine is of great importance. The tax policy in the field of investment activity should be adapted as much as possible and aimed at implementing legislative and organizational innovations in order to create comfortable conditions for starting a business in Ukraine (Savitska, 2020).

Foreign investments are of great importance for the restoration of the Ukrainian economy. Therefore, the main task for Ukraine remains the creation of favorable conditions for investors. We note that investment attractiveness is significantly influenced not only by the general state of the economy of our country, but also by the prerequisites for doing business, in particular, the taxation system and the main areas of the tax policy.

Ukraine compared to EU countries had the highest level of tax burden on enterprises in 2011–2020. Capital transfers and state guarantees for business entities serve as important components of the fiscal mechanism capable of influencing investment processes at the micro level. However, the latter are provided to individual enterprises, so they cannot regulate the investment activity of all legal entities in the state.

Therefore, the perspectives for further research are to find the ways to level the negative impact of the components of the fiscal mechanism on the investments of enterprises in Ukraine, where it is necessary to study and use the experience of EU countries regarding the implementation of various tax benefits that stimulate the investment activity of business entities (Melnyk *et al*., 2022: 160).

It should be noted that the organizational, legal and financial principles of state support for investment projects with the aim of creating favorable conditions for attracting significant investments to Ukraine (internal and external), creating new jobs, stimulating the economic development of regions and increasing the competitiveness of the Ukrainian economy are determined by the Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine" (Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine", 2020).

The President of Ukraine Volodymyr Zelenskyi presented a platform for potential foreign investors at the opening ceremony of the New York Stock

Exchange on September 6, 2022. It gathered more than 500 investment projects and opportunities in 10 branches of the economy: defense-industrial complex; metallurgy and metal processing; energy; agro-industrial complex; woodworking and furniture making; innovative technologies; logistics and infrastructure; pharmaceutics; natural resources; industrial production (Decree of the President of Ukraine, 2019).

According to the Ministry of Economy of Ukraine, more than 250 requests were received in the first month since the launch of the Advantage Ukraine investment platform. Companies from the USA, Great Britain, Poland, Germany and Turkey are mostly interested in investing in Ukraine. International strategic and portfolio investors are mostly interested in such sectors of the Ukrainian economy as innovations and technologies, agriculture and the defense industry. There are also many requests in the field of energy, infrastructure and logistics (Ministry of Economy of Ukraine, 2022).

At the same time, according to Deputy Minister of Economy Oleksandr Hryban, investors are primarily interested in tax benefits in the context of perspectives to start new factories, partnerships or acquiring Ukrainian assets (Ministry of Economy of Ukraine, 2022).

The regulation of new economic relations requires a tax policy that could optimize the interests of the state with the interests of foreign investors. That is why the tax policy of Ukraine should be aimed not only at effective administration of taxes and fees and filling the revenue part of the budget, but also at observing the rights and legitimate interests of taxpayers and ensuring their protection, effective interaction with authorities.

Herewith, the state has the opportunity to influence the economy through the implementation of the tax policy, in particular: to stimulate the development of production, to promote the accelerated growth of some industries compared to others, to change the investment climate and carry out structural restructuring.

Therefore, the state tax policy is one of the leading and the most effective instruments of state regulation of the economy.

Conclusions

The priorities of the tax policy in the conditions of the war are changing in Ukraine for the needs of operative support and proper and continuous implementation of the budget. Therefore, the further reform of the tax policy in terms of the martial law and post-war reconstruction requires a systematic approach to the selection of specific tools for improving tax legislation.

Restoring the economic stability of the state requires the development of a tax policy aimed at stimulating Ukrainian production, innovation and investment activity, consumer demand, as well as strengthening the regulatory and control functions of the state regarding the payment of taxes.

The essence of tax policy is determined by the set of organizational and legal, financial and economic measures of the state regarding the regulation of tax legal relations aimed at the formation and use of the state's financial resources.

State authorities take operative decisions to support the financial stability of the country in order to ensure the effective functioning of the budget and tax sphere, the needs of Ukrainians during the period of the martial law. That is the reason why the tax policy of Ukraine in the present day conditions needs further improvement and finalization of systemic reforms in terms of more justified decision-making on reducing the level of tax burden on business entities, improving the tax climate, state support for investment projects with the aim of creating favorable conditions for attracting significant investments to Ukraine, creation of new jobs, stimulation of the economic development of regions and the economy of Ukraine.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 641-661
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Criminal protection of state secrets in Ukraine and EU countries

DOI: https://doi.org/10.46398/cuestpol.4176.38

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Abstract

The aim of the study was to outline the differences between certain aspects of the system of state secrets protection in Ukraine and some countries of the European Union EU, which provides the basis for determining the directions of improvement of the national system of state secrets protection. The following general scientific methods were used in the article: analysis and synthesis, deduction and induction, analogy. As a result of the research, the following aspects of criminal protection of state secret in Ukraine and the EU countries identified for comparison were considered: definition of state secret, types of information classified as state secret, levels of secrecy, terms of classification, liability for disclosure of state secret. The methodological contribution of the study are the recommendations for the improvement of certain aspects of the system of state secrets protection in Ukraine. It is concluded that, the direction of future research should also be the disclosure of features and measures to optimize the procedure of security checks of persons having access to classified information.

Keywords: protection of state secrets; national security; criminal liability; secrecy levels; disclosure of classified information.

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Recibido el 05/01/23 Aceptado el 24/02/23

Protección penal de los secretos de Estado en Ucrania y en los países de la Unión Europea

Resumen

El objetivo del estudio fue esbozar las diferencias entre ciertos aspectos del sistema de protección de secretos de Estado en Ucrania y algunos países de la Unión Europea UE, lo que proporciona las bases para determinar las direcciones de mejora del sistema nacional de protección de secretos de Estado. En el artículo se utilizaron los siguientes métodos científicos generales: análisis y síntesis, deducción e inducción, analogía. Como resultado de la investigación, se consideraron los siguientes aspectos de la protección penal del secreto de Estado en Ucrania y los países de la UE identificados para la comparación: definición de secreto de Estado, tipos de información clasificada como secreto de Estado, niveles de secreto, términos de clasificación, responsabilidad por la divulgación del secreto de Estado. La contribución metodológica del estudio son las recomendaciones para la mejora de ciertos aspectos del sistema de protección de secretos de Estado en Ucrania. Se concluye que, la dirección de futuras investigaciones debe ser también la divulgación de características y medidas para optimizar el procedimiento de controles de seguridad de las personas que tienen acceso a información clasificada.

Palabras clave: protección de secretos de Estado; seguridad nacional; responsabilidad penal; niveles de secreto; divulgación de información clasificada.

Introduction

State secrets protection is one of the primary tasks for every state, because the disclosure of information that constitutes a state secret can seriously harm national security (Denyshchuk, 2019; Tyshchuk and Syvovol, 2021). However, this problem is particularly acute in the context of a military conflict, as evidenced by the experience of Ukraine after the full-scale invasion of the Russian Federation into its sovereign territory.

In such conditions, the disclosure of state secrets endangers the lives of civilians and the military of Ukraine, and may also negatively affect the further course of the conflict for the country as a whole. It follows that the effective reformation of the state secret protection system of comes to the fore among the strategic development goals.

Ukraine has launched the reform of the state secret protection system began before the beginning of the full-scale invasion, as evidenced by the mention of this direction of state policy in the National Security Strategy of

Ukraine (On the National Security Strategy of Ukraine, 2020). Ukraine's course towards integration into the world community, in particular the European Union (EU) and the North Atlantic Treaty Organization (NATO), determines the need to take into account the experience and practice of member countries of these associations in the course of reform (Zub, 2019; Ponomarenko, 2021; Halushka and Tikhonova, 2021).

Boldyr (2018) examines the reformation of the state secrets protection system in Ukraine from the perspective of identifying discrepancies between national traditions and practices of EU and NATO countries, as well as outlining measures to bring Ukrainian legislation into compliance with the norms of these associations. The researcher defines the main problematic issues that must be agreed related to the following aspects:

- granting and refusing permission to carry out activities related to state secrets for public authorities, local self-government bodies, enterprises, institutions, organizations;
- the procedure for granting and reissuing a Special Permit to public authorities, enterprises, institutions, and organizations headed by a foreign citizen;
- protection of information during execution of contracts or works related to classified information by non-governmental enterprises;
- approaches to ensuring the functioning of the admission system in the field of state secrets;
- the appropriateness of the procedure for approving the "list of positions that require admission and access to state secrets" at each enterprise or institution;
- the appropriateness of monetary compensation to persons for work under classified restrictions.

Vdovenko and Danyk (2019) also find significant discrepancies between the national system of state secret protection and the system of the EU and NATO countries. Researchers provide a list of specific documents and individual articles that should be revised. They identify the physical and moral obsolescence of the state secret protection system as one of the main threats to Ukraine's national security.

Serhiychuk (2019) deals with a comparison of the national state secret protection system and the systems of some other countries, in particular France, Estonia, and Uzbekistan. The researcher notes the main positive approaches in the French and Estonian experience, which can be useful for reforming the Ukrainian state secret protection system. Based on these approaches, he proposes to implement some changes in the Law of Ukraine "On State Secrets" and the Criminal Code of Ukraine.

A number of studies also deal with the problems of the Ukrainian state secret protection system. Kharchenko (2021) outlines aspects of the work of public authorities, local self-government bodies, enterprises, institutions and organizations that are engaged in activities related to state secrets, as well as aspects of organizational control and state policy in this area, etc. Denyshchuk (2021) identifies the current problems of legal protection of state secrets urged by a number of factors, in particular, the armed aggression of the Russian Federation (RF) (at the time of writing the author's article, a large-scale military invasion had not taken place).

Nehoda (2021) describes measures to prevent crimes in the field of state secret protection depending on the levels of crime prevention given by the researcher. Oliinyk (2020) focuses on a separate direction of implementation of those measures, in particular, general social measures.

Foreign researchers usually considered the state secret protection system in the context of the protection of classified information. For example, Topolewski (2020) studies the historical aspects of the protection of classified information in Poland, and provides prerequisites for building an effective protection system. Wądołowski (2022) describes the system of protection of classified information in Bosnia and Herzegovina, comparing certain aspects with the Polish system. Topolewski (2020) examines the protection of classified information in Hungary, mostly focusing on the growing threats to the security of such information in the context of the development of the information society.

So, the aim of this study is to identify the differences between certain aspects of the state secret protection system in Ukraine and some EU countries, which will give the grounds for determining the directions for improving the national state secret protection system. The aim involved the fulfilment of the following research objectives:

- study the definition of state secrets in the legislation of Ukraine and EU countries;
- identify the specifics of the definition of types of information classified as state secrets in the legislation of Ukraine and EU countries;
- describe the degrees of secrecy and terms of classification established by the legislation of Ukraine and EU countries;
- compare the responsibility for the disclosure of state secrets established in the legislation of Ukraine and EU countries.

1. Methodology

1.1. Research procedure

The research covers the study of a number of legislative documents of the EU countries (Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland) and Ukraine, related to the protection of state secrets, as well as their Criminal Codes. This research direction necessitates consideration of a large amount of information that cannot be described in detail in one article. Therefore, the study focused on certain aspects of the specified legislative documents, in particular: definition of state secret, types of information classified as state secret, secrecy levels, terms of classification, responsibility for disclosure of state secret.

The foregoing determines the division of the research into three stages. The first stage involved the study of the definition of state secret, the secrecy level and the terms of classification of information constituting a state secret provided by the legislative acts of the studied countries. The main differences between the studied aspects in the EU countries and Ukraine are determined at this stage using methods of analysis and synthesis.

The second stage provided for the identification of types of information classified as state secret. The main criteria that must be met by the classification of information classified as state secret were determined by using the methods of deduction and induction, and the compliance of Ukrainian legislation with these criteria was established through the use of analysis and synthesis.

The third stage describes the responsibility for the disclosure of state secrets defined in the Criminal Codes of the studied countries. The method of analogy was used to determine the aspects that should be reviewed and improved in Ukrainian legislation, taking into account the European experience, in particular, in the context of a large-scale invasion.

1.2. Sampling

The research sample consists of EU countries in view of the need to harmonize Ukrainian legislation with international norms in the context of Ukraine's integration into the world community, in particular the EU and NATO. The following countries were selected for comparison: Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland. This choice is primarily determined by the common past of Ukraine and the some studied countries as part of the Soviet Union – Estonia, Latvia, and Lithuania.

Therefore, it is appropriate to consider the ways in which the legislation of these countries and Ukraine developed after they gained independence. Second, the sample also includes Ukraine's neighbours — the Czech

Republic, Bulgaria and Poland, the choice of which is determined by the relatively close location of the countries, which causes their mutual influence and relationship from the perspective of politics, economy, and culture.

1.3. Information background

Scientific periodicals of Ukraine and other countries, as well as legislative acts of Ukraine and the studied countries were used as the information background of the research, in particular:

- Law of the Republic of Latvia On State Secrets;
- Law of the Republic of Lithuania No. VIII-1443 On State and Official Secrets of 25 November 1999;
- Law of Ukraine No. 3855-XII "On State Secrets";
- Decision of the National Security and Defence Council of Ukraine On the National Security Strategy of Ukraine;
- Act of the Czech Republic No. 412 On Protection of Classified Information of 21 September 2005;
- Classified Information Protection Act (Bulgaria);
- State Secrets And Classified Information Of Foreign States Act, Estonia (2011);
- The Act on the Protection of Classified Information of 5 August 2010, Poland;
- as well as the Criminal Codes of all the studied countries.

2. Results

The reliability of the state secret protection system primarily depends on the effective criminal law system legislatively enshrined by the state. Outdated practices of state secret protection can lead to increased threats, in particular from cybercriminals, in the context of the development of a digital society, as well as in view of the lack of mechanisms to counter new ways and means of committing crimes in the field of state secret protection. At the same time, the use of the latest tools and experience of developed countries can contribute to increasing the reliability of state secret protection.

This research focuses on the following aspects of the criminal law protection of state secrets in Ukraine and the EU countries selected for comparison:

- definition of a state secret;
- types of information classified as state secrets;
- secrecy levels;
- terms of classification;
- responsibility for disclosure of state secrets.

2.1. The definition of state secret, the secrecy levels and the terms of the classification of information constituting a state secret presented in the legislative acts of the studied countries

Six EU countries are selected in this article in order to conduct a comparative analysis with Ukrainian practice: Estonia, Latvia, Lithuania, the Czech Republic, Bulgaria and Poland. The information background of the research includes an analysis of the laws of these countries regarding state secrets protection and their criminal codes. In particular, Table 1 provides a comparison of the definitions of state secrets given in the laws of the selected countries regarding the state secrets protection with the source indicated.

Table 1. Definition of state secret presented in the legislative acts of the selected countries

Country	Source	Definition of state secret
Estonia	State Secrets and Classified Information of Foreign States Act (Estonia)	"State secret2 means information provided exclusively by this Act or legislation adopted pursuant to it, which requires protection from disclosure in the interests of national security or foreign relations of the Republic of Estonia, with the exception of secret information of foreign countries
Latvia	Law of the Republic of Latvia on State Secrets	State secret means such information of a military, political, economic, scientific, technical or other nature, which is included in the list approved by the Cabinet of Ministers, and the loss or illegal disclosure of which may cause damage
Lithuania	Law of the Republic of Lithuania No. VIII-1443 On State and Official Secrets	State secret is a political, military, intelligence, law enforcement, scientific, technical and other information classified in accordance with the procedure established by this Law, the loss or illegal disclosure of which could endanger the sovereignty, territorial integrity, defence capability of the Republic of Lithuania, cause damage to states, endanger human life
Czech Republic	Act No. 412 On the Protection of Classified Information of 21 September 2005	Classified information is information in any form recorded on any medium designated as such in accordance with this Law, the unauthorized disclosure or misuse of which may harm the interests of the Czech Republic or may be detrimental to those interests, and which is listed as "classified information"

Bulgaria	Classified Information Protection Act (Bulgaria)	For the purposes of this Law, classified information is any information constituting a state or official secret, any foreign secret information. A state secret is the information specified in Annex 1, the unauthorized access of which could threaten the interests of the Republic of Bulgaria or harm such interests related to national security, defence, foreign policy or the protection of the constitutional system
Poland	The Act of 5 August 2010 on the Protection of Classified Information (Poland)	The Act establishes rules for the protection of information, the unauthorized disclosure of which would cause or could cause damage to the Republic of Poland or would be disadvantageous from the perspective of its interests, also in the process of their development and regardless of the form and method of their expression, which is hereinafter referred to as "classified information"
Ukraine	Law of Ukraine "On State Secrets", 2022	State secret (hereinafter also referred to as classified information) is a type of secret information that includes information in the field of defence, economy, science and technology, foreign relations, state security and law enforcement, the disclosure of which may harm the national security of Ukraine and which are recognized as state secrets and are subject to state protection pursuant to this Law

Source: prepared by the authors.

The analysis of the definitions given in Table 1 gives grounds to note that only in Ukrainian legislation national security only is the object that can be harmed by the disclosure of a state secret. Of course, national security has the highest priority, but the legislation of other EU countries under research expands the list of the objects that can be harmed by the disclosure of state secrets, thereby further strengthening the protection of the interests of countries.

So, in Estonia it is national security and foreign relations, in Latvia – state security and economic or political interests, in Lithuania – sovereignty, territorial integrity, defence capability of the Republic of Lithuania, other states and human life, in the Czech Republic and Poland – the interests of the state as a whole, in Bulgaria – interests related to national security, defence, foreign policy or protection of the constitutional system. Therefore, in the author's opinion, the definition given in the Ukrainian legislation needs some clarification.

Table 2 presents the secrecy levels and terms of classification of information constituting a state secret in the legislative acts of the selected countries.

Table 2. Secrecy levels and terms of classification of information constituting a state secret in the legislative acts of the selected countries.

Country	Secrecy levels	Terms of classification
Estonia	1) "restricted" level; 2) "confidential" level; 3) "secret" level; 4) "top secret" level	From 10 to 75 years depending on information type
Latvia	Information constituting a state secret, depending on its significance, is divided into three categories: "especially important", "top secret" and "secret".	Information constituting a state secret classified as "secret" — for 5 years, as "top secret" — for 10 years, as "especially important" — for 20 years. Data on persons engaged in operational investigative activities and persons involved in special procedural protection are classified for a period of 75 years.
Lithuania	The classifications from the highest secrecy level to the lowest are as follows: 1) "top secret"; 2) "secret"; 3) "confidential"; 4) "restricted access"	Information is classified for the following terms: 1) information classified as "top secret" — for 30 years; 2) information classified as "secret" — for 15 years; 3) information classified as "confidential" — for 10 years; 4) information classified as "restricted access" — for 5 years. Classified information, the disclosure of which could create prerequisites for a threat to human life or health, is classified for 75 years
Bulgaria	Information that is a state secret must be classified with the following security level: "top secret"; "secret"; "confidential"	Periods of protection of classified information, starting from the date of creation: 1) information classified as "top secret" — 30 years; 2) information classified as "secret" — 15 years; 3) information classified as "confidential" – five years; 4) information constituting an official secret — 6 months.
Czech Republic	Secret information is classified as: a) "top secret"; b) "secret"; c) "confidential"; d) "restricted access"	10 years from the date of application for the "confidential" secrecy level, 15 years for the "secret" secrecy level, and 20 years for the "top secret" secrecy level
Poland	The classifications "top secret", "secret" and "confidential"	A confidentiality clause is provided by a person authorized to sign a document or mark [...]. That person can specify a date or event after which the confidentiality clause will be lifted or amended.
Ukraine	The security label is as follows: "special importance", "top secret" or "secret".	Information classified as "special importance" — 30 years, "top secret" — 10 years, "secret" — 5 years.

Source: prepared by the authors.

Table 2 gives grounds to conclude that the selected countries distinguish three or four secrecy levels. The terms of classification of the most important information, which constitutes a state secret, reach a maximum of 20-30 years. Information about persons engaged in investigative activities may be classified for 75 years (in Poland, such information must remain protected regardless of the time that has passed).

2.2. Types of information classified as state secrets

The legislation of the countries selected for the study also differs regarding the definition of the types of information that constitute a state secret. For example, in Estonia, such information in a generalized form includes data related to foreign relations, national defence, law enforcement, security agencies, infrastructure and information protection (State Secrets and Classified Information of Foreign States Act, 2011).

In Latvia, special attention is paid to the protection of information related to national defence, in particular, data on:

the military potential of the state, its defence strategy and tactics, defence and mobilization plans;

systems and material and technical means of armament, communication and information, their acquisition by state security and defence bodies;

location of facilities, buildings and other objects important for state security and defence, plans for their protection and evacuation;

types and quantities of products produced for the needs of state security and defence, as well as mobilization capacities of industry, etc.

Besides, information regarding state material reserves, scientific research, discoveries, use of inventions, if such activities are carried out with the support of the state, certain areas of state foreign policy, and a number of other types of information, including information about means and methods of protecting state secrets (Rada, 2004).

In Lithuania, the list of information that may constitute a state secret is quite detailed and contains 28 items. Traditionally, information about the defence of the state is in the first place: information about the state defence reserve and summarized detailed information about the mobilization reserve of material resources, plans for the activities of public authorities and self-government bodies in cases of a state of emergency and martial law, as well as mobilization plans. Besides, important information constituting a state secret in the country includes information on:

- protection of securities, documents, banknotes and other documents from forgery;

- individual information regarding criminal intelligence;
- information about negotiations with foreign countries;
- cooperation with special services of other states;
- protection of nuclear facilities;
- keeping secret information;
- preservation of information about secret participants of criminal intelligence and their activities;
- plans to combat terrorism and sabotage;
- new technologies, scientific research, tests and their results, which are of special importance for the interests of the state, etc. (Law of the Republic of Lithuania, 1999).

In Bulgaria, the list of information that can constitute a state secret covers even more of its types than in Lithuania, and is set out in the annexes to the relevant legislative act. The list is divided into categories:

- information related to the country's defence (24 items);
- information related to the country's foreign policy and internal security (34 items);
- information related to the country's economic security (7 points) (Classified Information Protection Act, 2018).
- In the Czech Republic, it is prohibited to disclose classified information to an unauthorized person, which may cause:
- threats to sovereignty, territorial integrity or democratic principles of the state;
- significant damage to the Czech Republic in the financial, monetary or economic spheres;
- death of people or threat to life and health of citizens;
- violation of internal order and security in the country;
- a serious threat to the combat capability of the Armed Forces of the Czech Republic, the North Atlantic Treaty Organization or its member state or the armed forces of a EU member state;
- a serious threat to important security operations or activities of intelligence services;
- a serious threat to the activities of the North Atlantic Treaty Organization, the European Union or a member state;

- a serious violation of the diplomatic relations of the Czech Republic with the North Atlantic Treaty Organization, the European Union, member states or another state or a serious aggravation of the situation causing international tension (On the Protection of Classified Information of 21 September, 2005).

In Poland, types of secret information are distinguished according to the classifications of secrecy defined in the legislation. Classified information is considered "top secret" if its unauthorized disclosure would cause extremely serious damage to the Republic of Poland through:

- a threat to the independence, sovereignty or territorial integrity of the Republic of Poland;
- a threat to internal security or the constitutional system of the Republic of Poland;
- a threat to allies or the international position of the Republic of Poland;
- weakening of the defence capability of the Republic of Poland, etc.
- Classified information is subject to the "secret" caveat if its unauthorized disclosure would cause serious harm to the Republic of Poland through:
- hindering the performance of tasks related to the protection of the sovereignty or constitutional system of the Republic of Poland;
- deterioration of the relations of the Republic of Poland with other states or international organizations;
- violation of the defence preparation of the state or the functioning of the Armed Forces of the Republic of Poland, etc.

The classified information is marked "confidential" if its unauthorized disclosure would harm the Republic of Poland through:

- complication of the current foreign policy of the Republic of Poland;
- hindering the implementation of defensive measures or having a negative impact on the combat capability of the Armed Forces of the Republic of Poland;
- violation of public order or threat to the safety of citizens, etc. (Global-Regulation, 2010).

The legislation of Ukraine provides a wide list of information that can be defined as a state secret. It is proposed to divide such information into categories: information in the field of defence, information in the field of economics, science and technology, information in the field of foreign

relations, information in the field of state security and law enforcement (The Law of Ukraine on State Secrets, 2022).

The types of information which can constitute a state secret enshrined in the legislation of the countries depend, first of all, on the priorities, strategic goals, peculiarities of internal and foreign policy in each individual state. However, it is common that such types of information, in general, should be: first, consistent with international norms, second, be sufficiently detailed to avoid misunderstandings, and, third, contain types of information related to such areas as defence, economy and finance, science and technology, foreign policy activities, intelligence or counterintelligence activities, internal security in the country, in particular, the security of citizens. Based on the conducted comparative analysis, Ukrainian legislation in this area meets the specified criteria in general.

2.3. Responsibility for the disclosure of state secrets established in the Criminal Codes of the selected countries

One of the most important and effective ways to ensure the protection of state secrets is to establish responsibility for its disclosure. Table 3 provides data on the responsibility for the disclosure of state secrets established in the Criminal Codes of the selected countries, indicating the relevant articles.

Table 3. Responsibility for disclosure of state secrets defined in the Criminal Codes of the selected countries

Country	Responsibility for disclosure of state secrets
Estonia	§ 241. Disclosure of state secrets and secret information of foreign countries (1) Disclosure or illegal notification or provision of illegal access to a state secret or secret information of a foreign state by a person who is obliged to maintain the confidentiality of a state secret or secret information of a foreign state [...] is punishable by a fine or imprisonment for a term of up to five years. (2) The same act committed by a legal entity is punishable by a fine (Penal Code, 2017).
Latvia	Article 94. Intentional disclosure of state secrets Intentional disclosure of a state secret, if it is committed by a person who has been warned not to disclose a state secret, and there are no signs of espionage in this crime, is punishable by imprisonment for a term of up to five years or temporary imprisonment, or probation supervision, or community service, or by a fine, with deprivation of the right to engage in certain activities or the right to hold certain positions for up to five years (Criminal Law/Krimināllikums, 2022).
Lithuania	Article 125. Disclosure of state secrets 1. A person who discloses information constituting a state secret of the Republic of Lithuania, if this information was entrusted to him/her or he/she gained access to it through his/her service, work or during the performance of public functions, but in the absence of signs of espionage, shall be punished by deprivation of the right to hold certain positions or engage in certain activities or deprivation of liberty for a term of up to three years (Law on the Approval and Entry into Force of the Criminal Code, 2010).

Czech Republic	Article 317. Threats to classified information (1) Whoever collects information classified in accordance with another legal provision with the purpose of disclosing it to an unauthorized person, who collects data containing secret information for such a purpose, or who intentionally discloses such secret information to an unauthorized person, shall be punished by imprisonment for a term of up to three years or a ban on engaging in relevant activities. (2) The offender shall be punished by imprisonment for a term of two to eight years, a) if he/she intentionally discloses information that is classified as "top secret" or "secret" in another legal act to an unauthorized person, b) if he/she has committed the act referred to in clause 1, although the protection of secret information was specifically entrusted to him/her, or c) if by such action he/she will obtain a significant benefit for himself/herself or another person or cause significant harm to another person, especially with serious consequences. (3) The offender shall be punished by deprivation of liberty for a term of five to twelve years, a) if the action referred to in paragraph 1 concerns secret information from the field of defence of the Czech Republic, which has the Top-Secret status in accordance with other legal norms or b) if he/she commits such an act that poses a threat to the state or in a state of war (Penal Code/Trestní zákoník, 2023).
Bulgaria	Article 357. (1) Anyone who discloses information constituting a state secret that has been entrusted to him/her or has become known through his/her service or work, as well as anyone who discloses such information being aware that it may harm the interests of the Republic of Bulgaria, unless is subject to a more severe punishment, shall be punished by imprisonment from two to eight years. (2) If the act has or may have particularly serious consequences for the security of the state, it shall be punishable by imprisonment for a term of five to fifteen years. (3) A person who disseminates foreign secret information received in accordance with an international treaty to which the Republic of Bulgaria is a party shall also be punished by a fine under Clauses 1 and 2. (Criminal Code Bulgaria, 2017)
Poland	Article 265. § 1. Anyone who discloses or, contrary to the provisions of the Law, uses information classified as "secret" or "top secret" shall be punished by imprisonment for a term of 3 months to 5 years. § 2. If the information referred to in § 1 was disclosed to a person acting on behalf of a foreign organization, the party at fault shall be punished by imprisonment for a term of 6 months to 8 years [...]. Article 266. § 1. Anyone who, contrary to the provisions of the Law or the obligation assumed, discloses or uses information that he/she has known in connection with his/her function, work, public, social, economic or scientific activity, shall be punishable by a fine, restraint of liberty or imprisonment for up to 2 years. § 2. A civil servant who discloses secret information classified as "secret" or "confidential" to an unauthorized person, or information that he/she received in connection with the performance of official duties and the disclosure of which may harm interests protected by law, shall be punished by imprisonment for up to 2 years (Penal Code/Kodeks karny, 2023).

Ukraine	Article 328. Disclosure of state secrets 1. Disclosure of information constituting a state secret by a person to whom this information was entrusted or became known in connection with the performance of official duties, in the absence of signs of treason or espionage, shall be punishable by imprisonment for a term of two to five years with deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years or without such. 2. The same act, if it caused serious consequences, shall be punishable by imprisonment for a term of five to eight years (Criminal Code of Ukraine, 2022).

Source: prepared by the authors.

Analysing Table 3, it can be noted that the legislation of the Czech Republic and Bulgaria provide the most severe punishment for the disclosure of state secrets. In the Czech Republic, in cases where disclosed state secrets were related to information in the field of defence with the Top-Secret status, in case of threat to the state or in a state of war, the offender shall be punished by imprisonment for a term of five to twelve years.

In Bulgaria, if the disclosure of a state secret has or may have particularly serious consequences for the security of the state, the punishment ranges from five to fifteen years of imprisonment. In Estonia and Latvia, the maximum term of punishment is five years, in Lithuania — three years, in Poland and Ukraine — eight years.

In the author's opinion, it is advisable for Ukraine to revise the terms of punishment for the disclosure of state secrets following the example of Bulgaria and the Czech Republic. If the disclosure of a state secret led to particularly serious consequences for the security of the state or occurred in case of threat to the state or in a state of war regarding particularly important information related to the defence of the country, it is advisable to increase the terms of the maximum punishment. Besides, the Estonia's experience of the introduction of responsibility in the form of a monetary penalty for the disclosure of state secrets to a legal entity can be effective.

3. Discussion

The article provides a comparison of the definitions of state secrets, types of information classified as state secrets, secrecy levels, terms of classification and responsibility for disclosure of state secrets in the countries selected for the study. The following conclusions can be drawn from the analysis in the context of recommendations for Ukraine:

The definition of state secrets should be clarified in Ukrainian legislation, in particular regarding the expansion of objects that may suffer damage as

a result of the disclosure of secret information. It is appropriate to increase the responsibility for the disclosure of state secrets, especially in the field of information that is particularly important for ensuring national security, is related to defence, and was also disclosed in a state of threat to the country or war.

Ukrainian and foreign researchers also give a number of recommendations in their studies on the reform of the state secret protection system and bringing the national system in compliance with international standards. Boldyr (2018) focuses on the aspects of checking persons who have access to classified information.

The researcher provides the following recommendations for optimizing such a check: replace the term "providing access to state secrets" with the concept of "security check certificate"; introduce a differentiated number of security checks depending on the secrecy level; revise the terms of the security check; consider the possibility of applying a security check to citizens before their appointment to responsible positions, etc. Aspects of security check were not covered in the author's research, because this topic went beyond the areas outlined in the article, and therefore this problem can become an area of further research.

Analysing the experience of other countries as an example for Ukraine, Serhiychuk (2019) makes the following recommendation regarding amendments to the Law "On State Secrets": to include the terms of storage and the secrecy level of classified information. This practice, as defined in this article, is carried out in Poland. However, in the author's opinion, there is no need for such a division in Ukrainian legislation, because it already has a division by spheres of information (defence, economy, science and technology, foreign relations, state security and law enforcement).

Inclusion of features by terms of classification periods and secrecy levels can make it confusing and less transparent. Following the example of Estonia, Serhiychuk (2019) also proposes to define (according to the Estonia's experience) a legal entity as the subject of crimes in the field of state secret protection. Such a suggestion can be effective in view of strengthening the protection of state secrets due to increasing the responsible attitude of legal entities keeping them.

As a result of the analysis of the experience of other countries, it is appropriate to cite the opinion of Kharchenko (2021): blind copying of foreign experience can lead to undesirable results, and therefore the use of such experience should be coordinated and adapted to national traditions and peculiarities.

A number of researchers emphasize that improving the system of information and communication technologies (ICT) and strengthening cyber security is necessary to increase the effectiveness of the state secret

protection system. Thus, Vdovenko and Danyk (2019) point out that, among other things, changes in the state secret protection system consist in determining the directions of scientific research in the field of information protection, the development of cryptographic and technical information protection systems, determining the sources of funding for such scientific research, etc.

Studying the protection of classified information in Hungary, Topolewski (2020) emphasizes the growth of threats to the security of such information in the context of the development of the information society. Topolewski (2020) also emphasizes the need for the development and use of ICT security measures, noting that the improvement of the state secret protection system should first of all be based on the rules and regulations established by law, as well as appropriate sanctions. The researcher's findings are reflected in the results of the author's research, in which the improvement of legislative norms and the establishment of appropriate responsibility are priority directions for increasing the effectiveness of the state secret protection system.

Denyshchuk (2021) writes on the areas of improvement that have been carried out by Ukrainian government officials recently and relate, in particular, to providing access to state secrets, classification procedures, requirements for persons related to the protection of state secrets, control and supervision, etc. The researcher notes that the introduced changes require further consideration and improvement, which, based on the results of the research conducted in this article, should be agreed with.

As mentioned above, it is advisable to pay special attention to the review of responsibility for the disclosure of state secrets, because in wartime this aspect can directly affect the course of the conflict. This opinion is confirmed in the studies of foreign researchers. In particular, Wądołowski (2022) in his research focuses on the organization of the system of protection of state secrets in the context of consideration and interpretation of criminal laws on crimes against the protection of classified information based on the analysis of the experience of the Republic of Croatia and Bosnia and Herzegovina.

Aspects of combating crimes in the field of state secrets protection are separately considered in the works of Ukrainian researchers. Nehoda (2021) studies the levels of combating such crimes. The researcher singles out three levels: general social counteraction (consists in the implementation of preventive influence on the crime rate in general); special criminological countermeasures (provides for the prevention of certain types of crimes in the relevant spheres of their commission); individual countermeasures (prevention of crimes by individual persons).

Oliinyk (2020) examines in detail a separate direction — subjective prevention of crimes, which is most closely related to the "individual countermeasures" mentioned above. The countermeasures include the improvement of professional qualities, resource and other provision of relevant state bodies, associations and individual citizens, improvement of information and analytical work, careful selection of personnel, etc.

Conclusions

Ensuring the protection of state secrets is always one of the most important tasks of the state in the context of preserving its national security, but the fact that Ukraine is at war with the Russian Federation makes this problem particularly acute. The issue under research is also relevant in view of Ukraine's integration into the world community.

This article analysed the following aspects of the criminal law protection of state secrets in Ukraine and EU countries selected for comparison: definition of state secrets, types of information classified as state secrets, secrecy levels, terms of classification, responsibility for disclosure of state secrets. The results of the analysis gave grounds to establish that the improvement of the state security protection system of Ukraine should consist, among other things, in the following:

clarification of the definition of a state secret, in particular regarding the expansion of the list of objects that may suffer damage as a result of the disclosure of secret information;

increased responsibility for the disclosure of state secrets, especially in the field of information that is particularly important for ensuring national security, refers to defence, and was also disclosed in times of threat to the country or war.

The obtained results can be useful for government officials in view of their focus on the identified problematic aspects. The direction of further research should be to identify specifics and determine measures to optimize the procedure of security checks of persons who have access to classified information.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 662-681
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Estados de excepción y la lucha contra las inmunidades del poder: COVID-19 en Ecuador

DOI: https://doi.org/10.46398/cuestpol.4176.39

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Resumen

El objetivo general de la investigación consiste en relacionar los estados de excepción con la doctrina de derecho administrativo, expuesta por García de Enterría (2016), denominada lucha contra las inmunidades del poder, a fin de conceptualizar los decretos con fuerza de ley sobre estados de excepción; con especial referencia a los decretos con fuerza de ley sobre estados de excepción por calamidad pública pandemia COVID-19, dictados por el Presidente de la República del Ecuador en todo el territorio nacional, durante el período comprendido desde el 17 de marzo de 2020 hasta el 1º. de septiembre de 2020. La metodología refiere a la estrategia de investigación documental, sustentada en el método analítico. Se concluye que la pandemia COVID-19 coloca en riesgo las condiciones existenciales del Estado: población, territorio y gobierno, debido a la propagación inmediata del coronavirus y el Presidente de la República del Ecuador se encuentra en la necesidad de dictar actos de contenido normativo, objeto de control interno -político y jurídico- e internacional, contentivos de medidas de restricción y suspensión de derechos de manera discrecional y con elementos reglados, sustentados en el principio de proporcionalidad, denominados decretos con fuerza de ley sobre estados de excepción.

Palabras clave: Estados de excepción; lucha contra las inmunidades del poder; decretos con fuerza de ley sobre estados de excepción; pandemia COVID-19; doctrina de derecho administrativo.

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Recibido el 10/11/22 Aceptado el 15/01/23

Exception states and the fight against power immunities: COVID-19 in Ecuador

Abstract

The general objective of the research consists of relating the states of exception with the doctrine of administrative law, exposed by García de Enterría (2016), called fight against the immunities of power, in order to conceptualize the decrees with force of law on states of exception; with special reference to the decrees with force of law on states of exception for public calamity pandemic COVID-19, issued by the President of the Republic of Ecuador throughout the national territory, during the period from March 17, 2020 to September 1, 2020. The methodology refers to the documentary research strategy, supported by the analytical method. It is concluded that the COVID-19 pandemic puts at risk the existential conditions of the State: population, territory and government, due to the immediate spread of the coronavirus and the President of the Republic of Ecuador finds himself in the need to dictate acts of normative content, subject to internal - political and legal - and international control, containing measures of restriction and suspension of rights in a discretionary manner and with regulated elements, based on the principle of proportionality, called decrees with force of law on states of exception.

Keywords: States of exception; fight against the immunities of power; decrees with force of law on states of exception; COVID-19 pandemic; administrative law doctrine.

Introducción

La pandemia COVID-19, designada por la Organización Mundial de la Salud con el nombre coronavirus causante del síndrome respiratorio de Oriente Medio (MERS-CoV), representa una calamidad pública que origina la puesta en práctica de la declaratoria de los estados de excepción en todo el territorio nacional de la República de Ecuador mediante actos normativos con rango, fuerza y valor de ley con el *nomen* en esta investigación de decretos con fuerza de ley sobre estados de excepción.

El objetivo general consiste en relacionar los estados de excepción con la doctrina de derecho administrativo, expuesta por García de Enterría (2016) denominada lucha contra las inmunidades del poder, a fin de conceptualizar los decretos con fuerza de ley sobre estados de excepción; con especial referencia a la calamidad pública pandemia COVID-19, dictados por el Presidente de la República del Ecuador en todo el territorio nacional, durante el período comprendido desde el 17 de marzo de 2020 hasta el 1º.

de septiembre de 2020. Los objetivos específicos consisten en analizar la necesidad de la declaratoria de los estados de excepción con ocasión de la pandemia COVID-19; y, explicar la aplicación de la doctrina administrativa de la lucha contra las inmunidades del poder en los decretos con fuerza de ley sobre estados de excepción por pandemia COVID-19 en Ecuador.

La metodología refiere a la estrategia de investigación documental, sustentada en el método analítico. Las fuentes para la recolección de información son secundarias y atienden a tres ámbitos jurídicos de información: normativo, doctrinario y jurisprudencial. El ámbito jurídico de información normativo constituido por instrumentos jurídicos normativos de rango constitucional y legal: Constitución de la República del Ecuador de 2008, Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009, Ley de Seguridad Pública y del Estado de 2009, y decretos con fuerza de ley sobre estados de excepción por calamidad pública pandemia COVID-19, dictados por el Presidente de la República del Ecuador en todo el territorio nacional, durante el período comprendido desde el 17 de marzo de 2020 hasta el 1º. de septiembre de 2020. El ámbito jurídico de información doctrinario determinado por la lectura exhaustiva de doctrina nacional e internacional y artículos publicados en revistas nacionales e internacionales arbitradas e indexadas. El ámbito jurídico de información jurisprudencial referido a la consulta electrónica de conceptos desarrollados en sentencias de la Corte Constitucional del Ecuador.

1. Estados de excepción y pandemia COVID-19

La Constitución de la República del Ecuador de 2008 establece, en el artículo 164, primer inciso, la competencia del Presidente de la República para: "...decretar el estado de excepción en todo el territorio nacional o en parte de él en caso de agresión, conflicto armado internacional o interno, grave conmoción interna, calamidad pública o desastre natural".

De esta forma las causas o motivos que originan la declaratoria de los estados de excepción son la agresión, el conflicto armado internacional o interno, la grave conmoción interna, la calamidad pública o el desastre natural. La Constitución de la República del Ecuador no define estas causas o motivos. La Roche (1984) refiere que el conflicto armado internacional o interno procede en caso de sublevación interna o ataque exterior y la conmoción interna concierne a un motín o levantamiento interno.

Saint Bonnet (Valim, 2018) establece que el calificativo excepción alude a una acepción clásica referida a un período de tiempo durante el cual las normas legales establecidas para períodos de calma son suspendidas o restringidas para hacer frente a un determinado peligro. En el ámbito doctrinal, González Becerra (2021) asimila los estados de excepción como un

régimen jurídico especial, regulado en la actualidad por las constituciones y por el derecho internacional humanitario, cuya naturaleza *erga omnes* se desprende de la necesidad de protección de los derechos humanos. Concluye González Becerra (2021: 161) que los estados de excepción comprenden:

> ...regímenes jurídicos que se estipulan dentro de los sistemas legislativos de los Estados para ser utilizados ante emergencias o, mejor, durante momentos de anormalidad que no pueden afrontarse con las normas vigentes, así pues, obedecen a una necesidad y las medidas adoptadas deben corresponder a la misma.

El estado de excepción según Llugdar (2021: 95) comprende: "aquella situación extraordinaria generada por un período de crisis, donde uno o alguno de poderes del gobierno dispone de poderes excepcionales para garantizar la continuidad de los servicios públicos o sus funciones esenciales". Sira Santana (2020: 59) define a los estados de excepción como:

> Un mecanismo previsto en la Carta Magna para la protección del orden constitucional que, frente a una circunstancia fáctica determinada –sea de orden social, económico, político, natural o ecológico– que por su gravedad hace insuficiente al ordenamiento jurídico ordinario, faculta al Presidente de la República para dictar...los actos que sean estrictamente necesarios para lograr una respuesta oportuna que ponga fin a la crisis –o la haga manejable– pudiendo inclusive este mandatario restringir determinadas garantías, sea que su actuar, en todo momento, respete los principios que rigen al régimen de excepción y esté fundamentado en una emergencia cierta.

En el ámbito legal, el artículo 28 de la Ley de Seguridad Pública y del Estado de 2009 establece nociones conceptuales de los estados de excepción y los considera como:

> ...la respuesta a graves amenazas de origen natural o antrópico que afectan a la seguridad pública y del Estado. Los estados de excepción conforman un régimen de legalidad y por lo tanto no se podrán cometer arbitrariedades a pretexto de su declaración.

En el ámbito jurisprudencial, la Corte Constitucional del Ecuador (2011: Sentencia No. 001-11-DEE-CC) emite un concepto de estados de excepción en los siguientes términos:

> Es un mecanismo o arreglo normativo-constitucional con el que cuentan los Estados Democráticos para proscribir problemas, así como defender los derechos de los ciudadanos que desarrollan su existencia dentro del territorio nacional, y que, a causa de eventos imprevisibles, dichos derechos no pueden ser protegidos con los mecanismos jurídico-institucionales regulares acogidos en la normativa Constitucional y legal.

La Corte Constitucional del Ecuador (2008: Sentencia No. 001-08-SEE-CC) considera que el Estado utiliza los estados de excepción para solventar crisis extraordinarias y emergentes. Tanto el derecho internacional como el derecho interno de los Estados, admiten que, en situaciones de crisis, las autoridades competentes puedan suspender el ejercicio de algunos

derechos, con la finalidad de restablecer la normalidad y el goce de otros derechos; pero tomando siempre en cuenta que esa potestad en los estados de derecho es limitada.

La pandemia COVID-19 ha provocado un desastre: "...de evolución lenta porque surge gradualmente con el paso del tiempo y está relacionado con las enfermedades epidémicas" (Cahueñas Muñoz, 2021: 15). La República del Ecuador utiliza el mecanismo o arreglo normativo-constitucional denominado estados de excepción en todo el territorio nacional, durante el período comprendido desde el 17 de marzo de 2020 hasta el 1º de septiembre de 2020, para tratar de proscribir el problema de casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud y defender el derecho a la salud y convivencia pacífica del Estado.

Los decretos con fuerza de ley sobre estados de excepción por calamidad pública pandemia COVID-19, dictados durante 2020 por el Presidente de la República del Ecuador en todo el territorio nacional de la República de Ecuador son los siguientes: En primer lugar, el Decreto Número 1017 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud, publicado el 17 de marzo de 2020.

Este decreto tuvo una vigencia predeterminada de sesenta días y es objeto de renovación por treinta días más, mediante Decreto Ejecutivo Número 1052 que renueva el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y número de fallecidos a causa de la COVID-19 en Ecuador, publicado el 22 de mayo de 2020.

En segundo lugar, el Decreto Ejecutivo No. 1074 que declara el estado de excepción por calamidad pública en todo el territorio nacional por la presencia de la COVID-19 en el Ecuador y por la emergencia económica sobreviviente a la emergencia sanitaria que atraviesa el Estado Ecuatoriano, publicado el 16 de junio de 2020.

Este decreto tuvo una vigencia predeterminada de sesenta días y es objeto de renovación por treinta días más, mediante Decreto Ejecutivo No. 1126 que renueva el estado de excepción por calamidad pública en todo el territorio nacional, por la presencia de la COVID-19 en el Ecuador, publicado el 1º de septiembre de 2020.

Se hace la salvedad que el Decreto Ejecutivo No. 1217 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por el grave incremento en el contagio de la COVID-19 por causa de las aglomeraciones, así como la exposición a una mutación con mayor virulencia importada, publicado el 22 de diciembre de 2020 no llegó a tener vigencia.

La Corte Constitucional del Ecuador (2020b: Sentencia No. 7-20-EE/20) declaró la inconstitucionalidad del mencionado decreto No. 1217 al exponer que se trata de un régimen diseñado para ser temporal y excepcional, que no puede perennizarse mientras dure la pandemia y sus consecuencias y declara que "…no admitirá una nueva declaratoria sobre los mismos hechos que han establecido la calamidad pública en dos ocasiones anteriores con sus respectivas renovaciones".

2. Decretos con fuerza de ley sobre estados de excepción por pandemia COVID-19 en Ecuador y la lucha contra las inmunidades del poder

Los decretos con fuerza de ley sobre estados de excepción se relacionan con la doctrina de derecho administrativo expuesta por García de Enterría (2016) denominada la lucha contra las inmunidades del poder, referida a la existencia de circunstancias extraordinarias que trastocan la vida normal de las sociedades, en torno a las cuales el derecho ha tenido una lucha permanente para regularlas "…para evitar momentos de ausencia de derecho donde sólo existan la fuerza y los hechos" (Brewer Carías, 2020b). Esta doctrina de derecho administrativo diseña tres teorías que permiten, en este caso, sustentar el dictado de los decretos con fuerza de ley sobre estados de excepción: teoría de las circunstancias excepcionales, teoría de los poderes discrecionales y teoría de los actos de gobierno.

a. Teoría de las circunstancias excepcionales

La teoría de las circunstancias excepcionales refiere a situaciones que ponen en peligro la vida misma de las instituciones del Estado y originan una ampliación de las competencias de los órganos de la Administración Pública sin llegar a casos de arbitrariedad, por cuanto es necesario establecer controles a estas libertades de acción (Araujo Juárez, 2007). Según Valim (2018) existe la teoría de las circunstancias excepcionales, estipulada por el Consejo de Estado francés, en la sentencia Heyriès– según la cual, en un período de crisis, el gobierno dispone de poderes excepcionales para garantizar la continuidad de los servicios públicos.

Las circunstancias excepcionales son entendidas por Rivero (1984) como ciertas situaciones de hecho que tienen el doble efecto de suspender la autoridad de las reglas ordinarias respecto de la administración, y desencadenar la aplicación a estos actos de una legalidad particular con relación a la cual, el juez define las exigencias. Vedel (1980) establece que las circunstancias excepcionales suponen una situación anormal y exorbitante; solo tienen efecto jurídico cuando existe la imposibilidad para la Administración de actuar legalmente; y, solo dispensan del respeto

a la legalidad normal en la medida en que un interés público actual lo exija. Entonces, la circunstancia excepcional es un concepto ligado al: "... principio de amenaza excepcional" (Zúñiga Urbina, 2005: 180), que define la naturaleza de peligro y puede conllevar a la existencia de situaciones devastadoras.

La pandemia COVID-19 es considerada una circunstancia excepcional, una calamidad pública, inclusive una catástrofe o desastre, por los índices de mortalidad que arroja para el Ecuador y el mundo (Pozo Calderón *et al*, 2021); y por ende es una circunstancia excepcional revestida del principio de amenaza excepcional. Sobre el particular, Pérez Fuentes (2020: 128) señala:

> El alcance mundial y la gravedad que ha afectado a casi todos los países por razón de la pandemia del COVID-19 es sin duda una amenaza a la salud pública que justifica restricciones a ciertos derechos, como los que resultan de la imposición de la cuarentena o el aislamiento y que limitan la libertad de movimiento (2020: 128).

La pandemia COVID-19 es entendida como el presupuesto de hecho, causa o motivo para sustentar la declaratoria de los estados de excepción por calamidad pública en Ecuador durante el 2020. Brewer Carías (2020b: 1) asevera que: "...ha provocado una circunstancia excepcional en la vida de las Naciones, lo que por supuesto no es desconocido para el derecho". La pandemia COVID-19 ha marcado tendencia en el llamado derecho de crisis o de excepción que según Tajadura Tejada (2021: 139) refiere a dos notas distintivas como: "...por un lado, la centralización de las competencias en un mando único, y, por otro, la adopción de medidas limitadoras o suspensivas de derechos fundamentales". Según Sira Santana (2020: 58) el derecho de excepción refiere a:

> ...un ordenamiento jurídico paralelo que concede un poder especial y temporal a la autoridad para atender un problema cierto y grave (evitándose así la postura pasiva del gobierno) pero que en ningún caso se considera un poder absoluto ya que, siempre, sin importar la gravedad de la emergencia, estará sujeto a claros límites que impiden desconocer los principios y postulados propios de un Estado Derecho, so pena de que el derecho de excepción pase a ser mera arbitrariedad bajo apariencia de legalidad.

Por ende, el derecho de excepción refiere a la titularidad competencial específica del poder central representada por el presidente de la República, cuya competencia permite asumir poderes extraordinarios para hacer frente a las crisis o situaciones excepcionales (Tajadura Tejada, 2021). Los estados de Excepción conforman una manifestación del derecho de crisis o de excepción cuya finalidad es: "...conservar el Estado de Derecho y el Estado democrático cuando debido a circunstancias excepcionales se pone en peligro el normal funcionamiento de las instituciones y/o el ejercicio de los derechos de los ciudadanos" (Tajadura Tejada, 2021: 158). Al respecto, Zúñiga Urbina (2005: 179) alega:

> ...los Estados de excepción se ajustan los caracteres de un Derecho de Excepción en un Estado de Derecho, a saber: poderes extraordinarios, excepcionales y temporales, ejercidos por autoridades o poderes constituidos con pleno imperio de los controles políticos sobre la decisión del estado de excepción y sus medidas concretas.

La pandemia COVID-19 conforma una circunstancia excepcional que pone en peligro, principalmente, el ejercicio del derecho a la vida y el derecho a la salud, por ello reviste una situación de anormalidad. La Corte Constitucional del Ecuador (2010: Sentencia 009-10-SEE-CC) define la situación de anormalidad como: "...Toda circunstancia de peligro, pero sobre todo una circunstancia especial, no cotidiana, sino excepcional, que exige una respuesta inmediata por parte del Estado". En este caso, la respuesta inmediata del Estado es la declaratoria de los estados de excepción por calamidad pública. La pandemia COVID, según De Rementería Venegas (2020: 2)

> ...ha impuesto una situación excepcional, no solo sanitaria, sino que se extiende a aspectos como seguridad, economía, control fronterizo y educación. Para hacer frente a esta situación de anormalidad, los gobiernos han tenido que hacer uso de poderes excepcionales muchas veces reconocidos constitucionalmente.

A título ejemplificativo, el artículo 1 del Decreto Número 1017 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud, publicado el 17 de marzo de 2020 establece que los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-2019 por parte de la Organización Mundial de la Salud representan un alto riesgo de contagio para toda la ciudadanía y generan afectación a los derechos a la salud y convivencia pacífica del Estado; circunstancia configurada como peligrosa, anormal, excepcional que amerita una respuesta inmediata del Estado.

b. Teoría de los poderes discrecionales

La teoría de los poderes discrecionales opera, según Brewer Carías (2020b), cuando la Ley otorga un margen de libertad a la autoridad administrativa para actuar, sin que esta actuación implique arbitrariedad y ausencia de control. Esta libertad de actuar está sometida a límites establecidos en el ordenamiento jurídico y principios generales de razonabilidad, racionalidad, equidad, justicia, igualdad y proporcionalidad.

La Corte Constitucional del Ecuador (2008: Sentencia No. 001-08-SEE-CC) indica que la competencia del Presidente de la República para dictar estados de excepción: "...es una potestad de la cual disponen los Estados para conjurar problemas y defender los derechos de las personas que viven en su territorio...". Esta potestad es de carácter discrecional, según el artículo 164, primer inciso de la Constitución de la República del Ecuador:

"La Presidenta o Presidente de la República podrá decretar el estado de excepción…" (negritas nuestras), se utiliza el imperativo "..podrá"…", lo cual denota el otorgamiento de la facultad o libertad a discreción del Presidente de la República de dictar o no dictar el decreto; y si el Presidente de la República decide hacerlo, lo deberá realizar dentro de los límites establecidos por la Constitución de la República del Ecuador de 2008 y demás leyes.

Resulta conveniente enfatizar que el derecho de crisis debe respetar el Estado de Derecho, por consiguiente, la declaratoria de estados de excepción, como manifestación del derecho de crisis representa una competencia discrecional con elementos reglados, debe velar por el respeto de los límites previstos en la Constitución y demás leyes. En efecto, Brewer Carías (2020a: 89) sostiene: "el derecho de excepción no equivale a negar la existencia y vigencia del Estado de Derecho".

Valim (2018) argumenta que el Estado de Derecho y el Estado de excepción no son categorías que se repelen entre sí y reitera que, aunque el uso sistemático de la excepción pueda llevar a la ruina el Estado de Derecho, ella presupone el marco de referencia del Estado de Derecho. En consecuencia, los decretos sobre estados de excepción deben someter su contenido a lo estipulado en la Constitución de la República del Ecuador de 2008, Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009, la Ley de Seguridad Pública y del Estado de 2009 y demás normas nacionales e internacionales; entendiéndose como elementos reglados de la competencia discrecional del Presidente de la República del Ecuador para declarar los estados de excepción, que en todo caso es entendida como limitada.

El límite a la teoría de los poderes discrecionales lo conforma el ordenamiento jurídico nacional e internacional que estipula competencias regladas. En este sentido, se reitera la posición doctrinal de García de Enterría (2016: 37) "…todo acto discrecional hay elementos reglados suficientes como para no justificarse de ninguna manera una abdicación total del control sobre los mismos".

Por tanto, se trata de una potestad discrecional con elementos reglados, sometida a principios regulados en el ordenamiento jurídico nacional e internacional. En primer lugar, el artículo 164, segundo inciso de la Constitución de la República del Ecuador de 2008 establece elementos reglados para el estado de excepción: "El estado de excepción observará los principios de necesidad, proporcionalidad, legalidad, temporalidad, territorialidad y razonabilidad".

El principio de necesidad de los estados de excepción refiere a la circunstancia de recurrir a las medidas de excepción cuando sea rigurosamente necesario por razones de interés público. Rondón de Sansó

(2016) que esta circunstancia debe accionar la necesidad de cambiar temporalmente el orden jurídico, sea la presencia o amenaza de un hecho que puede trastocar gravemente la seguridad de los sujetos e instituciones del Estado, cualquiera que sea su origen y su naturaleza.

El principio de proporcionalidad de los estados de excepción concierne a la necesaria adecuación o concordancia existente entre las medidas adoptadas por el Presidente de la República y la gravedad de la crisis o circunstancia excepcional presentada que motiva el decreto. El presupuesto de derecho representado por la norma debe resultar directamente proporcional al presupuesto fáctico representado por el hecho generador de la norma.

El principio de legalidad consiste en la exigencia del cumplimiento de normas preexistentes que regulan los estados de excepción y los mecanismos de control interno e internacional (Zúñiga Urbina (2005).

El principio de temporalidad del estado de excepción alude a la obligatoriedad de establecer expresamente en el decreto el período de vigencia predeterminada. El estado de excepción caduca con el transcurso del tiempo una vez que excede el período de vigencia predeterminada. Esta caducidad opera de pleno derecho, de forma automática, sin necesidad de declaración de autoridad pública alguna (Corte Constitucional del Ecuador, 2019: sentencia No. 001-19-DEE-CC).

Los estados de excepción presentan una vigencia predeterminada que en ningún caso deberá presumirse, dado que su lapso de vigencia debe estar expreso en el decreto que declara el estado de excepción para evitar su prolongación indebida. La Corte Constitucional del Ecuador (2008: Sentencia No. 001-08-SEE-CC) enfatiza que el principio de temporalidad o provisionalidad de los estados de excepción está implícito en la naturaleza transitoria de los Estados de excepción, y la vigencia del decreto se justifica mientras dure la situación de crisis. El principio de territorialidad implica que las medidas que se tomen deben limitarse al área geográfica en la cual son necesarias (Corte Constitucional del Ecuador, 2008: Sentencia No. 001-08-SEE-CC).

El principio de razonabilidad concierne a que la declaratoria de Estado de Excepción debe ser motivada, deben existir argumentos de hecho y de derecho que den lugar a su emisión para satisfacer la necesidad.

En segundo lugar, el artículo 164, segundo inciso de la Constitución de la República del Ecuador (2008) regula el contenido material obligatorio y mínimo de establecer en los decretos con fuerza de ley sobre estados de excepción:

> El decreto que establezca el estado de excepción contendrá la determinación de la causal y su motivación, ámbito territorial de aplicación, el periodo de

> duración, las medidas que deberán aplicarse, los derechos que podrán suspenderse o limitarse y las notificaciones que correspondan de acuerdo a la Constitución y a los tratados internacionales.

En tercer lugar, se le atribuye al Presidente de la República la competencia reglada de notificar la declaratoria de los estados de excepción a la Asamblea Nacional, entendido como un control político, a la Corte Constitucional del Ecuador, entendido como un control jurisdiccional de constitucionalidad, y a el Secretario de la Organización de los Estados Americanos (OEA), entendido como una obligación de ser la República del Ecuador estado parte de la Convención Americana de Derechos Humanos de 1969 y el Pacto Internacional de Derechos Civiles y Políticos de 1976. Así, el artículo 166, primer inciso de la Constitución de la República del Ecuador de 2008 prevé:

> El presidente o presidenta de la República notificará la declaración del estado de excepción a la Asamblea Nacional, a la Corte Constitucional y a los organismos internacionales que corresponda dentro de las cuarenta y ocho horas siguientes a la firma del decreto correspondiente (2008: art. 166)

A título de ejemplo, se presentan elementos reglados en la decisión de carácter discrecional del presidente de la República del Ecuador denominada Decreto Número 1017 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud, publicado el 17 de marzo de 2020. Este decreto que establece el estado de excepción contiene la exposición de motivos que sustenta las razones fácticas y de derecho de la emisión del decreto y en el artículo 1, la determinación de la causal representada por la pandemia COVID-19.

Este decreto que establece el estado de excepción contiene: en el artículo 1 el ámbito territorial de aplicación representado por todo el territorio nacional de la República del Ecuador; en el artículo 13 el período de duración con una vigencia predeterminada de 60 días contados a partir de la suscripción del decreto; y fue renovado por treinta días más, según lo preceptuado en el artículo 14 del Decreto Ejecutivo Número 1052 que renueva el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y número de fallecidos a causa de la COVID-19 en Ecuador, publicado el 22 de mayo de 2020.

Este decreto que establece el estado de excepción contiene las medidas a aplicar y los derechos que podrán suspenderse, en el artículo 2, se dispone la movilización de las entidades de la Administración Pública Central e institucional en todo el territorio nacional; en el artículo 3, se suspende el ejercicio del derecho a la libertad de tránsito y el derecho a la libertad de asociación y reunión; en el artículo 4, se determina el alcance y la limitación del ejercicio del derecho a la libertad de tránsito y las razones

de una cuarentena; en el artículo 5, declaración del toque de queda y sus excepciones; en el artículo 6, se suspende la jornada presencial de trabajo y sus excepciones; en el artículo 8, se podrán emitir resoluciones necesarias para la procedencia de suspensión de términos y plazos a los que haya lugar en procesos judiciales y administrativos y en procesos alternativos de solución de conflictos; en el artículo 9, se determina el alcance de la limitación del ejercicio del derecho a la libertad de asociación y reunión; en el artículo 10, se disponen requisiciones a las que haya lugar para mantener los servicios que garanticen la salud pública, el orden y la seguridad en toda el área de extensión del territorio nacional.

En cuanto a las notificaciones que correspondan de acuerdo a la Constitución y a los tratados internacionales, el artículo 14 del decreto *ejusdem* ordena notificar de este decreto a la Asamblea Nacional, la Corte Constitucional del Ecuador y a los organismos internacionales correspondientes. A tal efecto, y en cumplimiento de esta competencia reglada, se menciona que la Misión Permanente del Ecuador ante la Organización de los Estados Americanos notificó a la Secretaría General de la Organización Estados Americanos, mediante comunicado 4 - 2 - 073 / 2020 en fecha 17 de marzo de 2020 la decisión de emitir el Decreto Número 1017 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud, publicado el 17 de marzo de 2020 (Misión Permanente del Ecuador ante la Organización de los Estados Americanos, 2020).

c. Teoría de los actos de gobierno

Los decretos con fuerza de ley sobre estados de excepción presentan la forma jurídica de actuación de un acto, entendidos como declaraciones unilaterales de voluntad del presidente de la República de efectos generales, por estar dirigidos a un número indeterminado de destinatarios. Estos actos se consideran de contenido normativo que ejecutan directamente el artículo 164, primer inciso de la Constitución de la República del Ecuador de 2008: "La Presidenta o Presidente de la República podrá decretar el estado de excepción en todo el territorio nacional…en caso de calamidad pública…", por tanto son actos ubicados en el segundo peldaño de la pirámide de Kelsen referido al rango, valor o fuerza legal[2] y deberán ser dictados de conformidad con la Constitución de la República del Ecuador de 2008, la Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009 y la Ley de Seguridad Pública y del Estado de 2009 y demás normas nacionales e internacionales.

2 Los términos rango, valor o fuerza legal se consideran sinónimos según Soto Hernández *et al* (2007) y significa la segunda posición, grado o lugar de los actos en la pirámide de Kelsen, según el principio de formación del derecho por grados.

La Constitución de la República del Ecuador de 2008, la Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009 y la Ley de Seguridad Pública y del Estado de 2009 carecen de un *nomen iuris* para referirse a los decretos con fuerza de ley sobre estados de excepción, sin embargo deben ser denominados decretos por ser el decreto la forma del acto utilizado por el Presidente de la República para manifestar su voluntad (Tavares Duarte *et al*, 2009) y deben ser denominados leyes por ejecutar directamente el artículo 164, primer inciso de la Constitución de la República del Ecuador de 2008 y denotar el rango, valor o fuerza legal. Los decretos con fuerza de ley sobre estados de excepción son conceptuados por Tavares Duarte *et al* (2006) como actos normativos de efectos generales con rango legal emitidos por el Presidente de la República en Consejo de Ministros, de conformidad con la Constitución que regulan situaciones de emergencia, eminente necesidad o urgencia.

Los decretos con fuerza de ley sobre estados de excepción, como se señala *ut supra* pertenecen al llamado derecho de crisis y el decreto ley configura su forma ordinaria de legislar según Tajadura Tejada (2021). Sin embargo, el decreto con fuerza de ley sobre estados de excepción no es acto consecuencia del ejercicio de la función legislativa por órgano del Presidente de la República sino que conforma un acto consecuencia del ejercicio de la función de gobierno[3], función típica y propia de los órganos del poder ejecutivo (Soto Hernández y Tavares Duarte, 2001). Brewer Carías (2013: 57) expresa que el presidente de la República "…ejerce la función política, cuando decreta los estados de excepción, y restringe garantías constitucionales".

Los decretos con fuerza de ley sobre estados de excepción son dictados por el Presidente de la República del Ecuador en ejercicio de la función de gobierno o de conducción política referida a: "…fijar las grandes directrices de la orientación política, mediante la gestión de asuntos que afectan los intereses vitales de la comunidad, respecto de su seguridad interna…" (Dromi, 1997: 123). El presidente de la República actúa como soberano y dicta actos de gobierno sometidos a lo establecido en la Constitución de la República del Ecuador de 2008 y solamente al órgano del presidente de la República le está encomendada de forma exclusiva y excluyente esta función por mandato expreso de la Constitución de la República del Ecuador de 2008. Brewer Carías (2013: 57) enfatiza que la característica fundamental de esta función de gobierno o función de conducción política es: "…que está atribuida en la Constitución directamente al presidente de la República, es decir, al nivel superior de los órganos que ejercen el Poder Ejecutivo, no pudiendo otros órganos ejecutivos ejercerla".

3 La función ejecutiva se divide en función de gobierno o de conducción política y función administrativa (Soto Hernández y Tavares Duarte, 2001).

Resulta preciso distinguir los decretos con fuerza de ley sobre estados de excepción de la expresión decretos-leyes de urgencia económica, *nomen iuris* utilizado por la Constitución de la República del Ecuador de 2008 en el artículo 148, cuarto inciso: "Hasta la instalación de la Asamblea Nacional, la presidenta o presidente de la República podrá, previo dictamen favorable de la Corte Constitucional, expedir decretos-leyes de urgencia económica…" (negritas nuestras).

Esta competencia del presidente de la República para dictar decretos-leyes de urgencia económica se realiza en ejercicio de la función legislativa; y también son considerados decretos con fuerza de ley. La Constitución de la República del Ecuador de 2008 prevé dos subtipologías de decretos con fuerza de ley dictados por el presidente de la República: decretos con fuerza de ley sobre estados de excepción en ejercicio de la función de gobierno y decretos con fuerza de ley de urgencia económica en ejercicio de la función legislativa. Ambas subtipologías se insertan en la tipología decretos con fuerza de ley de los gobiernos de iure[4], y se encuentran tipificadas de forma expresa en la Constitución de la República del Ecuador de 2008.

Los decretos con fuerza de ley sobre estados de excepción son sometidos al control abstracto de constitucionalidad por ante la Corte Constitucional del Ecuador de conformidad con el artículo 436, numeral 8 de la Constitución de la República del Ecuador:

> La Corte Constitucional ejercerá, además de las que le confiera la ley, las siguientes atribuciones: … Efectuar de oficio y de modo inmediato el control de constitucionalidad de las declaratorias de los estados de excepción, cuando impliquen la suspensión de derechos constitucionales;

y de conformidad con el artículo 75, numeral 3, literal c de la Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009: "Para ejercer el control abstracto de constitucionalidad, la Corte Constitucional será competente para: …Ejercer el control de constitucionalidad en los siguientes casos: …Decretos que declaran o que se dictan con fundamento en los estados de excepción". Estas normas permiten asignarle a la Corte Constitucional del Ecuador el carácter de:

> …instrumento de control del Ejecutivo y en garante de la preservación de los derechos constitucionales; evitar el ejercicio arbitrario de la potestad presidencial de decretar la excepción resulta ser así, un cometido fundamental que la Constitución asigna a los jueces constitucionales, para la protección de los derechos" (Aguilar Andrade, 64s.)

4 Según Tavares Duarte *et al* (2006) los decretos con fuerza de ley de gobiernos de iure son dictados conforme a derecho en ejercicio de la función legislativa o de la función ejecutiva y la competencia del Presidente de la República para dictarlos resulta indispensable que se encuentre expresamente prevista en la Constitución.

A título de ejemplo, el Decreto Número 1017 que declara el estado de excepción por calamidad pública en todo el territorio nacional, por los casos de coronavirus confirmados y la declaratoria de pandemia de COVID-19 por parte de la Organización Mundial de la Salud, publicado el 17 de marzo de 2020 fue declarado constitucional por la Corte Constitucional del Ecuador (2020a: Sentencia No. 1-20-EE/20).

Conclusión

Los decretos con fuerza de ley sobre estados de excepción de conformidad con la Constitución de la República del Ecuador de 2008 se conceptualizan en los siguientes términos: actos de gobierno de contenido normativo con fuerza, rango o valor legal, dictados exclusivamente por el Presidente de la República en ejecución directa de la Constitución de la República del Ecuador de 2008, por razones de circunstancias excepcionales, tales como agresión, conflicto armado internacional o interno, grave conmoción interna, calamidad pública o desastre natural, de forma discrecional con elementos reglados previstos en la Constitución de la República del Ecuador de 2008, Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional de 2009, Ley de Seguridad Pública y del Estado de 2009 y demás normas de carácter nacional e internacional, en ejercicio propio de la función política o de gobierno, con una vigencia predeterminada de sesenta días, prorrogable por treinta días más, dirigidos a una pluralidad de administrados del territorio nacional o parte de él; con la finalidad de garantizar los derechos subjetivos públicos de los administrados, so pena de restringir o suspender el ejercicio de derechos constitucionales como el derecho a la inviolabilidad de domicilio, derecho a la inviolabilidad de correspondencia, derecho a la libertad de tránsito, derecho de asociación y reunión, y derecho a la libertad de información.

La procedencia de la declaratoria de los estados de excepción por pandemia COVID-19 representa una excepcionalidad normativa dentro de la normalidad institucional-marco del Estado de Derecho-; y obedece su origen a la necesidad inmediata del Estado de solventar una crisis que atenta contra el derecho a la vida y el derecho a la salud de los ciudadanos. Esta crisis coloca en riesgo las condiciones existenciales del Estado: población, territorio y gobierno, debido a la propagación inmediata del coronavirus causante del síndrome respiratorio de Oriente Medio (MERS-CoV) y el Presidente de la República del Ecuador se encuentra en la necesidad de dictar actos de contenido normativo, objeto de control interno -político y jurídico- e internacional, contentivos de medidas de restricción y suspensión de derechos de manera discrecional y con elementos reglados, sustentados en el principio de proporcionalidad, denominados decretos con fuerza de ley sobre estados de excepción. Los actos que declaran los estados de

excepción previstos en la Constitución de la República del Ecuador de 2008 revisten el *nomen* doctrinario decretos con fuerza de ley sobre estados de excepción y por ello, se sugiere al próximo constituyente de la República del Ecuador, el uso expreso del *nomen iuris:* decretos con fuerza de ley sobre estados de excepción para referirse a esta tipología de decreto ley.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 682-698
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

History of formation and development of legal guaranteeing of Pharmacia in Ukraine

DOI: https://doi.org/10.46398/cuestpol.4176.40

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Abstract

The purpose of the article was to characterize the processes related to the genesis of the legal guarantee of the Ukrainian pharmacy. The methodological basis meant a set of general scientific and special legal methods of scientific knowledge, the use of which was determined by the purpose, objectives and specifics of the subject. It has been concluded that the emergence and formation of the legal guarantee of pharmacy has ancient origins, but its development is taking place at the present time, as new standards of Ukrainian pharmacy are still being formed. Four stages in the formation of pharmaceutical relations have been distinguished. It has been emphasized that the current state of the legal guarantee of pharmacy begins its development from the moment when Ukraine gained independence. That led to the emergence of new forms of economic management within the pharmacy, which affected its formation of legal guarantee. In particular, it was necessary to create the system of state control over the quality of medicines. The processes of globalization of the markets of production and sale of medicines required the updating of technologies for the production of drugs by domestic manufacturers.

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Recibido el 10/10/22 Aceptado el 25/12/22

Keywords: pharmaceutical area; pharmaceutical business; pharmaceutical legal relations; health sector; legal guarantee.

Historia de la formación y desarrollo del soporte legal de la farmacia en Ucrania

Resumen

El propósito del artículo fue caracterizar los procesos relacionados con la génesis de la garantía legal de la farmacia ucraniana. La base metodológica significo un conjunto de métodos científicos generales y legales especiales del conocimiento científico, cuyo uso estuvo determinado por el propósito, los objetivos y las especificidades del tema. Se ha llegado a la conclusión de que el surgimiento y la formación de la garantía legal de la farmacia tiene orígenes antiguos, pero su desarrollo se está produciendo en la actualidad, ya que todavía se están formando nuevos estándares de la farmacia ucraniana. Se han distinguido cuatro etapas en la formación de las relaciones farmacéuticas. Se ha enfatizado que el estado actual de la garantía legal de la farmacia comienza su desarrollo desde el momento en que Ucrania obtuvo la independencia. Eso llevó al surgimiento de nuevas formas de gestión económica dentro de la farmacia, lo que afectó su formación de garantía legal. En particular, era necesario crear el sistema de control estatal sobre la calidad de los medicamentos. Los procesos de globalización de los mercados de producción y venta de medicamentos requirieron la actualización de las tecnologías para la producción de fármacos por parte de los fabricantes nacionales.

Palabras clave: área farmacéutica; negocio farmacéutico; relaciones jurídicas farmacéuticas; sector salud; garantía jurídica.

Introduction

Pharmaceutical activities have a long history. It is due to the fact that Pharmacia is a systemic entity that covers phenomena of different content. In particular, we are talking about the development and manufacture of medicines, their sale through specialized institutions, the training of pharmacists, pharmaceutical science and pharmaceutical legislation.

Therefore, the formation and development of Pharmacia as a legal phenomenon includes such phenomena as the actual occurrence of medicines, their use and the processes of legal regulation of pharmaceutical

relations, the formation of the system of state government agencies in the pharmaceutical sector.

One of the first pharmaceutical reference books that pointed to the independence of pharmaceutical activity was Sushruta Samhita, an Indian Ayurvedic treatise of the VI century B.C. There were also Sumerian cuneiform clay tablets (end of the VI century B.C. – early II century B.C.) containing recipes for medicine (History of pharmacy, 2021). Pharmaceutical activity actively developed in the Ancient Egypt. The papyri found testify to the development and use of medicines. For example, the Ebers Papyrus describes 811 recipes for medicinal products, where many of them consist of 5-13 components, and one recipe includes 37 ingredients (Guzev, 2017).

Pharmaceutical activity was developed even more intensively over time, and the ancient Roman physician Dioscorides Pedanius was the first to single out medicinal substances as a separate area of medical knowledge in the I century A.D. At the same time, he provided a complete description of all known medicines in his work "Hospital Remedies". The physician and philosopher Claudius Galen (131-201 A.D.) also made a significant contribution to the emergence of pharmacia.

He was the first who pointed out that a pharmacia is a place where medicines are both stored and produced (Ohar *et al*., 2011). Despite the scientific approach to the discovery and use of medicinal products, this area of activity was one of the most mysterious for human beings. Therefore, both alchemists and monks, who opened pharmacies at monasteries, were involved in that activities.

Pharmaceutical specialty was first singled out in 1178 in France. It was from this time that the first pharmacies began to open. At the same time, the pharmacist simultaneously performed the function of a therapist and a pharmacist. Pharmaceutical education emerged in the XIV century in European countries. The first public pharmacies emerged in 1490 on the territory of modern Ukraine, and the first private pharmacies appeared in 1578 in Lutsk.

Their legal regulation raised simultaneously with the actual formation of pharmaceutical relations, in particular, the Herbalist's Charter adopted in 1543 in England (Flannery, 2001). This indicates the relevance of the research of scientific issues in the field of pharmacia, which are directly related not only to the development of a segment of the state economy, public administration of the pharmaceutical sector, but also to the fundamental human right to life and health care (Teremetskyi and Khovpun, 2020).

The *purpose* of the article is to study and characterize the processes related to the emergence, formation and development of legal guaranteeing of pharmacia in Ukraine. The main *objective* is to reveal the genesis of the legal guaranteeing of pharmacia in Ukraine and its role in improving the

provision of the country's population with affordable and most necessary medicines in the course of implementing the medical reform.

1. Methodology of the study

Theoretical basis of the article is the scientific achievements of national and foreign scholars in various branch and related sciences. The empirical basis was certain provisions of the Constitution of Ukraine, the Association Agreement between Ukraine and the EU, international legal acts and legislation of Ukraine regulating relations in the healthcare sector in general and pharmacia in particular.

The methodological basis of the article is a set of general scientific and special legal methods of scientific cognition, whose use is determined by the purpose, objectives, specifics of the subject matter and object of the research.

Thus, the dialectical method was used to clarify the current status of legal regulation of relations in the field of pharmacy, as well as to determine the perspectives for its further development and improvement. The historical and legal method was used to study the origin, formation and development of legal guaranteeing of pharmacia in Ukraine.

Theoretical provisions of the article were formulated with the help of the formal and logical method. The comparative and legal method, as well as the method of structural and functional analysis made it possible to distinguish and analyze the various stages for the formation and development of legal relations that arose in the field of pharmacia in Ukraine.

The application of the method of legal modeling allowed developing a number of suggestions aimed at improving scientific views on the optimization of legal relations in the field of pharmacia. The axiological method was used in determining the importance and value of legal regulation of pharmacia for the vital activity of Ukrainian society, as well as the formation of new standards for the development of Ukrainian pharmacia in the context of European integration. Generalization and forecasting methods were used to formulate the conclusions to the article.

2. Results and Discussion

2.1. Origin of legal guaranteeing of Ukrainian pharmacia

We believe that it is advisable to consider pharmacia as a legal phenomenon not from ancient times, but from the moment of the

emergence of systemic pharmaceutical activity, which led to the need for its legal regulation. Moreover, legal guaranteeing of pharmacia in Ukraine has a long retrospective.

Thus, the pharmacy ordination "Lekta digna" was introduced in Lviv in 1609. This document defined the rights and obligations of pharmacists. The King Sigismund III approved the Charter of the Lviv Pharmacy Workshop (Perfumery Workshop) in February 1611, which, in particular, determined responsibility and limited competition in the pharmacy business (Fedushchak, 2011).

The indicated facts emphasize that legal guaranteeing of Ukrainian pharmacia was formed along with the development of pharmacology, the formation of a pharmacist profession. It is due to the fact that the free functioning of pharmaceutical activities without an element of public provision is practically impossible, since pharmacia is directly related to human life and health.

Legal guaranteeing of pharmacia has gradually expanded with the development of human civilization. It is evidenced by the following historical facts. Thus, the fiundations of pharmacological science in Ukraine were laid at the Kiev-Mohyla Academy in 1682-1817. A graduate of this Academy N. Ambodyk wrote the first textbook on pharmacology and pharmacognosy called "Medical Speech, or Description of Medicinal Plants", where he systematized information about medicinal plants.

The pharmacist H. Ventsel started the first private pharmacy in 1810 in Kharkiv, which was included in the "Russian Medical List". Its activities were regulated by the Pharmaceutical Charter of 1789. It is noteworthy that permission to work in a pharmacy was granted by the Minister of Internal Affairs after passing the exam by a pharmacist at the Department of Medical Speech, Pharmacy and Medical Literature of Kharkiv University. Due to a systematic approach to the development of legal guaranteeing of pharmacia in Ukraine there were 1067 pharmacies as of 1913, including 714 rural and 353 urban ones, and there were already 1096 pharmacies in 1927 (Borishchuk *et al.*, 2014).

A professional direction – pharmaceutical activity has begun to be formed along with the opening of pharmacies. There was a tendency at the end of the XIX century in increasing the number of people wishing to receive a pharmaceutical education. Thus, the Department of Pharmacology at Academician O.O. Bohomolets Kyiv Medical Institute was founded in 1842, where the general problems of pharmacology were studied. It was opened at St. Volodymyr University under the title "Medical Veshchestvosloviie with a Recipe".

Not more than 5 people per year received the title of pharmacist and 10-15 people became pharmacy assistants at Kharkiv University in the 1860s.

Kharkiv University trained 30 pharmacists and 31 pharmacy assistants in 1872, in 1874 – 32 pharmacists and 26 pharmacy assistants, in 1877 – 16 pharmacists and 38 pharmacy assistants. 700 pharmacists were trained on the basis of the pharmaceutical laboratory of Kharkiv University in 1916 (Prokopenko *et al*., 2015).

2.2. Stages of formation and development of pharmacia on the territory of modern Ukraine

Two interrelated processes took place simultaneously in the Soviet period of the formation of pharmacia (1920-1923): the withdrawal of the private sector of pharmacies from civil circulation (by nationalization on the basis of the Decree of the Council of People's Commissars of the Ukrainian SSR "On the nationalization of the pharmacy business" in 1920) and the development of legal guaranteeing for pharmaceutical activities (the Pharmacy Department was created under the People's Commissariat of Health of the Ukrainian SSR, which was in charge of the pharmacy personnel and the pharmaceutical subdivision of the Health Department of the provincial executive committee including the management of the pharmacy warehouse, as well as the control and analytical laboratory).

The activity for the production of medicines arose directly from the moment of the formation of management activity. "Krasnaya Zvezda" Chemical Pharmaceutical Plant was launched in Kharkiv in 1923, the branch of the Ukrainian Institute of Experimental Endocrinology was founded in Kyiv in 1930, which began to produce medicines since 1932 (today it is the well-known pharmaceutical company "Darnitsa"). The Kyiv Vitamin Plant hs begun its work since 1937. The artel named after Kirov was registered in 1947, which was transformed into the Borshchahovskyi chemical-pharmaceutical plant in 1957 (Illiashenko, 2016).

Due to the systematic development of the pharmaceutical industry Ukraine, among other Soviet Republics, was second in terms of drug production. The country produced about 30% of all pharmaceutical products in the state, which represented 800 types of drugs. Despite this situation, industrial production had difficulties after Ukraine gained independence. "Enterprises experienced an acute shortage of raw materials in the middle of 1992. Production of more than 50 items of vital medicinal products was discontinued. The level of provision of medical institutions and the population with them was decreased to 35%" (Chernykh, 2002).

In order to overcome the critical state that arose in the pharmaceutical industry in 1992, the Comprehensive Program for the Development of the Medical, Veterinary and Microbiological Industry, Improvement of Providing the Population and the Needs of Livestock Farming with Medicinal Products was approved by the Resolution of the Cabinet of Ministers (hereinafter referred to as the Cabinet of Ministers) of Ukraine.

The enterprises for the manufacture of medicinal products were re-equipped according to this Program, and the production of semi-finished products was launched. The Pharmacological and Pharmacopeial Committees, the State Inspectorate for Quality Control over Medicinal Products were formed.

That contributed to the renewal of the pharmaceutical sector of the economy. "In particular, the production of 120 drugs and prophylactic agents that were not previously produced in Ukraine was mastered from 1992 to 1996, where 10 of them were fundamentally new" (Chernykh, 2002: 3). Thus, the system of public administration entities in the field of circulation of medicinal products was created during this period.

The State Committee of Ukraine for the chemical, petrochemical industry and medicinal products was established in 1991, which was the central government agency subordinated to the Cabinet of Ministers of Ukraine.

Its activities were aimed at organizing an independent chemical cycle in Ukraine, which assisted in producing drug ingredients. The Pharmacopoeia Center was established in 1992, whose task was to develop national standards for medicinal products.

The State Committee for the Medical and Microbiological Industry was established in 1993, whose powers include: performing tasks aimed at improving the provision of the population and the needs of animal agriculture with medicinal products, medical and veterinary equipment; solution of issues of providing the industry with material and technical resources; implementation of a unified scientific, technical and investment policy and coordination of foreign economic activity in the field of medical and microbiological industries.

The enterprises and organizations of the national form of ownership, which were part of the liquidated concern "Ukrmedbioprom", were transferred to the sphere of its management. The system of legal guaranteeing for pharmacia was developed due to its activities, in particular, the system for managing the pharmaceutical industry and the sale of medicines.

Ukraine adopted the fundamental law of the pharmaceutical sector "On Medicinal Products" in 1996. This law established legal regulation of relations associated with the creation, registration, production, quality control and sale of medicinal products, defined the rights and obligations of enterprises, institutions, organizations and citizens, as well as the powers of state authorities and officials in this area (On Medicinal Products, 1996). It was also determined that the management of pharmacy was entrusted to the Ministry of Health of Ukraine, the State Committee of Ukraine for the Medical and Microbiological Industry and specially authorized state agencies.

Summarizing it should be noted that the next stage of the formation and development of legal guaranteeing of pharmaceutical legal relations was formed in 1991-1996, which we offer to name: "The emergence of independent Ukrainian state agencies for legal guaranteeing of pharmaceutical legal relations and the creation of the pharmaceutical sector in the economy of independent Ukraine".

The next stage in the formation and development of legal guaranteeing of pharmacia was marked by the adoption of the Comprehensive Program for the Development of the Medical Industry for 1997-2003 approved by the Resolution of the Cabinet of Ministers of Ukraine in 1996, which determined the development of medical equipment and the production of medicinal products.

The Program fixed the directions and financing for the development of production bases for the finished medicinal products and their substances. Pharmaceutical production was expanded in the state due to the implementation of that Program. Thus, about 800 types of medicinal products were produced in 1992, then more than 4000 were produced in 2005 (Almakaieva, 2011).

The Resolution of the Cabinet of Ministers of Ukraine "On streamlining the activities of pharmacies and approving the Rules for the retail sale of medicinal products" was adopted in 1997. According to that Resolution, the Ministry of Internal Affairs, the Licensing Chamber, the State Tax Administration, the State Committee for Standardization, Metrology and Certification, the State Inspectorate for Quality Control of Medicinal Products, the Council of Ministers of the Autonomous Republic of Crimea, the regional, Kyiv and Sevastopol city state administrations were charged with the obligation to strengthen control over the sale of medicinal products.

To take measures on preventing trade in places not specified in the license, to prosecute persons violating the rules for the sale of medicinal products in accordance with the law. Having analyzed the content of that Resolution, one can argue that there was a practice of distributing medicinal products outside pharmacies at the time of its adoption, as well as massive falsification of medicines. Overcoming those violations became possible due to the active development of legal guaranteeing of pharmacia.

At the same time, agencies for monitoring the quality of medicinal products were created. Thus, the State Inspectorate for Quality Control of Medicinal Products of the Ministry of Health (hereinafter referred to as the Ministry of Health) of Ukraine began its functioning in accordance with the Decree of the Cabinet of Ministers of Ukraine "On State Control over the Quality of Medicinal Products".

The process of providing medicines has received a new development due to that direction. The order of the General Directorate of Health,

Pharmacy Association "On the regulation of free and preferential provision of medicinal products on physicians' prescription in case of outpatient treatment" was adopted in 1999. It laid the foundation for the existence of the system of affordable medicinal products for the population.

There were also changes in the system of pharmaceutical legal relations management in 1999, in particular, the Resolution of the Cabinet of Ministers of Ukraine "Issues of the Committee for the Medical and Microbiological Industry" was adopted. It allowed the Committee for the Medical and Microbiological Industry to have 5 deputies, including one first deputy chairman and deputy chairman of the Committee – the director of the state enterprise "Expert Center of the Committee of the Medical and Microbiological Industry", as well as the board of eleven people.

The National Agency for Controlling the Quality and Safety of Food, Medicinal Products and Medical Devices was established in the same year, as a result of which the Coordinating Expert Committee on Food Quality and Safety, the Committee on Hygienic Regulation, the Committee on Immunobiological drugs, the Committee for New Medical Technology, the Pharmacopoeia Committee, the Bureau of Registration of Medicines and the State Inspectorate for Quality Control of Medicines were liquidated. The above indicates the ongoing development of the pharmacia management system and the optimization of the management of the pharmaceutical sector.

The Decree of the President of Ukraine of 2000 approved the Concept for the Development of Public Health in Ukraine, which determined the priority of the development of medical and pharmaceutical industries. The Health Departments of regional state administrations were entrusted with control over the quality and sales of medicinal products and medical devices. It was also determined that the public health care sector should provide the population with the most necessary medicinal products (Concept for the Development of Public Health in Ukraine, 2000).

2.3. Development of pharmaceutical activity and formation of special state agencies in this area

The legal guaranteeing of pharmacia continued to be formed along with the development of pharmaceutical activities, in particular, through the formation of special state agencies in this area. Thus, the Resolution of the Cabinet of Ministers of Ukraine "On the formation of the State Department for Quality Control, Safety and Production of Medicinal Products and Medical Devices" was adopted in 2000.

The Department managed and controlled the quality, safety and production of medicinal products including active substances, excipients, medicinal plant materials and medical cosmetics, immunobiological

preparations, biomaterials, medical equipment and medical products (On the approval of the Provisions on the State Department of Control, 2020).

The State Pharmacopoeia of Ukraine has launched its activities in Ukraine since the beginning of October 2001 – the first national pharmacopoeia among the CIS countries, which had been developed since 1998. That document established national standards for the development, manufacture of medicinal products, their testing and quality compliance. The quality control system of medicinal products has received the basis for further development in the direction of the safety of using medicines due to this, and hence the support of public health.

Summing up the results of the development of pharmacia from 1997 to 2003 within the framework of the implementation of the Comprehensive Program for the Development of the Medical Industry for 1997–2003, it is advisable to single out another stage in the formation of legal guaranteeing of pharmaceutical legal relations in 1997–2003 and name it as "Comprehensive development of pharmaceutical production and control over the quality and safety of medicinal products".

The next stage in the formation and development of legal guaranteeing of pharmacia began in 2003. The State Program for the Development of Industry for 2003-2011 was adopted in July of the same year, which was approved by the Resolution of the Cabinet of Ministers of Ukraine. It laid down the mechanisms for the formation of competition among the entities of production, in particular, in the pharmaceutical sector of the economy.

Achieving this became possible due to the principles laid down for the modernization of existing enterprises, the development of new technologies for the development of medicinal products, changes in the product certification system and production standards. The basis for that was both changes in ideas, business standards and the renewal of legal guaranteeing of pharmacia, which began to be transformed from a control system into a support system and creation of favourable conditions for the development of the pharmaceutical sector of the economy.

The State Service for Medicinal Products and Medical Devices was established in 2003, which became the successor of the State Department for Quality Control, Safety and Production of Medicinal Products and Medical Devices. It should be noted that constant changes in the pharmacy management system lead to destabilization of legal guaranteeing statics.

The procedures for the sale of medicinal products are improved simultaneously with the renewal of the pharmacia management system. Thus, new Rules for the sale of medicinal products in pharmacies approved by the Resolution of the Cabinet of Ministers of Ukraine have come into effect since 2004 (Rules of trade in medicinal products in drugstores, 2004). Wholesale and retail trade in medicinal products without a license was

prohibited according to these Rules. Only medicines registered in Ukraine could be sold. The provisions of these Rules have established additional requirements for entrepreneurial activities in the field of pharmacia, as well as for the quality of medicines.

The Procedure for the state registration (re-registration) of medicinal products and the amount of the fee for their state registration (re-registration) approved by the Resolution of the Cabinet of Ministers of Ukraine as of May 26, 2005 was additionally adopted in order to implement these Rules (On the approval of the Procedure of state registration (re-registration) of medicinal products, 2005).

The state registration of a medicinal product according to this Procedure is carried out by the Ministry of Health of Ukraine on the basis of an application and the results of an examination of registration materials for such a product, carried out by the State Expert Center of the Ministry of Health of Ukraine. This provision was justified, it made it possible to improve the quality of medicinal products, to establish the system for ensuring pharmaceutical activities.

An important Resolution of the Cabinet of Ministers of Ukraine "On Measures to Stabilize Prices for Medicines" was adopted in October 2008. The state according to that Resolution establishes the system for stabilizing prices at the pharmaceutical market, in particular, it determines marginal supply and marketing allowances in the amount of not more than 10% charged to wholesale selling price, taking into account taxes and fees, and marginal trade (retail) allowances (On measures to stabilize the prices for medicinal products, 2008).

Price stabilization is one of the most important forms of legal guaranteeing for pharmacia, since it is aimed at creating the system of access to medicines for the population with the purpose to ensure the public health of the country's population.

The State Inspectorate for Quality Control of Medicinal Products under the Ministry of Health of Ukraine has begun its work since 2010. Control over the quality of medicines was carried out by checking the compliance by business entities with the requirements of the legislation on the quality of medicinal products by using laboratory analysis of the quality of medicines, visual control, verification of related documents. In general, regulation on the selection of medicine samples to check their quality has been introduced since 2010.

Summing up, we should define that the stage of formation of legal guaranteeing of pharmaceutical legal relations from 2003 to 2011 can be named as "The formation of legal guaranteeing of pharmacia and stabilization of prices in the pharmaceutical market".

A new stage in the formation and development of legal guaranteeing of pharmaceutical legal relations has begun to be formed since 2011, which was associated with providing the population with affordable medicines as part of implementing medical reform. Thus, the Ministry of Health of Ukraine announced in 2011 the publication of the draft Concept of the state target-oriented program "Development of import-substituting industries in Ukraine and substitution of imported medicinal products with domestic ones including biotechnological drugs and vaccines for 2011-2021" (Draft Concept of the State Target-Oriented Program, 2011). The above Concept testified to an attempt of creating an import-substituting production of medicines in Ukraine, which would make it possible to make medicines more accessible to the population.

The Government of Ukraine approved in 2013 the Concept of the National Target-Oriented Economic Program for the Development of Industry for the period up to 2020, the purpose of which is:

> A comprehensive solution of problematic issues for the functioning of the industrial sector of the Ukrainian economy by developing an organizational and economic mechanism and attracting resources to implement the tasks of structural and technological modernization of domestic industry in the direction of increasing the share of high-tech activities in the volume of production and exports, meeting the needs of the domestic market for products of own production, increasing employment and thereby improving the well-being of the population (The Cabinet of Ministers of Ukraine, 2013: 06).

National producers received tax benefits and the opportunity to introduce science-intensive technologies as innovations due to the adoption of this Concept.

The drug quality control system continues to be improved along with the support of the national pharmaceutical manufacturers. Thus, an updated Procedure for quality control of medicinal products during wholesale and retail trade was approved in 2014. The conduct of input state control and quality control of medicinal products by business entities having licenses to carry out economic activities for the wholesale and retail trade in medicinal products has been determined in accordance with that Procedure.

The purpose of this control is to detect trade in low-quality medicinal products, unregistered drugs in Ukraine, narcotic drugs, etc. (On the approval of the Procedure to control over the quality of medicinal products, 2014).

2.4. Impact of medical reform on legal provision of pharmacia in Ukraine

The medical reform began in Ukraine in 2016, which was directly related to the legal guaranteeing of pharmacia. In this regard the Cabinet

of Ministers of Ukraine approved the Concept for the Development of the Public Health System, the expected result of which (among others) was the increase in the medical literacy of the population by counteracting the uncontrolled and irrational use of medicinal products.

Besides, the reform of medicine also meant providing the population with access to medicinal products and medical care. It is to achieve this result the Resolution of the Cabinet of Ministers of Ukraine "On ensuring the availability of medicinal products" was adopted in March 2017 (On ensuring the availability of medicinal products, 2017). Patients with cardiovascular diseases, bronchial asthma or type II diabetes were able to receive free of charge medicines or with a small additional payment.

The Ministry of Health of Ukraine in order to implement this project has developed the Register of affordable medicines. In this case two factors were taken into account: the prevalence of the disease among the population and the production of medicines by national manufacturers. That approach led to the receipt of state assistance to citizens and pharmaceutical manufacturers.

In addition to the drug availability program, the program of state guarantees of medical care for the population began to be formed, which also provided a list of medicinal products, where the state guarantees to patients the full payment for their provision at the expense of the State Budget of Ukraine according to the tariff for the prevention, diagnosis, treatment and rehabilitation related to diseases, injuries, poisonings and pathological conditions, as well as in regard to pregnancy and childbirth (On State Financial Guarantees of Medical Care for the Population, Art. 1).

The content of the activity of drug sales establishments has also been changed as a result of the implementation of the medical reform. Thus, the provisions of the 2001 WHO Guidelines for the Development and Implementation of Standards of Good Pharmacy Practice (Pharmaceutical Services) – GPP began to be implemented in pharmaceutical practice. In particular, the pharmaceutical establishment should help to ensure the correct use of prescripted drugs and medical products, as well as to prevent self-medication.

To achieve a positive effect from the implementation of medical reform, it was necessary to amend the legal guaranteeing of pharmacia. The Pharmaceutical Directorate has been established in the structure of the Ministry of Health of Ukraine since 2018 for this purpose. It includes the Expert Group on Market Admission of Medicinal Products, which ensures the formation and implementation of the state policy in the field of creation, production, quality control and sale of medicinal products, medical immunobiological preparations, in the field of narcotic drugs, psychotropic substances circulation (Regulations on the Expert Group, 2018).

Changes in the administrative and legal guaranteeing of pharmacia in 2020 were due to the fight against the COVID-19 pandemic. One of the directions was the development of the possibility of electronic retail trade in medicinal products. The Resolution of the Verkhovna Rada of Ukraine "On the adoption of the draft Law of Ukraine on amending the Art. 19 of the Law of Ukraine "On Medicinal Products" as a basis regarding the implementation of electronic retail trade in medicinal products" was adopted for this purpose. The Law was eventually adopted.

Conclusion

Summarizing the above, we note that the formation and development of legal guaranteeing of pharmacia has ancient origins. It has been established that the systemic pharmaceutical activity was formed, its legal regulation was formalized, state management of the pharmaceutical sector was launched in Ukraine in the XVIII century. The current status of legal guaranteeing of pharmacia begins its retrospective development from the moment Ukraine gained independence.

That led to the emergence of new forms of economic management in pharmacia, which affected the formation of its legal guaranteeing. In particular, there was a need to create the system of state control over the quality of medicinal products. Globalization processes at the markets for the production and sale of medicinal products required updating the technologies for the production of medicines by domestic manufacturers. All that influenced the development of the legal guaranteeing of pharmacia.

It has been emphasized that the state policy, as well as the model of implementation of pharmaceutical legal relations available in the country plays an important role in the process of establishing the legal guaranteeing of pharmaceutical legal relations. The formation and development of the specified relations is characterized by the gradual emergence of medicines, pharmacies, the production of medicines, state regulation of the pharmacy business.

We believe that the formation of the legal guaranteeing of pharmaceutical legal relations continues due to the formation of new standards for the development of Ukrainian pharmacia. Based on the foregoing, we can suppose the following stages for the formation and development of legal guaranteeing of pharmacia:

1. from 1991 to 1996 – the emergence of independent Ukrainian state agencies for legal guaranteeing of pharmaceutical legal relations and the creation of the pharmaceutical sector in the economy of independent Ukraine;

2. from 1997 to 2003 – comprehensive development of pharmaceutical production and control over the quality and safety of medicinal products;
3. from 2003 to 2011 – the formation of legal guaranteeing of pharmacia and the stabilization of prices at the pharmaceutical market;
4. from 2011 to the present day – the formation of legal guaranteeing for the availability of medicinal products for the population of Ukraine.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 699-719
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Problems of legal guarantee of educational needs of national minorities

DOI: https://doi.org/10.46398/cuestpol.4176.41

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Abstract

The aim of this study was to analyze the current international agreements, the Ukrainian legislation on ensuring the educational needs of its national minorities, the observance of their educational rights and their compliance with international standards. The study is conducted on the example of the educational needs of Gypsies, Poles and Hungarians. The materials and methods used made it possible to carry out analytical and research work, identify shortcomings and offer clear proposals for the legal regulation of the educational provision of national minorities. Also, a questionnaire survey was conducted among representatives of national minorities studying in educational institutions in Ukraine. The system of general philosophical and scientific methods was chosen as a methodological basis. It is concluded that, in general, Ukrainian legislation complies with international and European standards of minority education, because it contains rules and guarantees to ensure full understanding of the native language of the national minority and, in the broadest sense, the legislator managed to find a balance between national, moral and cultural interests of these groups of Ukrainian citizens.

Keywords: educational needs; national minorities; educational institutions; inclusive legislation; ethnopolitics.

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Recibido el 14/11/22 Aceptado el 08/01/23

Problemas de la garantía legal de las necesidades educativas de las minorías nacionales

Resumen

El objetivo de este estudio fue analizar los acuerdos internacionales actuales, la legislación de Ucrania en cuanto a la garantía de las necesidades educativas de sus minorías nacionales, la observancia de sus derechos educativos y su conformidad con las normas internacionales. El estudio se realiza a partir del ejemplo de las necesidades educativas de los gitanos, los polacos y los húngaros. Los materiales y métodos utilizados permitieron realizar un trabajo de análisis e investigación, identificar las deficiencias y ofrecer propuestas claras para la regulación legal de la oferta educativa de las minorías nacionales. También, se realizó una encuesta por cuestionario entre los representantes de las minorías nacionales que estudian en centros educativos de Ucrania. Se eligió como base metodológica el sistema de métodos filosóficos y científicos generales. Se concluye que, en general, la legislación ucraniana cumple con las normas internacionales y europeas de la educación de las minorías, porque contiene normas y garantías para asegurar la plena comprensión de la lengua materna de la minoría nacional y, en el sentido más amplio, el legislador logró encontrar un equilibrio entre los intereses nacionales, morales y culturales de estos grupos de ciudadanos de Ucrania.

Palabras clave: necesidades educativas; minorías nacionales; instituciones educativas; legislación inclusiva; etnopolítica.

Introduction

The modern world is globally integrated, migration processes are intensifying, and citizenship is no longer a universal, stable characteristic of the individual. Therefore, the issue of educational space of ethnic minorities in the era of global changes and state power transformations is especially relevant.

Of additional interest is the problem of implementing the educational rights of ethnic minorities, legislative consolidation, establishment of measures to ensure and protect them, and the formation of a system of guarantees for their implementation. This is due to the fact that the viability of national minorities is a key issue in preserving the ethnic and cultural diversity of the state. The formation of this group of citizens has its own characteristics and requires a special system to ensure it.

1. Research Problem

Proper legal policy in the sphere of national minorities defines a weighty criterion of democratic state, is an indicator of the tolerance of society and compliance with European values of civilized nations. The axiological component determines the praxiological importance of having a holistic mechanism for ensuring the rights of national minorities. At the same time, there is a dissonance between the absolutization of the rights of national minorities and the tendencies of protecting national state interests, ensuring territorial integrity and citizenship. The problem of the research is exactly the legal provision of educational needs of national minorities, how in Ukraine the right of national minorities to education is legally observed. The study focuses on such national minorities as Roma, Poles, Hungarians, and Russians.

The legal provision of their extracurricular, school, vocational and technical education is studied, the main problems are identified. The purpose of this study is to analyze the existing international agreements, Ukrainian legislation to ensure the educational needs of national minorities and the observance of their educational rights.

The study reveals the issues of correlation of national and international legislation, peculiarities of obtaining education by representatives of national minorities, resolution of conflict situations on provision of educational rights of national minorities, gaps in Ukrainian legislation and ways of their resolution, issues of international cooperation with foreign partners to solve problematic issues of ensuring educational rights of national minorities, Romanian legislation in the field of ensuring educational needs of ethnic minorities was analyzed, the level of general satisfaction of educational needs of ethnic minorities, the impact of the pandemic on the educational provision of ethnic minorities was analyzed.

2. Study methods

2.1. General Background

To implement the objectives of the study was carried out by certain stages in a combination of analysis of theoretical material, legislation, and performance of practical tasks. Such stages were: searching for state and international legislation, searching for legislation of other countries, scientific literature; analysis of the above normative legal acts and scientific sources; comparing and comparing national legislation of Ukraine with international normative legal acts; revealing problems in national legislation in the sphere of national minorities education; conducting a survey among national minorities population; providing suggestions for solving problems.

The empirical basis of the research was questionnaire surveys of such national minority groups as Roma, Poles, Hungarians, Slovaks, and Russians. The system of philosophical, general scientific and special scientific methods was chosen as the methodological basis. The humanistic method, which establishes the axiological determinants of the role and legal nature of the status of national minorities in the educational sphere, was chosen as the main method. The integrated method allows combining the knowledge and practice of education, pedagogy, public administration, international relations, and law.

The synergetic methodology will be useful for determining the current bifurcation point of educational rights of representatives of national minorities and external paradigms of globalization influencing them. The methodology of the author's survey made it possible to analyze the real situation in the field of ensuring educational competence of representatives of national minorities.

3. Study results

Identification of problematic issues in the system of providing educational services to national minorities, positive aspects of interaction, taking into account the holistic mechanism of education in Ukraine is a relevant doctrinal and practical issue.

The main ideology of the state policy regarding national minorities should be the harmonization of interests so that, on the one hand, citizens have the opportunity to continue their national and spontaneous traditions, to learn their native language, to pass on to future generations, on the other hand, attention should also be paid to the adaptation of traditional culture of national minorities to the requirements of a globalized modern society Through an author survey of national minorities established

The right to study the language of national minorities in Ukraine is guaranteed and ensured at many levels, including both state and communal property institutions and public institutions (national and cultural societies). Such a policy defines a bilingual educational environment, where the language of national minorities may be taught alongside the national language of instruction. In general, the national legislation complies with international and European standards of national minority education, contains norms and guarantees to ensure full understanding of the native language of the national minority, and in the broadest sense the lawmaker managed to find a balance.

Between the national and cultural interests of these groups of citizens of Ukraine. The shortcomings of the lawmaking regulation of the covered

problem in Ukraine, in our opinion, are as follows. Discrimination of representatives of national minorities on the basis of their origin. Absence in the Law on Extracurricular Education of a reference to the realization of the right to education for representatives of national minorities. Ukrainian legislation does not contain any peculiarities of acquiring knowledge and skills of an appropriate level of education.

The right of national minorities to establish private educational and training institutions is not stipulated by national norms, so discussions on this issue may continue. It is recommended to bring Ukrainian legislation into compliance with international standards. The experience of Romania in the legal regulation of the educational needs of national minorities is analyzed. Regarding the experience of Romania, in addition, we propose to apply to the Ukrainian legislation a norm introducing a person, a representative of this minority to the management of an educational institution. For Ukraine, this issue is of geopolitical importance.

More than one hundred and thirty national minorities and ethnicities live on its territory. To a greater extent, in analyzing the educational problems of members of national minorities, scholars examine the problems faced by Roma children in education, in particular the issue of possible restrictions for equal access to education as a factor of a significant barrier to quality education.

Sina Van den Bogaert's comprehensive monograph focuses on the problem of segregation in the education of members of the Roma national minority in Europe, focusing on the implementation of public international law of the Framework Convention for the Protection of National Minorities (Framework Convention for the Protection of National Minorities, 1994) Equality 2000/43/EC of the European Union (Van den Bogaert, 2018) (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).

Some achievements focus on the issue of Roma education in individual countries, in particular Bosnia and Herzegovina (Lukenda and Pavlović, 2018), Finland, Sweden, and Norway (Helakorpi *et al*., 2020), the UK (Butterworth, 2019). Valuable for the analysis is a structural review by representatives of the Norwegian school of sociology, which analyzed a total of 151 peer-reviewed research articles published during 1997-2016.

This allowed them to identify a number of problems facing Roma socialization and education: school absence, low academic achievement, socioeconomic problems, cultural differences, invisibility, teacher competence, hostility, segregation, and false policies and activities (Lauritzen and Nodeland, 2018). This review can help raise awareness of the methodology form research questions in minority education.

Much less often scholars focus on the educational needs of members of national minorities in general. In general, the problem is addressed through studies of their legal status, cultural national autonomy, and integration problems in individual countries, in particular in Hungary (Cservák, 2018), Belarus, the Czech Republic, Poland (Grabowska and Łukasz, 2020), Great Britain (Willis, 2020), Ukraine (Toronchuk and Markovskyi, 2018), Hungary, Estonia, Serbia and Russia (Prina *et al.,* 2019), the Visegrad Group V4 of Poland, the Czech Republic, Hungary and Slovakia (Kichera, 2020). The problems of the formation of legal policy regarding the status of national minorities in Ukraine (Tkachenko *et al*., 2021) and its constitutional consolidation are relevant (Karp, 2018).

However, most of these works are of a narrow sectoral nature and do not contain a comprehensive analysis of the system of providing educational services for representatives of national minorities. The problem of ensuring the educational rights of members of national minorities in Ukraine is raised mainly at the level of political rather than scientific discussion. The system of philosophical, general scientific, and special scientific methods was chosen as the methodological basis.

The main method chosen is the humanistic method, which establishes the axiological determinants of the role and legal nature of the status of national minorities in the educational sphere. The integrated method allows combining the knowledge and practice of education, pedagogy, public administration, international relations, and legal science.

The synergetic methodology will be useful in determining the current bifurcation point of educational rights of persons from national minorities and external globalization paradigms affecting them. The author's survey method allowed us to analyze the real state of affairs in the area of educational competence provision for members of national minorities.

The survey was conducted in four schools in Lviv and Uzhgorod (Lyceum No. 45 of the Lviv City Council, which used to be a school with profound study of the Russian language; Lyceum No. 10 named after Saint Mary Magdalene of the Lviv City Council with Polish language teaching; Specialized General Education School No. 4 with profound study of the Slovak language, Uzhgorod and the Mishka Frede Ugrian Grammar School, Uzhgorod).

The classical secondary education institutions chosen for comparison are Lyceum No. 46 and No. 66 of the Lviv City Council. Requirements for respondents: parents from national minorities, two or more children study at the school (the above, in our opinion, will demonstrate a broader picture and allow to disassociate from subjective evaluation of individual character).

The number of respondents in each school - 42 people, sample by the article was not conducted, the majority were mothers. Two people refused to answer during the survey, which did not affect the overall result. The statistical error is no more than 2%. The survey was conducted by filling out questionnaires containing the author's questions about the provision of the educational process in their institution. The questions in the questionnaire were structured so that respondents could rate the level on a five-point scale, where 1 point is very poor, 2 points are poor, 3 points are mediocre, 4 points are sufficient, and 5 points are positive.

Statement of Main Points. Quality education promotes social engagement, economic growth, and innovation. Therefore, the field of education should be the "springboard" that can optimally connect the interests of all groups. National minorities have special interests in the context of preserving traditions, customs, and languages. The latter is a determinant, indicating the belonging of the legal policy of the state, its human-centeredness, and humanism. National minorities, even in states with an advanced level of education and law, remain at a disadvantage, often discriminatory.

According to the 2018 U.S. Education Report, some groups have traditionally always struggled with learning, among them students of national, ethnic, and racial groups, and for this purpose, the state operates 4,360 specialized educational institutions (The National Center for Education, 2019).

Research in the United Kingdom in unison notes that Roma students in this country have significantly lower levels of education than their peers (Butterworth, 2019). The demographic process is variable, national minorities exist in every state and their numbers are not at a steady level. Global transformations have intensified trends of increasing numbers of members of the population studied.

The second factor in the growth of national minorities is the rapid increase in the number of refugees. According to the latest UN report on migration issues, 84 million people around the world were displaced by persecution, conflict, violence, human rights violations, or other serious events in 2020. In Venezuela alone, 73% of the population has become refugees to neighboring countries (UNHCR, 2020).

European Union states are currently experiencing a new wave of refugees due to the hybrid means of warfare by the unrecognized president of the Republic of Belarus (Koehler and Schneider, 2019). Ratified international acts take precedence over national acts. The issue of the protection of national minorities is regulated by acts of international law, as discussed in previous studies (Czepek and Karska, 2021).

Among international instruments, the first to be mentioned is the Declaration on the Rights of Persons Belonging to National or Ethnic,

Religious and Linguistic Minorities, adopted by UN General Assembly Resolution 47/135 of 18 December 1992. (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992). It only indirectly mentions the activities in the sphere of education that should be guaranteed by the state, with no special attention to the right to education of national minorities.

However, the significance of this act is important because it is the only one at the international level that defines the value of protecting the rights and freedoms of citizens from national minorities.

The main document at the regional European level is the Council of Europe's Framework Convention for the Protection of National Minorities since 1994, to which Ukraine has acceded for three consecutive years. Articles 12 - 14 of this Convention indicate the provision of educational needs of minorities, draws attention to guaranteeing the teaching of native language, studying it in educational institutions, proper training of teachers and aids, as well as the possibility of the existence of private schools for national minorities (The Framework Convention for the Protection of National Minorities, 1994).

There are also regional norms of soft law. In particular, the Organization for Security and Co-operation in Europe issued the Hague Recommendations on the Education Rights of National Minorities, where the key ideology is the requirement for states to find an effective approach to national minority rights in education (Organization for Security and Co-operation in Europe, 1996).

High international standards are developed at the highest level, agreed by many states, and require implementation by countries at the national and local levels. On the constitutional level in Ukraine, Article 53 states that nationals are guaranteed the right to be educated in their native language or to study their native language in state or municipal educational institutions or through national cultural societies (Constitution of Ukraine, 1996).

Such constitutional dogma is typical for many European countries. For example, positive in this sphere is the constitutional norm of Romania, wherein article 32 (3) the right of persons belonging to national minorities to study their native language and their right to education in this language is guaranteed by the state (The Constitution of Romania, 1991).

A general comprehensive document in the sphere of education is the Law of Ukraine "On Education," where Article 7 defines the peculiarities of education for members of national minorities (About education, 2017). This normative act caused the greatest discussion in society and concern on the part of the governments of European states, in particular Poland, Hungary and Romania.

The conflict moved from the domestic to the international level when Hungary blocked the organization of high-level political meetings between Ukraine and NATO (Csernicskó, 2020). The problem is that states have clarified the norm as allowing instruction in a native language along with the national language only for children up to grade 5.

The European Commission for Democracy through Law (Venice Commission), as the Council of Europe's advisory body on constitutional law, in considering the legitimacy of national law, pointed out that an independent state has the right, moreover the duty, to promote the national language, including among citizens belonging to national minorities, and pointed out the shortcomings of the law: the lack of public discussion of the norm with representatives of all national minorities (paragraph 53 of the Opinion). Paragraph 67, 127 of the Opinion pointed out that the law does not need to be amended and that future laws and regulations may correct the inaccuracies (The European Commission for Democracy, 2017).

National legislation should be considered in the context of levels of education. In Article 7 of the Law of Ukraine "On Preschool Education," one of the key tasks is not only to teach children to respect their native language but also to instill a love for the language of ethnic minorities. At the same time, the subordination obligation in Article 36 is also defined for the parents of the child or the persons substituting them (About preschool education, 2001). The Law of Ukraine "On complete general secondary education" (On complete general secondary education, 2020) represents the right to the language of national minorities in the broadest way.

This fact can be explained by its recent update, so the legislator focused on the problematic aspects of legal ethnopolitics in the context of the implementation of international standards and took into account the problems pointed out by the Venice Commission. The key is Article 5 of this Law, which states that in Ukraine the right to study the language of national minorities is guaranteed and ensured at many levels, including both state and communal property institutions, as well as public institutions (national cultural societies). Article 12 of this Law defines the right to create classes (groups) in the language of instruction of national minorities at the request of parents.

Therefore, in general, the shortcomings indicated by the Venice Commission are taken into account in the legislative act on secondary education. The Law of Ukraine "On Higher Education" in paragraph 11 of Article 44 provides the right of a person at will to receive an assignment for external independent evaluation as a means of assessing learning outcomes, the language of the national minority, provided that the training was accordingly carried out in this language (On higher education, 2014).

In general, the national legislation complies with international and European standards for the education of national minorities, contains norms and guarantees of providing a valuable understanding of the native language of the national minority and, in the broadest sense, the lawmaker managed to find a balance between the national and mental and cultural interests of these groups of Ukrainian citizens. The shortcomings of the lawmaking regulation of the covered issue in Ukraine, in our opinion, are as follows.

Discrimination of representatives of national minorities by the characteristic of belonging to the state of origin. Thus para. 6. Article 5 of the Law of Ukraine "On Secondary Education" gives priority rights to persons, belonging to national minorities of Ukraine and whose languages are official languages of the European Union. At the same time, other national minorities are not taken into account. The latter constitute the largest three groups, including in the last census the Russians accounted for 17.3% of the total population, the Belarusians for 0.6%, and the Moldovans for 0.5% respectively (State Statistics Committee of Ukraine, 2001).

The absence in the Law on Out-of-School Education mentions the realization of the right to education for members of national minorities (About Out-of-School Education, 2000).

We negatively assess another current normative act - the Law of Ukraine "On Professional (vocational) Education," which does not contain any specifics of obtaining knowledge and skills at the appropriate educational level (On professional (vocational) education, 1998). The mentioned above predetermines the dissonance of paragraph 5 of Article 7 of the Law of Ukraine "On Education", which determines the right of applicants for professional (vocational) education to study languages of national minorities as a separate discipline.

There is a need to bring Ukrainian legislation into conformity with international and European standards recognized and ratified by Ukraine. The Framework Convention, in Article 13, states that states recognize the right of national minorities to establish their own private educational and training institutions. Such a right is not provided for by national norms, so discussions on this issue may continue.

The practice of applying the experience of foreign states, in particular Romania, in the context of the emphasis on the territorial accessibility of educational institutions for national minorities seems appropriate. Art. 10 (2) of the Romanian Law on National Education (LEGEA national education, 2011) states that in each city or town, educational institutions and educational establishments shall be established and operate with instruction in Romanian language and, if necessary, with instruction in the languages of national minorities, or instruction in the mother tongue in the

nearest town, if possible. (In any town or city, educational institutions and educational establishments with a branch in English and, as the case may be, with a branch in the national minority languages shall be established, or teaching shall be provided in the maternal langua in the nearest town if it is possible).

Moreover, Article 45(7) specifies additional obligations of the state to support pupils who have no opportunity to study in their native language in their town by paying for their travel or by receiving free board and lodging in a boarding school with instruction in the minority language where they receive instruction.

The system of educational needs also includes a network of educational institutions operating in the state and administrative institutions at the state and territorial level, providing management in the field of education. The Ministry of Education and Science ensures the formation and implementation of state policy in the fields of education and science and is the main body in this field among the central bodies of executive power. The Ministry coordinates policy at the level of international cooperation, the activity of which is analyzed in Table 1.

Table No. 01. Measures of international cooperation of the Ministry of Education and Science of Ukraine with foreign partners during 2021 to resolve the problematic issues of ensuring the educational rights of members of national minorities

Countries of cooperation	date	Event title	Problematic issues that were considered
Moldova	18.11. 2021	working group on the interests of the national minority	cooperation in higher education
Hungary	6.05.2021	meeting with representatives of public organizations of Hungarian national minorities	identification of problematic issues in education, peculiarities of creating curricula for Hungarian-language classes
Hungary	21.09.2021, 12.05.2021	Ukrainian-Hungarian interdepartmental working group on education	consultations on the conclusion of a Memorandum of Understanding; preservation of instruction in the Hungarian language in general secondary education
Bulgaria	During August 2021	International summer seminars on Bulgarian language, literature, and culture	preservation of the national identity of the Bulgarian language

Poland	27.10.2021	advisory commission on meeting the educational needs of representatives of the Polish national minority in Ukraine	draft Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on institutions of pre-school, general secondary education in Ukraine, in which the Polish language is studied and classes with instruction in the Polish language function, as well as institutions of pre-school and general secondary education

Source: According to the analysis of the official website of the Ministry of Education and Science of Ukraine (2022).

A network of educational institutions operates to provide for the educational and linguistic needs of members of national minorities. We note that the introduced principle of decentralization of administrative powers in education (Mariuts, 2016) and the autonomy of the educational institution significantly improves the situation because at the local level the problems faced by members of national minorities are more visible. Such principles are characteristic of most European states, clearly defined in the legislation, for example in Romania it is stated in Art. 3 of the Law on National Education.

It is important to point out that after the educational reform the network of educational institutions is not reduced, which we evaluate especially positively. Today there are still functioning secondary education institutions in which teaching is conducted in Polish (4 schools in Lviv region, 2 in Khmelnytsky, and one in Ivano-Frankivsk), but the number of students in them is increasing, despite the general trend of decrease in the number of children in Ukraine. So, as of 2011/2012, there were 746 students in the Lviv region and 929 students in 2020-2021. Altogether during this year at the expense of the state budget about 140 thousand copies of textbooks in Polish were published.

As for representatives of the Hungarian national minority, the situation in 2020-2021 is as follows: there are 110 pre-school institutions with groups and 101 institutions with classes in the Hungarian language. There are 68 institutions of general secondary education with instruction in the Hungarian language. Almost 31 thousand copies of textbooks have been published on state budget funds.

A major challenge for the education sector in any state is the possibility to provide professionals with sufficient professional competence to teach persons belonging to national minorities. Generalization of the analysis of the functioning of higher education institutions allows us to point out the

sufficient level of solving this problem. Detailed indicators are summarized in Table 2.

Table No. 02. Functioning of institutions of higher education providing teachers for members of national minorities

National minority	Number of educational institutions that provide training in vocational specialties	Number of students in 2021
Polish	13	858
Hungarian	2 (Uzhgorod National University, Ferenc Rakoczi II Transcarpathian Hungarian Institute)	1466
Romanian	6	327

Source: (Ministry of Education and Science of Ukraine, 2022)

For comparison, let us turn to the experience of Romania, here there is only one educational institution with the Ukrainian language of teaching (Lyceum named after Taras Shevchenko in Sighetu-Marmatia), although it is the third-largest national minority, according to the last census it was 65,472 people (Population by ethnicity in censuses of the period 1930 – 2002, 2022). Such a number could provide for the educational needs of the Ukrainian national minority. Ukraine provides significant assistance to the Ukrainian diaspora in Latvia, especially in the development of its cultural and educational sphere.

Thus, work is underway to create a Center for Ukrainian Studies at the Faculty of Philology of the University of Latvia. Thanks to the work of this center, almost 100 students of the University of Latvia attend lectures on Ukrainian language and literature. Among the domestic higher education institutions, Drohobytskyi State Pedagogical University named after Franko and Kyiv Pedagogical University named after M. Dragomanova are the most actively cooperating with Latvian universities (Krasnozhon, 2019).

4. Case studies/experiments/ demonstrations/ application functionality

The results of the author's survey allow us to determine the general state of satisfaction with the provision of educational services among representatives of national minorities (Russian, Hungarian, Polish, Slovak). Most parents are satisfied with the level of teaching, representatives of the Polish minority are the most satisfied with the level - 4.6 points, the lowest satisfaction was expressed by the Russian national minority - 3.6. The overall average level of assessment reaches almost 4.2 points. Specific results are presented in Diagram 1.

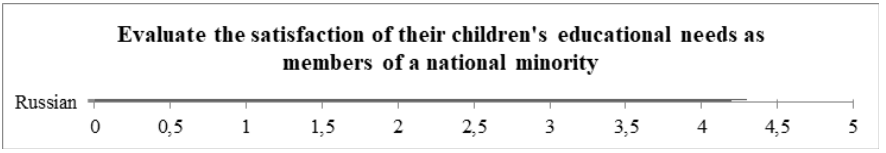

Figure No. 01. Overall satisfaction with educational needs. Source: According to the results of the author's survey.

Educational competence is directly affected by the provision of the necessary materials. For representatives of national minorities, this issue is particularly acute because the translation of textbooks and their printing requires additional organizational and financial costs. Respondents noted a sufficient level of provision with textbooks and other teaching materials. The average score for all groups is - 4.3 points. The Polish national minority stands out, where the level is assessed as very high - 4.8 points. The results are shown in Diagram 2.

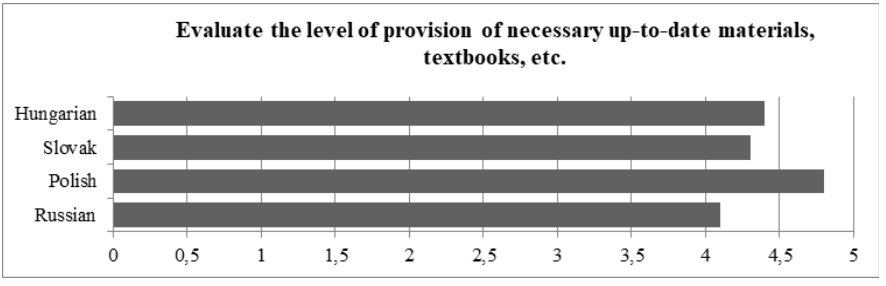

Figure No. 02. The level of provision of the educational process. Source: based on the results of the author's survey.

Another contemporary synergetic problem needs additional analysis. The pandemic threat that has existed for two years now brings about changes in all spheres of social life, and educational competencies are no exception. The entire education system has faced challenges such as the withdrawal of schooling, social inequality, lack of access to technology and the Internet, lack of digital skills, the shift to online learning, poor health in school institutions, even the problem of restoring or closing the school year (Vulpe, 2021).

The threat is worldwide. School closures can result in a loss of 0.3 to 1.1 quality-adjusted years of schooling, reducing the effective years of basic schooling that students have achieved in their lifetime from 7.8 years to 6.7-

7.5 years. About 11 million students from primary to secondary education may leave school just because of the effects of the pandemic (Azevedo *et al.*, 2020).

The peculiarities of teaching online are that the transition to such a system is difficult for all subjects of the educational process, but certain categories suffer the most. Among them are socially disadvantaged segments of the population, are orphans, children with special educational needs, and this group also includes members of national minorities. The interface offered by the government is common to all subjects, conducted in the state language, which can already make it initially difficult to understand for students, especially younger grades.

The legal educational policy does not provide additional inclusive mechanisms and characteristics. Adding another difficulty is the high professional level of the teacher, it must be "a person with a rich, grounded scientific background, clearly above the level at which he teaches" (Ungureanu, 2020: 31).

Therefore, in addition to pedagogical skills, bilingualism and technological skills and media literacy of teachers are necessary to provide education for national minorities. This is quite difficult to provide, especially in rural areas.

The results of our survey confirmed the existing problems. Specifically, on average, non-minority parents rated the level of distance teaching as of February 2022 at 4 with a five-point system. In contrast, the pandemic score on the level of teaching subjects through the use of online instruction among members of national minorities was 3.1, well below the level of the comparison group. Representatives of the Hungarian national minority were particularly dissatisfied - 2.8 points respectively. Specific results are illustrated in Diagram 3.

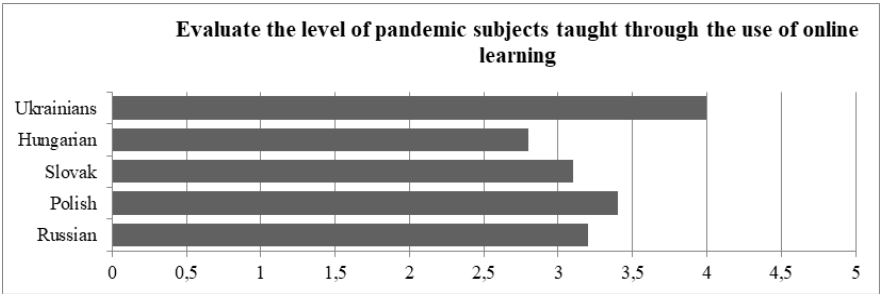

Figure No. 03. Teaching levels during the pandemic. Source: Authors' survey

5. Discussion

The results of the study showed that in general members of national minorities are satisfied with the provision of their educational needs. But the presence of interstate conflicts on this issue shows that countries have claims about the legal regulation of education for national minorities. Analysis of Ukrainian legislation shows that there are certain problems and gaps in this issue, because there are still unregulated issues such as preschool, vocational education, discrimination of national minorities on the basis of country affiliation. It is proposed to make appropriate amendments to the Ukrainian legislation in this regard. At the same time, it is important to maintain a balance between national interests and the provision of national minorities.

Since the realization of the right to education for national minorities requires additional funding, proposals should be made to improve the legislation with this in mind. Therefore, this issue requires further research. In addition, quite little scientific literature is devoted to the problems of providing for the educational needs of individual national minorities, so further research on this issue is important. The application of the experience of other countries, in particular Romania, is positive.

But we consider it necessary to further investigate issues comprehensively, comparing the legal regulation of educational needs of national minorities in several countries. With the emergence of the global pandemic, providing for the educational needs of national minorities has become even more difficult due to the lack of appropriate means and legal regulation, and therefore, the problem requires further elaboration.

Conclusion

The ideological basis of the ethnopolitics of democratic states should be an optimal balance between national state interests and the cultural values of national minorities, which is primarily ensured through the sphere of education. Global transformations have intensified the tendencies of increasing the number of national minorities due to global demographic processes, in particular migration and flight.

The elements of the system of national minorities' educational needs in education in Ukraine have been identified: international, European regional, and national legal acts; functioning of public authorities; complex structure of educational institutions at all levels; additional organizational and economic guarantees of educational rights provision.

It is stated that, in general, Ukrainian national legislation meets international and European standards of national minorities education. Existing shortcomings are highlighted: discrimination against non-European representatives of national minorities based on the characteristic of their affiliation with the state of origin; non-involvement of the extracurricular educational system in the provision of educational needs of representatives of national minorities; lack of opportunity to study in their native language at the level of vocational education; a collision of legislation in the field of establishing pre-school education groups with the national language of education; failure to provide opportunities to establish their private educational and training institutions with the national language of instruction; failure to resolve the issue of territorial accessibility of educational institutions.

The results of the author's survey allow us to determine a sufficient level of satisfaction with the provision of educational services among representatives of European national minorities. The pandemic threat has been proven to have a particularly negative impact on the education of national minorities.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 720-734
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Military law: current state and prospects of development

DOI: https://doi.org/10.46398/cuestpol.4176.42

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Abstract

The aim of the article was to analyze the current state and prospects of development of military law. The methodological basis of the study was the use of empirical research methods, theoretical knowledge and logical research techniques. The research was based on several certainties: The first systemic certainty is the limited or conditional commitment of some states to international law. The second systemic certainty is the state perspective of international security. The third is the structural deficiencies of the United Nations. The fourth systemic certainty is that horror in the context of armed conflict is present and that war is always a humanitarian catastrophe. Finally, the fifth systemic certainty is the defensibility of a state in possession of nuclear weapons or other weapons of mass destruction. It is concluded that it is necessary to create a military justice system for modern police practice, i.e., to enact military law directly. Based on the idea that military justice is a system of organs, it should include: an organ that conducts pre-trial investigation or ensures law and order and an organ that monitors the rule of law; military courts.

Keywords: military law; military justice; military courts; military courts; armed aggression; military police.

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Recibido el 10/10/22 Aceptado el 14/12/22

Derecho militar: estado actual y perspectivas de desarrollo

Resumen

El objetivo del artículo fue analizar el estado actual y las perspectivas de desarrollo del derecho militar. La base metodológica del estudio ha sido el uso de métodos de investigación empírica, conocimientos teóricos y técnicas de investigación lógica. La investigación se sustentó en varias certezas: La primera certeza sistémica es el compromiso limitado o condicional de algunos Estados con el derecho internacional. La segunda certeza sistémica es la perspectiva estatal de la seguridad internacional. La tercera son las deficiencias estructurales de las Naciones Unidas. La cuarta certeza sistémica es que el horror en el contexto de los conflictos armados está presente y que la guerra es siempre una catástrofe humanitaria. Por último, la quinta certeza sistémica es la defensibilidad que alcanza un Estado que posee armas nucleares u otras armas de destrucción masiva. Se concluye que es necesario crear un sistema de justicia militar para la práctica policial moderna, es decir, promulgar directamente el derecho militar. Partiendo de la idea de que la justicia militar es un sistema de órganos, debería incluir: un órgano que lleve a cabo la investigación previa al juicio o que garantice el orden público y un órgano que vigile el estado de derecho; tribunales militares.

Palabras clave: derecho militar; justicia militar; tribunales militares; agresión armada; policía militar.

Introduction

The relevance of the article is to develop appropriate approaches to develop an effective mechanism for the functioning of military law in our time.

The invasion of Ukraine initiated by the Russian Federation on the morning of 24 February 2022 will undoubtedly be a turning point in the deconstruction of the current international order and in the emergence of a new era of world geopolitics, perhaps even more uncertain and dangerous than the existing one.

First of all, a problem for Ukraine and for Europe, and for Europeans, which make it prevail over other interstate and internal conflicts taking place in many other places on the planet, and which generate and will lead to unpredictable consequences in international relations and international systems.

Apart from the absolute humanitarian catastrophe in terms of human lives and civilian suffering that it entails - as, moreover, is the case in all armed conflicts - its consequences of all kinds - political, economic, military, social, energy, agricultural, and food - undoubtedly also deserve - as do the legal and international implications. In the conditions of armed aggression in the territories that were shelled and where hostilities were conducted, the work of many state institutions, including judicial bodies and institutions, was paralyzed.

The statistics of committed war crimes supplemented the traditional statistics of cases to be considered by Ukrainian courts. In addition, law enforcement agencies did not stop conducting pre-trial investigations, which require judicial control over the observance of the rights and legitimate interests of persons involved in criminal proceedings, to comply with reasonable time limits, or to obtain admissible evidence during investigative (search) or covert investigative (search) actions.

When considering proposals for the establishment of a pre-trial investigation body to investigate criminal offences committed by military personnel or other persons belonging to armed formations, it is necessary to take into account the existing risks, which, in particular, include their subordination, which should not affect the independence and impartiality of the investigation.

Despite some turbulence in the legislative regulation of the military prosecutor's office in Ukraine, this body with different names, structure, subordination, and staffing has been carrying out a pre-trial investigation of war crimes, supervision over the legality of the activities of pre-trial investigation bodies and procedural guidance of the investigation for a long time in accordance with the system of law. Particular attention is paid to the arguments in support of the idea of creating a system of military courts and military justice.

In the context of the armed aggression in Ukraine, the issue of completing the creation of the military justice system, which has been significantly updated, is relevant, and it has ceased to be controversial and has turned into a direction for concrete actions.

There have been attempts to build a coherent and effective military justice structure since 2014. However, the reforms were not completed, which significantly affected the maintenance of the rule of law in the state after February 24, 2022, in the territories where hostilities were conducted or close to them.

After the full-scale invasion of Ukraine by the Russian army on February 24, 2022, Ukraine faced unprecedented challenges for the national justice system and the need to involve international justice in bringing Russian military, government, political and military leaders to justice. Military

security of the state is seen as the protection of state sovereignty, territorial integrity, and democratic constitutional order.

Throughout the war, ukrainians witnessed murders and grievous bodily harm of civilians, torture, deportations, hostage-taking, attacks on civilians, looting, rape, and starvation. Individual criminal responsibility for war crimes extends beyond those who committed them or ordered them to those military commanders who know or should have known that such crimes would be committed and failed to take necessary and reasonable measures to prevent them. The individual criminal responsibility for the crime of aggression lies not with ordinary soldiers, but with the Russian political and military leaders who planned, prepared, initiated, or carried out the invasion, occupation, bombing, and blockade of Ukraine, as well as the sending of armed forces and mercenaries to commit armed acts.

Under the current provisions of its statute, the International Criminal Court cannot exercise jurisdiction over criminal aggression committed in Ukraine without Russia's consent - which Russia will not give - or referral to the Security Council, which Russia will veto. Accordingly, the States Parties to the Rome Statute should amend it to allow the Court to exercise jurisdiction over the crime of aggression if the General Assembly, acting under Uniting for Peace, refers to the Prosecutor a situation in which aggression appears to have been committed. This could be done by amending Articles 13 and 15ter of the Charter or by introducing a new article.

This proposal is both more principled and more pragmatic than the alternative proposal to establish an ad hoc tribunal for aggression. It would avoid comparable accusations of selectivity. Its legitimacy would be in line with that of the Uniting for Peace program, which was strongly reaffirmed by the resolution deploring Russia's act of aggression.

It would be based on an existing institution with relatively modest increases in costs and staff. Nor could Russian leaders claim personal immunity if the General Assembly were to refer to the situation, knowing full well that the Court rejects the application of such immunities against the Court or against States Parties that comply with the Court's request for the arrest and surrender of a sitting head of state.

In turn, the purpose of the article is to analyze the problems and prospects for the development of military law in today's realities, as well as to consider the international protection against Russia's military actions against Ukraine, and the activities of world human rights organizations and the effect of military law.

1. Literature Review

Military law is of great importance, because it regulates the relations related to the activities of the military organization of society, which aims to ensure the protection of the state, state sovereignty, and territorial integrity.

In Ukrainian military time, scientists from all over the world began to search for an effective mechanism to overcome the global problem, namely war, as civilians suffer.

The study revealed that the Constitution of Ukraine is at the center of the system of legal sources of military law in Ukraine. Organic, normal laws, by-laws, and even local regulations are based on constitutional provisions, their mutual dependence is determined by legal force. Military law, having its own system of legal sources, is formed as a complex branch of law through the peculiarities of the legal regime with the constant influence of public branches of law.

The development of military law as a complex branch of the system of Ukrainian law is carried out through the doctrinal definition of the peculiarities, systemic features of intra-branch institutional formations - sub-branches, institutes; through the implementation of systematic scientific developments of military-legal matter, creating conditions for the formation of military law as a science.

In turn, Ihnatieva (2021) in her work made one of the newest studies of the system of military law in Ukraine and Great Britain in modern international law, her position was taken into account in the formation of the author's position based on the results of the study of the chosen topic.

Pons Rafols (2022) reveals the issues of the international legal system that have come to the fore in connection with the current crisis, highlighting its weaknesses, risks, and contradictions. The author points out that Russia's military aggression against Ukraine has further weakened the system of international relations and the entire international legal order, built, at least in its most familiar parameters, since the end of World War II and revitalized with the end of the Cold War. He analyses the situation in terms of the weaknesses of the current international legal system.

Haque (2022) in his work points out that the legal consequences of an immoral act such as war are not all directly specified in the texts of treaties or UN resolutions. Their identification requires a reasonable application of legal principles, guided by the axiom that international law is a holistic legal system, not just a set of rules. Pointed out that the rules governing the conduct of hostilities and the treatment of prisoners should be applied equally on both sides for the sake of their common humanity.

Kaluzhna *et al.* (2022) in their work analyzes such a component of military law as a trial in terms of the Nuremberg process after the Second World War - the International Tribunal. In his work, he points out that the international tribunal is to ensure the impartiality of the court. Analyzes the current state of the international legal order and points out that in order to ensure access to justice in cases of aggression and war crimes of Russia, cases against Russia should be considered not only by Ukrainian courts.

Niebytov *et al.* (2022), in turn, explore the mechanisms of accountability for war crimes committed as a result of Russia's invasion of Ukraine in February 2022. They emphasize that when building a military justice system, we proceed from paradigmatic provisions. Based on the idea of military justice as a system of bodies, it should include: a body that carries out the pre-trial investigation and/or ensures law and order; a body that supervises the rule of law; military courts, in addition, it is pointed out that Ukraine's victory over the aggressor, the success of protecting Ukraine's national interests, and the achievement of peace largely depends on stability on the European continent, and therefore it can be noted that military law is currently variable.

Analysis of the above scientific literature fully or partially analyzes modern aspects of military law, which gives reason to believe that a comprehensive study among scientists has not been conducted, which indicates the relevance of this study.

2. Methods

To ensure objectivity, comprehensiveness, and completeness of the study, as well as to obtain scientifically sound and reliable results, the article used a system of general scientific and specific scientific methods of cognition, in particular the method of philosophical hermeneutics, which integrates knowledge of military law - legal, logical, linguistic, psychological, historical, socio-political, etc.; dialectical method, the manifestation of which is a comprehensive study of the effectiveness of the mechanism of legal regulation, its relationship with other legal phenomena: expediency, efficiency; targeted method, which clarified the purpose and objectives of military law.

The method of documentary analysis made it possible to outline the directions of improving the theoretical foundations and practice of improving the effectiveness of military law in today's conditions. The method of generalization was used to formulate the final provisions of the study.

The historical method was another method used to analyze the foundations of military law, according to the development of which such phenomena are manifested as problems that in turn need to be solved, that is, the development of prospects for the development of military law. This method was used to consider the genesis of military law in the context of its development after the Second World War and in current time. The research methodology of the article is also based on the principles of dialectics, empirical and comparative law.

To achieve the goal set in the article, other methods were also used in this study:

- content analysis to study large volumes of legal and scientific texts and determine their relevance to the problems of military law;
- doctrinal approach to the study of military norms as normative constructions that establish responsibility for war crimes.

In general, the objectives of the study were fully met due to the methods, techniques, and approaches used in this study.

3. Results

Military law is aimed at determining the means of achieving the military security of society as an indispensable component of national security, subject to the implementation of human rights mechanisms of the status of servicemen and other categories of citizens who are subjects of military and civil-military relations. The problem of military law is the lack of a military justice system. There are many definitions of "system" in science.

Despite the difference in wording, all of them, in one way or another, are based on the translation of the Greek word "systema" - a whole consisting of parts, a set of elements that are in certain relations with each other, interact (function) with each other, form certain integrity, interact with the environment as a whole and acquire new properties that these objects do not have if they exist separately (Niebytov, 2022).

Speaking about the construction of the military justice system, it is necessary to proceed from the paradigmatic position that it is connected by relations of subordination and coordination of law enforcement and judicial bodies, subject competence arising from the activities of the Armed Forces of Ukraine and other paramilitary formations, as well as other persons who have the status of military personnel.

Based on the idea of military justice as a system of bodies should include:

1. a body that carries out the pre-trial investigation and/or ensures law and order;

2. law enforcement agency;
3. military courts.

Figure 1. Military justice (author's own development).

The Military Law Enforcement Service in Ukraine as part of the Armed Forces of Ukraine was established in 2002 and operates based on the Law of Ukraine of the same name (Verkhovna Rada of Ukraine, 2002).

According to Article 1 of the mentioned Law of Ukraine, the military law enforcement service is a special law enforcement formation within the Armed Forces of Ukraine, designed to ensure law and order and military discipline among the servicemen of the Armed Forces of Ukraine in the places of deployment of military units, in military educational institutions, establishments and organizations, military camps, on the streets and in public places; to prevent crimes and other offences in the Armed Forces of Ukraine, to bring them to justice; to protect the life, health, rights and legitimate interests of servicemen, persons liable for military service during their training, employees of the Armed Forces of Ukraine, as well as to protect the property of the Armed Forces of Ukraine from theft and other illegal encroachments, as well as to participate in counteracting sabotage and terrorist acts at military facilities (Verkhovna Rada of Ukraine, 2002).

The Military Service of Law and Order in the Armed Forces of Ukraine is entrusted with the following tasks: a) identifying the causes, preconditions and circumstances of criminal and other offences in military units and at military facilities; searching for persons who have left military units (places of service) without permission; b) prevention and suppression of criminal and other offences in the Armed Forces of Ukraine; c) participating in the protection of military objects and ensuring public order and military discipline among servicemen in the places of deployment of military units, military camps, on the streets and in public places; d) executing, in cases provided for by law, decisions on the detention of servicemen in the guardhouse; e) ensuring the enforcement of criminal punishments against servicemen who have been sentenced to detention in a disciplinary battalion; f) participation in countering sabotage and terrorist acts at military facilities, etc. (Verkhovna Rada Of Ukraine, 2002).

The Military Law Enforcement Service is not empowered to carry out a pre-trial investigation of military criminal offenses. For a long time, a proposal was discussed to create military police on its basis, which would have these powers or another pre-trial investigation body. At the same time, on September 17, 2021, the Decree of the President of Ukraine No. 473/2021 "On the Strategic Defence Bulletin of Ukraine" (On commission decision of the National Security and Defense Council of Ukraine, 2022) entered into force.

For this purpose, it was planned to develop the capabilities of the investigative and operational search units of the military police; to develop the capabilities of the military police to manage law enforcement and anti-terrorist support at potentially dangerous facilities in the system of the Ministry of Defense of Ukraine; to achieve compatibility of the military police with the relevant structures of NATO member states.

As a result, the current system of pre-trial investigation bodies does not ensure the effective and prompt investigation of mass war crimes in combat conditions, during the performance of tasks in the area of combat operations, which negatively affects the state of combat readiness of military units.

As of today, Ukraine has not created a system of military courts, which is another problem of military law. However, proposals about the need for its implementation are constantly heard. Opinions in support of the creation of a military justice system are voiced at the highest level, emphasizing the erroneousness of the decision to abolish military courts.

Some states, such as Australia and Ukraine, are in the process of reforming the military justice system, discussing these issues, and learning from the experience of other states (Denton, 2019).

Speaking about the prospects for the development of military law in the international arena, it should be noted that the democratic and human rights foundations of the Council of Europe make it incompatible for states that do not adhere to the values of the UN, or, for example, which have started an aggressive war, as is happening nowadays. This led to the fact that on February 25, 2022, the Committee of Ministers activated the procedure provided for in Article 8 of the Statute of the Council of Europe and agreed to suspend the Russian Federation - its representation rights in the Council.

Subsequently, on 16 March 2022, after consultations with the Parliamentary Assembly on the possible additional application of Article 8, the Committee of Ministers decided that it could no longer be a member state and, after 26 years of membership, agreed to the expulsion of Russia, although the day before this state had announced its voluntary withdrawal from the Council of Europe and its intention to denounce the European Convention on Human Rights (Resolution CM/Res, 2022).

In practice, a narrower approach to the investigation of war crimes is more often used: Criminal prosecution in another country is initiated if a national of one's own country is alleged to have committed an international crime; if the crime is committed against a national of that country; or if the suspect is present in the territory of that country (Chubinidze and Oleksandra, 2019).

The investigation can be initiated at any time, as war crimes, crimes against humanity and genocide are serious threat to global security. Therefore, the statute of limitations does not apply in this case. At the same time, the principle of universal jurisdiction is an additional mechanism for prosecuting war criminals.

In a time of war, states may take measures derogating from their obligations under the Convention. However, no derogation from the Convention is permitted in respect of the right to life, except in cases of death resulting from "lawful acts of war", i.e., acts that are regulated but not prohibited by international humanitarian law. In other words, no derogation is allowed for unlawful acts of war that violate international humanitarian law.

Such unlawful acts of war violate both international humanitarian law and the human rights of those they kill (Haque, 2022). Military necessity does not justify violations of the laws of armed conflict and, conversely, the use of force that is not necessary is illegal (Pictet, 2019; Ponomarenko, 2022).

To address the problems of military law, it is necessary to implement a military justice system, which should consist of two main elements: a disciplinary system that ensures the investigation and prosecution of disciplinary and criminal offenses, and an administrative system that aims to improve processes, such as complaints (Denton, 2019).

The role of international organizations and the UN became clear during the Russian aggression against Ukraine in attempting to stop, counteract and control these aggressive actions and preserve international peace and security. Since the beginning of the Russian invasion of Ukraine, the UN Secretary-General has called the Russian aggression and related actions "the moment of the grave" and stated that the Russian resolution to declare the independence of Donetsk and Luhansk is a violation of the territorial unity and sovereignty of Ukraine, contrary to the principles of the UN Charter.

Therefore, the UN has repeatedly called for a ceasefire to protect civilians and invited the parties concerned to engage in political dialogue to reach a peaceful settlement, which, unfortunately, has not yet happened. Many civilians are still on the bloody battlefields, hundreds of people are trapped in conflicts, war crimes are being committed from the latest reports (Khater, 2022).

It should be noted that military law is also about providing weapons, and therefore, given that Western powers are providing our country with weapons to help defend against Russia's ongoing armed attack, as our country has an individual right to self-defense against Russia, our country has the right to demand that other states act in its collective self-defense.

One of the forms of collective self-defense is the provision of material support.

Providing Ukraine with weapons cannot be considered an internationally wrongful act - this conclusion is confirmed by the fact that the responsibility of the state provides that "the unlawfulness of a state action is excluded if the action is a lawful measure of self-defense taken in accordance with the Charter of the United Nations" (Heller and Trabucco, 2022).

Undoubtedly, the Russian attack on Ukraine is a clear violation of the principles and norms of international law, as provided for in the UN Charter and customary international law, as the Russian forces violated a set of norms of international law, especially those relating to respect for the equality in national sovereignty of States, the principle of peaceful settlement of disputes, the principle of non-use of force or threat in mutual relations between States which may endanger the maintenance of international peace and security, the principle of non-intervention in matters which are essentially within the internal jurisdiction of States, the principle of non-interference in the internal affairs of States, the principle of the right to self-determination, and the principle of the sovereignty of States (Khater, 2022; Gorinov & Mereniuk, 2022).

4. Discussion

The results of this study indicate that the purpose of military law is to contribute to the maintenance of order and discipline in the military forces, to increase the effectiveness of military law, and thus strengthen national security.

It has been found that throughout history, legislation has often had to catch up with technological and scientific progress, including the technical development of weapons. A consistent theme throughout the centuries has indeed been the tension inherent in establishing rules aimed at regulating the ever-evolving ability to inflict harm and suffering on the "enemy". In this respect, the countless resources invested in technological advances for the development of warfare far outweigh those invested in the continued (Guido, 2022; Bozhkova & Halytsia, 2022).

It was found that international criminal law in the field of war crimes has developed dramatically over the past three decades and can be broadly defined as the judicial enforcement of criminal offenses, certain international regulations (Guido, 2022).

Scholars have long debated the basis of people's moral responsibility based on their decision-making mechanisms that lead to action. These reflections, however ancient, are important because our criminal systems

are essentially a reflection of the generally accepted moral social system, and such responsibility is linked to criminal proceedings and punishment, in the area of war crimes.

This was emphasized by Guido (2022) and pointed out that modern criminal law theory tends to consider punishment justified only when individuals can be blamed for the acts or omissions attributed to them because the individuals concerned can understand the consequences of their behavior, and it can be said that such behavior occurred under their rational control.

Researchers emphasize that, in particular, the International Criminal Court was established in 1998 as a permanent institution with universal jurisdiction. This should be understood as a strategy for investigating and prosecuting those most responsible for the most serious crimes (Ba, 2020). In the context of this article in terms of the levels of combating war crimes, about two separate systems of combating war crimes: national (domestic) and international.

Considering the problem of military justice emphasized by Neibot (2022), it is worth agreeing that the main difference between the military police and the existing military law enforcement service is the expansion of its competence to investigate crimes committed by military personnel and/or war crimes.

Empowering the military police to conduct pre-trial investigations is associated with certain risks, which in turn is a problem. First, it should be borne in mind that the jurisdiction of the military police may create a conflict with the competence of the State Bureau of Investigation and the Security Service of Ukraine.

Of course, the investigation of crimes committed by military personnel will be more effective if conducted by the military police. However, the impartiality of the investigation conducted by the military police may be at risk, as the military police and the objects of its activity belong to the sphere of management of the Ministry of Defense of Ukraine.

The second problem that may arise with the introduction of the military police as a pre-trial investigation body into the military justice system is that the creation of this body may not be in line with the doctrinal concept of ensuring the impartiality of the exercise of its powers as a judicial investigation body. The conducted research allowed to achieve the set goal and objectives and, in turn, to draw conceptual conclusions.

The study found that the problem of military law is not the functioning and implementation of the military justice system, which should include subordinate and coordinated law enforcement and judicial bodies, whose subject matter competence arises in relation to the activities of the Armed

Forces of Ukraine and other paramilitary formations, as well as other persons who have the status of a serviceman.

Conclusion

So, it was established that military law is aimed at determining the means to achieve military security of society. It is an important component of national security, provided that human rights mechanisms are implemented. The Russian-Ukrainian war as a whole influenced the transformation of military law not only in Ukraine, but also in the international legal organizations of the world.

The weakness of international organizations, which forms the central axis of the entire international system and is the fundamental basis for achieving the long-awaited peaceful, just, and favorable international society, with the effective functioning of which there will be no need to develop the functioning of military justice.

The United Nations continues to be an indisputable reference point and an important and necessary organization, as it is the structure that the current international society has provided for itself, and there is currently no other alternative structure. Our time testifies to a crisis that is in its most acute phase, which is also sad in humanitarian terms, which has a very difficult and difficult outcome with deadly consequences for all. In this sense, the war in Ukraine clearly showed the existence of weaknesses or structural problems in the international legal system and military law. This study gives impetus to the further development of military law, an overview of its problems and solutions in the context of current changes around the world.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 735-752
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Modern methods of preventing crimes related to the excess of power or official authority in the system of law enforcement agencies

DOI: https://doi.org/10.46398/cuestpol.4176.43

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Abstract

The aim of the research was the examination of modern methods of crime prevention related to the excess of official power or authority in the law enforcement system. The methodological basis of the study was the dialectical method of scientific knowledge, as the main method of objective and comprehensive analysis. The results highlight that over the past eight years in Ukraine 391 judgments, 4258 decisions on procedural actions were made during the consideration of crimes under Article 365 of the Criminal Code of Ukraine. The study of the Unified State Register of Judicial Decisions shows that the largest number of verdicts was pronounced in 2014 - 78, in 2015 - 58, in 2016 - 50, in 2017 - 46, the smallest number in 2018 - 28, in 2019 twice as much in comparison with the previous year - 46, in 2020 - 38, in 2021 - 47. Everything allows to conclude that, measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legislative framework of the state's protection and prevention policy, which signify the essential basis of any substantive democracy.

Keywords: law enforcement; excess of power; legal principles; preventive measures; international experience.

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Recibido el 10/12/22 Aceptado el 17/01/23

Métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial en el sistema de las fuerzas del orden

Resumen

El objetivo de la investigación fue el examen de los métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial en el sistema de las fuerzas del orden. La base metodológica del estudio fue el método dialéctico del conocimiento científico, como principal método de análisis objetivo y exhaustivo. En los resultados se destaca que, en los últimos ocho años, en Ucrania se dictaron 391 sentencias, 4258 decisiones sobre actuaciones procesales durante el examen de los delitos previstos en el artículo 365 del Código Penal de Ucrania. El estudio del Registro Estatal Unificado de Decisiones Judiciales muestra que el mayor número de veredictos se pronunció en 2014 - 78, en 2015 - 58, en 2016 - 50, en 2017 - 46, el menor número en 2018 - 28, en 2019 el doble en comparación con el año anterior - 46, en 2020 - 38, en 2021 - 47. Todo permite concluir que, las medidas para prevenir los delitos relacionados con el abuso de poder deben ser integrales. En particular, deben estar efectivamente correlacionadas con el marco legislativo de la política de protección y prevención del Estado, que significan la base esencial de toda democracia sustantiva.

Palabras clave: agente de la ley; exceso de poder; principios legales; medidas preventivas; experiencia internacional.

Introduction

Law enforcement officers have a wide range of functions and powers to use force, detain or arrest offenders, conduct undercover investigative actions to investigate crimes. During the execution of such powers, law enforcement officers are given considerable freedom of action. However, the granting of broad discretionary powers leads to the question of the extent to which law enforcement agencies use their functions and the legality of exceeding their powers.

The current situation in the state has caused an increase in various types of crimes. At the same time, economic circumstances force the authorities to reduce the number of law enforcement agencies through layoffs, despite the obvious growth in the need to protect the population. Protection of public order and protection against this type of threats, such as meetings, demonstrations, gatherings, requires employees to be prepared to risk their own lives. A modern law enforcement officer must protect against the enemy in difficult conditions.

Crimes committed by law enforcement officers are one of the most dangerous social phenomena that have a negative impact on all spheres of social relations and processes taking place in the state, as a result of which stability and security in society is undermined.

Different attitudes of the public to the fact of excesses of power by law enforcement officers increase mistrust, hostility and violence among the population.

Today, the problem of criminal acts of officials becomes a transnational problem and ceases to have a purely national aspect.

Thus, the purpose of this article is to conduct a study of crimes related to the abuse of power or official authority by law enforcement officers and to determine the main ways to avoid and prevent their commission.

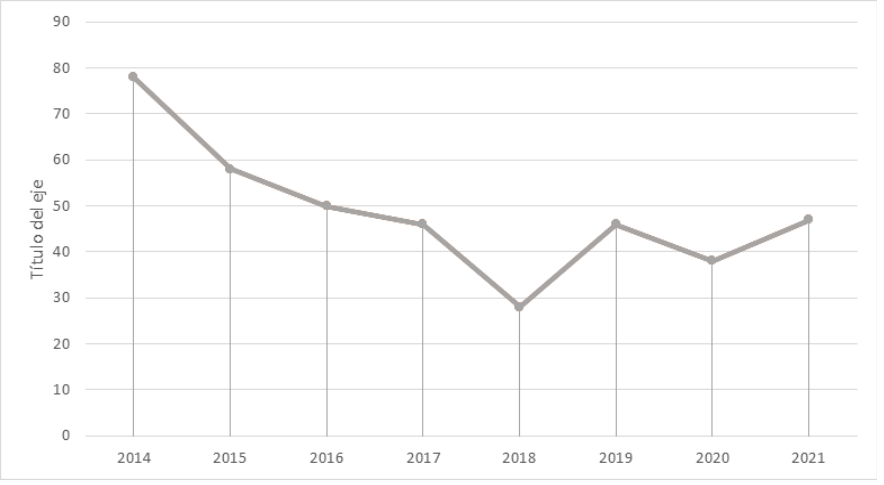
1. Materials and methods

The methodological basis of the research was the dialectical method of scientific knowledge as the main method of objective and comprehensive analysis. Thanks to its application, legal and social phenomena affecting the actions of law enforcement officers were analyzed in relation to each other, statistical survey data, judicial practice related to issues of abuse of power by law enforcement officers were studied.

2. Results

Over the past eight years, 391 verdicts were handed down in Ukraine, and 4,258 decisions were made regarding procedural actions during the consideration of crimes provided for by Article 365 of the Criminal Code of Ukraine. The study of the Unified State Register of Court Decisions shows that the largest number of sentences was pronounced in 2014 - 78, in 2015 - 58, in 2016 - 50, in 2017 - 46, the smallest number in 2018 - 28, in 2019 twice more compared to the previous year – 46, in 2020 – 38, in 2021 – 47 (Figure 1) (Unified State Register of Court Decisions, 2022).

Fig. 1 (developed by the author).
In recent years, it has become obvious that the abuse of authority by law enforcement officers is a widespread phenomenon and requires effective methods of combating it. Such methods may depend on a number of political, legal, and social factors.



The fight against this type of crime is one of the serious problems in countries all over the world.

Every law enforcement officer must be aware of the importance of due process. Abuse of power directly contradicts the concept of proper legal behavior.

The activities of law enforcement officers within the framework of their functions are aimed at ensuring national security at all levels, ensuring law and order, as well as protecting human rights, freedoms and interests in society. Each state has its own structured system of law enforcement agencies, which is clearly regulated by the current national legislation (Smernytskyi, 2021).

Abuse of power or official position is interpreted as intentional, with the aim of obtaining any unlawful benefit for himself or another natural or legal person, the use of power or official position by an official against the interests of the service, if it caused significant damage to the rights, freedoms and interests of individuals protected by law citizens or state or public interests, or the interests of legal entities (Chubenko *et al*., 2018).

Until 2014, the subjects of the specified type of crime could be any officials who were entrusted with the duties of implementing the functions of state authorities. Such persons were defined as representatives of state

authorities or local self-governments who held positions related to the performance of organizational-administrative or administrative-economic functions in state authorities, local self-governments, state or communal enterprises, institutions or organizations, and the excess of power or official powers, the actions of an official who does not have official powers and goes beyond his powers during the performance of his administrative and economic functions, or the actions of an official who has powerful powers, but in this case exceeds not them, but his other powers , were recognized , or exceeds its authority over persons who are not its subordinates (Information and consulting platform, 2018).

The question of the specificity of the definition of the subject of the crime provided for in Article 365 of the Criminal Code of Ukraine was repeatedly raised. Discussions among academics raised the question of why the specified article stipulates responsibility specifically for law enforcement officers, bypassing other officials whose actions can have no less dangerous social consequences. The legislator explained such measures by the fact that in 2013, most of the crimes stipulated by Article 365 of the Criminal Code of Ukraine were committed by law enforcement officers (Paseka, 2017).

Khavroniuk (2014) claim that the intentional commission of actions that obviously go beyond the limits of the given powers by another public official in any field, except for law enforcement officers, can have only administrative, disciplinary and civil legal responsibility, the possibilities of which should be used to the full extent in all necessary cases through the mechanisms provided for in the relevant normative legal acts.

In view of the above, the main differences in the distinction between the concepts of «exceeding power or official authority» and «abuse of power or official position» are that an official illegally and contrary to the interests of the service uses the rights and powers granted to him by law, as defined in Article 364 The Criminal Code of Ukraine stated that the crime provided for in Article 365 of the Criminal Code refers to the commission of actions by a person who is superior to this department or an official of another department.

In addition, the actions must be performed under those conditions, if their performance is allowed only in special cases, that is, with a special permit or an appropriate order. As for the subject, in this case, actions are supposed to be performed individually, which should have been performed only collegially. In addition, no one has the right to perform or allow such actions.

From the moment of the initial codification until the entry into force of the Criminal Code of Ukraine, the domestic criminal law did not contain a legislative definition of a special subject of the specified type of crime. However, the doctrinal analysis demonstrates that this concept was developed by the science of domestic criminal law.

A special subject of a crime is a person who, in addition to general features, has special features. They usually include: position, official duties, demographic characteristics, membership in the service (Makarov *et al.*, 2019).

In the scientific literature, the term «law enforcement officer» refers to a person who puts the interests of society above his own. Legal and professional training is an important prerequisite in the formation of law enforcement culture (Sushytska *et al.*, 2021).

As mentioned earlier, law enforcement officers can exercise their own powers at their own discretion. This practice sometimes leads to too much freedom of action, which ultimately exceeds the limits of the necessary defense in critical situations.

Some scholars consider the necessary defense in two manifestations. In the first, as an individual way of protecting oneself or other persons, the state from socially dangerous encroachments. In the second, as a way to protect oneself during active actions from the side of law enforcement officers: offensive movement forward, and therefore, in the hands of law enforcement officers, there must be an appropriate and accessible toolkit capable of meeting the ever-increasing demands of everyday criminal reality (Miliukov, 2021).

Law enforcement officers are usually empowered to detain persons who have committed a crime. In those cases, if the detainee was harmed, which clearly does not correspond to the nature and danger of the committed act, law enforcement officers must bear responsibility for this on an equal basis with all citizens, and their position cannot be burdened only because they are representatives of the authorities. Because police officers risk their lives while performing their duties.

The unconditional prosecution of representatives of law enforcement agencies who, in the course of their duties, exceeded the limits of necessary harm, to criminal liability under Articles 365 of the Criminal Code of Ukraine, in fact, may lead to increased liability for exceeding the measures necessary to detain the person who committed the crime. Under such conditions, criminal liability may arise for causing any light damage, regardless of the degree of the offense committed by the criminal.

According to sociological research, the level of trust of citizens in law enforcement agencies in Ukraine in 2020 is 40.8%. Compared with other European countries, this indicator reaches 39% in Hungary, up to 94% in Finland. Compared to 2019, the number of cases of inappropriate behavior by law enforcement officers decreased from 20.2% to 9.6% (Klymenko, 2020).

In 1979, the United Nations General Assembly adopted the Code of Conduct for Law Enforcement Officials (Resolution GA 34/169), which was the main instrument providing normative guidance to states on the implementation of the role of the police in society. The articles of the Code mark a significant departure from the traditional, narrow definition to a more «legal», broad understanding of the police as officials who «serve» the community.

In practice, the human rights approach to law enforcement involves an obligation to refrain from unjustified restrictions on human rights; take reasonable measures to ensure the exercise of human rights and take positive measures to promote the exercise of human rights. For example, this approach requires that law enforcement officers do not unlawfully restrict the right to assemble, and take the necessary measures to protect those who organize a demonstration (United Nations Digital Library System, 2019).

The excess of power can manifest itself in the form of the use of force, manifestations of cruelty. One cannot fail to note that the use of force is a necessary and legal tool for the work of a law enforcement officer, given the specifics of his activity. Instead, the manifestation of «cruelty» is already a conscious act of employees, who usually make great efforts to hide their misconduct. At the same time, the use of force can occur by chance, which is explained by the problem of the lack of special professional skills. Thus, "excessive force" can be cruel, involve malicious intent, or simply accidental (Lourens, 2022).

Legislation of foreign countries differently distinguishes such corpus delicti as abuse of power or official position and abuse of power and official authority, as evidenced by the analysis of the criminal legislation of foreign countries (French Republic, Republic of Latvia, Georgia, Republic of Estonia, Russian Federation, Republic of Estonia, Italian Republic) (Nesterenko, 2021).

The American Police Foundation conducted a nationally representative survey that revealed the attitudes of America's police officers on important issues related to police overreach. As a result, it was established that American law enforcement officers believe that extreme cases of excess of authority by the police do not happen often. At the same time, some respondents confirmed that sometimes they have to use more force than is allowed by law.

Despite a responsible attitude to legal norms that recognize the limits of the powers of law enforcement officers, the survey showed that it is not unusual for police officers to ignore the inappropriate behavior of their colleagues. Most police officers in the United States disapprove of the use of excessive force. Therefore, more than 30% of respondents expressed

the opinion that law enforcement officers do not have the right to use as much force as is often necessary when making arrests. Almost 25% believe that it is sometimes permissible to use more force than is allowed by law in order to control a person who physically assaults a police officer. Also, 22% of respondents indicated that officers in their department sometimes (or often) use more force than necessary, and only 16% reported that they never did.

Some respondents, almost 4 out of 10, reported that constant compliance with the rules is incompatible with doing the job. It is worth noting that American police officers believe that training and educational programs are an effective means of preventing the excess of power by officers (Weisburd *et al.*, 2015).

Exceeding the powers of law enforcement officer's contrary to the principles of legality, necessity and proportionality can lead to serious violations of human rights. For example, illegal and arbitrary use of violence may lead to violation of the right to life, arbitrary detention violates the right to freedom and integrity. In addition, a warrantless personal search can be a violation of freedom. Illegal actions can also manifest in the form of arbitrary use of information obtained as a result of the investigation, which is a gross violation of the right to privacy.

Values in law enforcement agencies are formed not only from normative acts, but also from traditional culture. The management's position regarding the excess of power can significantly affect the attitude of law enforcement officers to their powers.

Mutual respect and cooperation between state law enforcement agencies and the public are essential to ensure that security needs are effectively met.

In recent decades, international and regional documents have paid more attention to police accountability as a system that requires the involvement of a variety of external and civilian oversight actors. In this regard, the European Code of Police Ethics stipulates that «the police should be accountable to the various independent bodies of a democratic state, i.e. the legislature, the executive and the judiciary» (Council of Europe, 2021).

In the United States of America, there is a dedicated unit that employs experts in police practice to help review law enforcement incidents, documents and policies. These experts are involved in developing remedies and evaluating compliance actions (Department of Justice, 2022).

Therefore, in the case of the use of force, the actions of a law enforcement officer must comply with the following principles:

1. Necessity. This principle contains mandatory interrelated elements: the obligation to use non-violent means where possible; the obligation to use force only for the legitimate purpose of law enforcement

agencies; and the duty to use only the minimum necessary force that is reasonable under the circumstances. Whenever possible, law enforcement officers should use reasonable means to achieve a legitimate law enforcement objective before resorting to physical force. Such permissible means must be non-violent in nature and may include the use of symbols of police authority: uniform, vehicle, educational conversation, physical presence.

2. Legitimate purpose. The use of force must be carried out with a corresponding purpose for the implementation of the functions assigned to law enforcement agencies. That is, officers must use such force as is reasonably necessary under the circumstances to prevent a crime or to effect or facilitate the lawful arrest of offenders.

3. Limitation. Impossibility of applying force to a person who does not resist. Unnecessary use of force is obviously not legal.

4. Rationality. This principle is explained by the fact that the force used should not exceed the minimum reasonably necessary under the given circumstances, that is, be only to the extent necessary for the performance of the duties of officials.

5. Proportionality. This principle establishes a boundary between what is considered the legal use of force and the threat posed by the offender. That is, proportionality does not mean that force must be used by the law enforcement agency in strict accordance with any continuous use of force (where the level of force increases in stages) or as a similar response to violence by the suspect (UNODS, 2019).

Measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legal framework of protection and prevention policy on the part of the state.

State measures, which consist in conducting a policy on the prevention of offenses in the field of law enforcement agencies, can affect the structure and behavior of law enforcement officers. Conducting internal audits at local levels and strengthening reporting can have a positive impact on employee accountability.

Law enforcement officers must pass expert checks during internal disciplinary commissions. In addition, it is important to ensure transparency during their conduct, so that the public can be sure that the internal procedures are effective and fair.

The work of structural subdivisions should also take into account the continuous training of employees, their evaluation and certification.

In addition to these measures, law enforcement officers can also be prosecuted in a civil lawsuit. These lawsuits can be filed against persons

who, as a result of exceeding their authority and official duties, caused a violation of the rights of citizens.

Civil lawsuits are the main mechanism for holding law enforcement officers accountable for causing moral damage. Provisions of the special Law of Ukraine: «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operative-Investigative Activities, Pretrial Investigation Bodies, Prosecutor's Office and Court» dated December 1, 1994 No. 266/94-BP (The Law of Ukraine, 1995) and the Regulations on the Application of the Law of Ukraine «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operational-Investigative Activities, Pretrial Investigation Bodies, the Prosecutor's Office and the Court», approved by the order of the Ministry of Justice, the General Prosecutor's Office and the Ministry of Finance of Ukraine dated 03.04.1996 according to No. 6/5/3/41 (Order of the Ministry of Justice, The General Prosecutor's Office, The Ministry Of Finance Of Ukraine, 1996) the right of a person to apply for compensation for damage caused by illegal actions of employees of state authorities is determined.

In our opinion, the specified normative legal acts are outdated and do not take into account all important aspects of the legal relationship arising between the victim and the law enforcement officer as a result of the latter exceeding his powers.

An important measure is to strengthen community rights to record police actions to promote accountability and encourage good law enforcement behavior.

The provisions of the previously effective Order of the Ministry of Internal Affairs of April 24, 2009 № 177 «On the organization of initial training of employees of the internal affairs bodies of Ukraine» regulated the procedure for applying mentoring. Therefore, a new employee was initially attached to a specific mentor (Order of the Ministry of Internal Affairs, 2009).

The Order of the Ministry of Internal Affairs of Ukraine dated 16.02.2016 №.105 approved " Regulations on the organization of initial professional training of police officers who have been recruited for the first time in police service" according to which "a mentor from among the members of the management of the police body (institution, institution) is assigned to the police officer, where he serves, who monitors his performance of tasks, organizes for him individual practical training in fire, physical and tactical training, which is provided for in the individual curriculum" (Order of the Ministry, 2016).

The use of the mentoring institute is also followed in the provisions of the Order of the Ministry of Internal Affairs of Ukraine dated 29.01.2018

No. 51, which approved the Concept of the introduction of a three-level model of training of police officers, which provides that after the end of the initial professional training as a police officer, for the next six months, police officers serve in junior police positions under the guidance of mentors (Order of the Ministry of Internal Affairs Of Ukraine, 2018).

O.M. Karpenko and E.S. Zelenskyi (Karpenko and Zelenskyi, 2020) also emphasize the need to introduce a mentoring institute in the system of law enforcement agencies. According to scientists, the content of mentoring is broad, and therefore should not be limited to the transfer of professional knowledge, skills and abilities. The mentor should be an example for the trainee to follow. Such imitation can concern not only professional, but also personal, moral-willed qualities, civic and life position, conscious attitude to official duties, etc. Also, the task of the mentor may be to help the intern adapt to the conditions of service.

Mentoring in law enforcement agencies today is an important event that affects the personnel system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

For example, in the Republic of Kenya, abuse of power by law enforcement officers is commonplace. For a long time, there was a negative practice that police officers received bribes, unjustly accused and restricted freedom, sometimes even took the lives of citizens, without fearing any consequences, which clearly indicated abuse of power. The Kenyan population complains of helplessness and inability to protect themselves and their loved ones. Between 2019 and 2021, nearly half a thousand police killings were recorded in Kenya (IGM, 2021).

Given the powers vested in law enforcement agencies, it is undeniable that the police are both the primary protection and threat in a democratic society.

A law enforcement officer cannot be a law in itself. Despite the strong pressure, they should not act exclusively in accordance with the interests of the authorities, since it is important to maintain neutrality between political sentiments and the protection of citizens' rights. For example, in cases of rallies, demonstrations, and other disturbances, law enforcement officers should not take sides.

The universal attitude of law enforcement officers to citizens indicates equal law enforcement, which is a guarantee of a democratic society. Their personal attitude should not differ from the requirements of the positions

they hold. The neutrality of a law enforcement officer is when he simply enforces the rules, regardless of the characteristics of the individuals or groups who violate them.

However, there is another side to such a situation, where law enforcement officers cannot stand aside and be neutral, since they are a special body entrusted with the functions of ensuring compliance with state legislation.

Police in the UK are distinctly non-military and local, although more standardized than in the US. Responsibility for its control is shared between the Ministry of the Interior of the national government, the local police authority and the local police chief. There is no official bill of rights, but generally the police do not exercise powers beyond their authority over the average citizen, and the police are not armed. It is worth noting that the state clearly emphasizes the need to observe internal organization and self-control. It is believed that citizens are responsible for participating in the maintenance of law and order in their localities. Much attention is paid to the symbolic value of law enforcement officers as representatives of the nation, and they are taught to see themselves as a model of moral behavior.

The development of British policing has been accompanied by constant debate about how to protect democratic freedoms while remaining effective in fighting crime and disorder. The Home Office and the College of Policing are working together to develop relevant national standards aimed at improving the effectiveness of policing (Home Office, 2022).

France's law enforcement system is highly centralized, so it is less focused on providing services to serve the population. The unified national police system includes two components: the gendarmerie, which is part of the armed forces, and the national police, which is part of the Ministry of Internal Affairs.

They are controlled at higher levels. Prosecutor's offices play an important role mainly in criminal proceedings. On the other hand, the specific judicial system is not adversarial, so it is difficult for citizens to file a complaint against the actions of the police. According to the French, in order to protect democracy, the rights of society should prevail over the rights of the individual (Gary, 1995).

In the Republic of Kazakhstan, the General Prosecutor's Office developed a draft Concept and a draft Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan in connection with the introduction of a three-level model with the separation of powers and spheres of responsibility between law enforcement agencies, the prosecutor's office and the court».

The essence of this draft law is to coordinate all key procedural decisions that are taken regarding the rights and freedoms of the citizen with the

prosecutor, as well as the adoption of procedural and final decisions in criminal cases at all stages of the pre-trial investigation, including the election precautionary measures (Kulbaeva and Akhpanov, 2022).

Perhaps this practice will speed up the pre-trial investigation process, however, in our opinion, the fundamentally important functions of the procedural statuses of the subjects will not be demarcated in this case, which will significantly affect the powers of each of the aforementioned participants.

O.M. Boboshko (2018) emphasizes the need to distinguish powers between special subjects. Taking into account the fact that the current legislation does not clearly regulate the activities of pre-trial investigation bodies when conducting investigative actions, there are cases in practice when the rights and freedoms of citizens are violated. Under such conditions, court bodies and prosecutor's offices must definitely exercise their supervisory and control functions.

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concluded that state governments should develop the widest possible range of legal remedies and arm law enforcement officers with various types of weapons and ammunition that will allow differentiated use of force and firearms. Employees should be equipped with non-lethal weapons that can stop an offender, but are not capable of causing death or injury.

In addition, law enforcement officers should be given the opportunity to have self-defense equipment, such as shields, helmets, body armor, and bulletproof means of transportation, so that there is no need to use weapons. It was rightly noted that states should implement rules and regulations regarding the use of force and firearms by law enforcement officials. In developing such rules and regulations, governments and law enforcement agencies must constantly consider ethical issues related to the use of force and firearms (United Nations, 1990).

Conclusions

1. When applying criminal responsibility, each case of committing a crime has its own individual characteristics, taking into account those that individualize the person guilty of committing the same crime. Each personality has specific characteristics that make up its individuality. Such individualization is manifested in biological, psychological, social and professional characteristics.
2. The threat to the life and safety of law enforcement officers should be considered as a threat to the stability of society as a whole,

taking into account that law enforcement officers play a vital role in protecting the right to life, liberty and personal integrity, guaranteed by the Universal Declaration of Human Rights and confirmed in the International Covenant on civil and political rights.

3. In the case of the use of force, the actions of a law enforcement officer must comply with the following principles: necessity, legitimate purpose, limitation, reasonableness, proportionality.
4. Measures to prevent crimes related to excess of power should be comprehensive. In particular, they must be effectively correlated with the legal framework of protection and prevention policy on the part of the state. As a result of the study, taking into account international recommendations and the practice of foreign countries, the following measures are proposed:
    - conducting internal audits at local levels and strengthening reporting.
    - strengthening the rights of the community to record police actions to promote accountability and encourage proper behavior of law enforcement officers.
    - the active development of the institute of mentoring in law enforcement agencies, which is currently an important measure that affects the personnel law enforcement system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 753-768
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

On the issue of historical origins and civilizational preconditions of the Russian-Ukrainian war of 2014-2022: attempts of scientific reflection

DOI: https://doi.org/10.46398/cuestpol.4176.44

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Abstract

The aim of the article was to determine the current state of the ideological basis of the Russian-Ukrainian war of 2014-2022. The purpose was to achieve a scientific reflection on the historical and civilizational foundations of the Russian-Ukrainian war of 2014-2022, with a key focus on the distorted facts of the past. The presentation of the research results is carried out on the basis of the chronological method. The main sources of the work are written historical evidence (Hypatian Chronicle and Chronicle of Thietmar of Merseburg, etc.). In addition, the problem of the main historical and political origins of the divergence between the Ukrainian and Russian peoples, the features of the formation of Asiatic-type despotism in Russia and the problem of Eurocentricity of Ukrainian territories over the centuries were considered. In conclusion, it is summarized that the simplified schemes of interpretation of the history of Ukrainian and Russian peoples became the main feature for the

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Recibido el 04/11/22 Aceptado el 16/01/23

Russian, anti-Ukrainian propaganda in the period of 2014-2022. On the basis of distortion of historical facts and financial opportunities poured into the information sphere, the old Soviet and imperial myths are actively replicated in Russia.

Keywords: historical background; foundations of civilization; Russian-Ukrainian war; Russian propaganda; contemporary political history.

Sobre la cuestión de los orígenes históricos y las precondiciones civilizatorias de la guerra ruso-ucraniana de 2014-2022: intentos de reflexión científica

Resumen

El objetivo del artículo fue determinar el estado actual de la base ideológica de la guerra ruso-ucraniana de 2014-2022. El propósito fue lograr una reflexión científica sobre los fundamentos históricos y de civilización de la guerra ruso-ucraniana de 2014-2022, con un enfoque clave en los hechos distorsionados del pasado. La presentación de los resultados de la investigación se realiza sobre la base del método cronológico. Las principales fuentes del trabajo son las pruebas históricas escritas (Hypatian Crónica y Crónica de Thietmar de Merseburg, etc.). Además, se consideró el problema de los principales orígenes históricos y políticos de la divergencia entre los pueblos ucraniano y ruso, los rasgos de la formación del despotismo de tipo asiático en Rusia y el problema de la eurocentricidad de los territorios ucranianos a lo largo de los siglos. En conclusión, se resume que los esquemas simplificados de interpretación de la historia de los pueblos ucranianos y rusos se convirtieron en el rasgo principal para la propaganda rusa, anti-ucrania en el periodo de 2014-2022. Sobre la base de la distorsión de los hechos históricos y las oportunidades financieras vertidas en la esfera de la información, los viejos mitos soviéticos e imperiales se replican activamente en Rusia.

Palabras clave: antecedentes históricos; fundamentos de la civilización; guerra ruso-ucraniana; propaganda rusa; historia política contemporánea.

Introduction

The Kremlin regime began its active expansion against Ukraine in 2014, when it took advantage of anti-government protests and a degree of chaos in the state and occupied the Crimean peninsula (Ishchuk, 2022). Russia also tacitly supported pro-Russian separatists in eastern Ukraine by providing them with volunteers, equipment, and military supplies (Johnson, 2022).

The ideological justification for this aggressive policy was the Russian regime's conviction of its own historical rights to these territories, which were replicated in all possible media channels and even partially found their way into European and American analytical resources that had contacts with Russian news agencies (Bînă and Dragomir, 2020). The effectiveness of such actions was quite high because even completely inert citizens were persuaded of their own rightness (Bînă and Dragomir, 2020). The military aggression against Ukraine in 2022 demonstrated the destructive influence of militaristic and pseudo-historical propaganda, which created a false picture of the real situation.

The present situation had little in common with the intrusive material, but the Russian attack and the behavior of the invaders in the occupied territories vividly demonstrated the fallacy of perceptions of brotherly peoples, common heritage, and cultural affinity. The deep divisions between Ukrainian and Russian societies, which had previously attracted little scholarly attention and were sometimes denied at all, became undeniable.

1. Research Problem

The historical origins of the Russian-Ukrainian war were formed back in the Middle Ages, that is, during the formation of the Ukrainian and Russian peoples. Modern researchers see them primarily in the disagreements of mental and worldview principles, so they speak of the war between societies of a completely different mentality, historical memory, cultural identity, and traditions. These disagreements have not been emphasized in the public consciousness for a long time (Krasnozhon, 2019).

Russian media resources celebrated theses about the "unity" of the Ukrainian and Russian nations (and specifically as a Russian nation), while the Russian narrative was popular in the Ukrainian information field even after 2014 (some political forces and the resources under their control even on a general level sought to use the national issue to gain popularity among their voters). For this reason, the problem of differences in worldview, culture, and historical past requires additional consideration and argumentation, especially given the aggressive Russian propaganda and the imposition of false imperial values.

1.1. Research Focus

The main focus of the research is on historical, cultural and diplomatic coverage of the processes that distinguish truthful information from constructed false and biased assessments. The problems of Russian propaganda tools and its ideological basis require additional coverage. It is about Russian imperial, Soviet and modern Russian authoritarian mythologemes that are actively introduced into public discourse and replicated by all possible means. The historical origins of civilizational differences between Russia and Ukraine through the prism of historiosophical reflection are also emphasized.

1.2. Research Aim and Research Questions

Consequently, the purpose of the article is to scientifically reflect on the historical and civilizational preconditions of the Russian-Ukrainian war of 2014-2022. Consideration of this purpose involves the search for answers to questions related to the origins of Russian despotism and authoritarianism, the past of Rus-Ukraine in the system of international politics of the Middle Ages, Eurocentricity of Ukrainian lands through the centuries, the peculiarities of the formation of the modern European integration path of Ukraine in historical retrospective.

2. Research Methodology

2.1. General Background

The methodological basis consists of several scientific principles and methods of research: general scientific and specifically historical. Among the general scientific methods include synthesis, analysis, induction, and deduction. In the study, the main part is formed on the historical methods of research: historical-comparative, historical-typological, historical-systemic, etc. Presentation of the results of the study begins with the VI century and in chronological order are described events of the Middle Ages, early modern, modern time in order to compare events in Russian and Ukrainian history.

2.2. Materials

The main materials of the study are historical sources of Russian and European origin. In particular, the materials of the Ipatiev Chronicle were used.

Among the European narrative sources, we shall single out:

1. The Annales Bertiniani, created in the ninth century, Describing events in the West Francan kingdom and neighboring countries and their diplomatic relations (Bertiniani, 1964).
2. The Chronicle of Thietmar of Merseburg, created in the early 11th century, describes the Prince of Rus', Volodymyr Sviatoslavych, and the individual circumstances of the Christianization of Rus' (Thietmar, 1889).
3. "The Journey of Patriarch Makarii," by Paul of Aleppo, which describes the customs and life of Cossack Ukraine (Stanytsina, 2020).
4. The Description of Ukraine, by Guillaume Le Vasseur de Beauplan, which describes in detail the climate and population of the Ukrainian lands of the XVII century (Beauplan, 1660).

The use of descriptions of archaeological monuments, in particular coins, which circulated in the territory of Rus and Hetmanshchyna was of separate importance (Stanytsina, 2020).

2.3. Instrument and Procedures

Based on the analysis the main subject of research (the origins of the Russian-Ukrainian war) is divided into smaller parts (the study of mental structures of the Ukrainian and Russian peoples, the analysis of Russian-Ukrainian relations through the centuries, etc.). By means of synthesis, the mentioned parts are united and own conclusions about the main historical origins of the Russian-Ukrainian war are formed. As a result of the use of historical and comparative method comparativistic analysis of the development of the mentality of the Ukrainian and Russian people was carried out. At the same time, the historical-systemic method was aimed at the study of separate phenomena of the past of Russia and Ukraine as integral world historical systems (Gushchyn *et al.*, 2022).

The study took place in several stages. On the first - a thorough analysis of modern historical literature, on the second - the mental difference between the Ukrainian and Russian people was characterized, the origins of the Asian despotism of Russia were traced, the belonging of the Ukrainian nation to the European family of nations was investigated, the genesis was characterized. The third stage formed conclusions and prospects for further research on this debatable problem.

3. Research Results

3.1. The Origins of Asian Despotism in Russia

Russia in its historical memory mostly did not perceive European ideas and values, this rejection is explained by the historical creation of the Moscow kingdom on the territory of the Genghis Khan Empire (Golden Horde). The latter is known for the fact that it was a despotism of the Asian version with characteristics of totalitarian thought. Even K. Marx noted in his time in The Secret Diplomatic History of the Eighteenth Century that: "The Moscow Empire was created in the humiliating conditions of Mongol slavery and represents a typical Eastern despotism" (Marx, 1889: 123). From this time the Moscow tsar became the heir of the Mongol khans. The overthrow of the Tatar yoke involved: 1. Replacement of the Tatar khan by an Orthodox tsar; 2. Transfer of the capital to Moscow (Hrushevskyi, 1966).

It is known that many boyars and military nobles of the Moscow tsar consisted of Tatar nobles. At the same time, in contrast to the Russian people, the Ukrainian people had long been an organic part of the European nation. The national differences between Ukraine and Russia were also explained by the fact that the Ukrainian territory (before the establishment of Russian domination) was more connected with Europe in the social and cultural sense (Chupriy, 2018).

The famous historian M. Hrushevskyi also noted the powerful influence of Asian despotism on the formation of the culture, traditions, and mentality of the Russian people (Hrushevskyi, 1966). He believed that, compared to the Great Russian (i.e., Russian) people, the Ukrainian is a people of Western (European) culture. He further remarked that although the Russian people are becoming more Europeanized, yet they are in captivity of Eastern culture (Hrushevskyi, 1966).

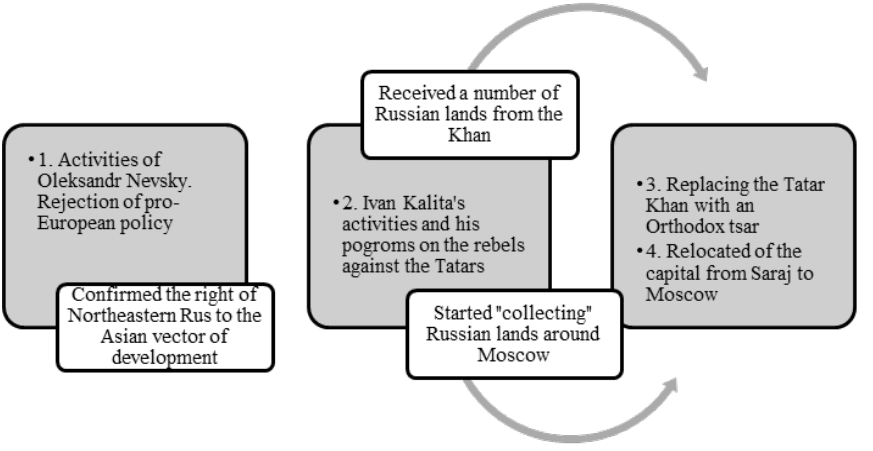
Oleksandr Nevskyi promoted the formation of Golden Horde eastern despotism in Northern Russia, who refused the prospect of the European anti-Mongolian alliance headed by Pope Innocentius IV and the Galician-Volyn (Ukrainian) prince Danylo Romanovych. Oleksandr Nevskyi contributed to the Mongols in every way, exposed his brother Andrii Yaroslavovych (who wanted to oppose the khan), and received his lands as a reward from the Mongols.

By his victories over the European knights in 1240-1242, Oleksandr approved the right of Northeast Rus for the Asian vector of development. Oleksandr Nevskiy made a final choice between east and western civilization in favor of the eastern one.

At the same time, a new stage in the formation of eastern despotism in Russian lands is associated with Ivan Kalita, who committed brutal pogroms

on the rebels against the Tatars (Konta, 2017). As a result, he became the head of the Golden Horde administration on the Volga (Chupriy, 2018). Because of his loyalty to the khan, he was able to annex to Moscow other principalities that were subject to the khan. Thus began the "assembly" of Russian territories by Moscow. In addition, the Moscow nobility happily invited Tatars to military service.

Figure No. 01. The scheme of formation of the Asian despotism of Russia



Source: Authors' development.

Consequently, the Asian culture and mentality of Russians does not accept Western values and negatively relates to its carriers, as well as Ukrainians, who have repeatedly confirmed their European aspirations in their squares in 2004 and 2013-2014.

4. Rus-Ukraine in the system of international European politics

By synthesizing influences from the West, Rus' itself exerted considerable influence on its Western neighbors. An active foreign policy, numerous treaties, and agreements present Rus as an independent medieval state with influence in the political space (Hrushevskyi, 1966).

A unique source of the ninth century is the Annales Bertiniani, which for the first time among European sources mentions Rus. The Rus ambassadors were first received by the Byzantine emperor and then, at his request, by the king of the Franks (Bertiniani, 1964).

This is convincing proof of the existence of the Rus state as early as 839 and evidence of its military and political power (Bertiniani, 1964). The European community was aware of the zeal for the campaigns. Indeed, the campaigns of the princes of Kyiv against Byzantium in the ninth and tenth centuries received publicity in Europe and this further helped to establish the military and political reputation of Rus (Chupriy, 2018). Therefore, Byzantium constantly sought to maintain friendly relations with the Russians by concluding peace treaties.

Unconditional proof of the influence of Rus in the international political arena also dynastic ties of the princes of Kyiv with the courts of European states in the XI-XII centuries. Dynastic marriages were one of the forms of interstate relations in the Middle Ages. The practice of dynastic marriages is connected with the activity of Yaroslav the Wise, Vladimir Monomakh. Thus, the dynasties of Byzantium, Western Europe, and indeed Germany and France had kinship ties with the representatives of the Rurik dynasty (Hrushevskyi, 1966).

Marriage was accompanied by certain political goals, so the rulers sought to be born with the Kyivan princes, in order to obtain their military and diplomatic support. Dynastic ties together with various diplomatic combinations and wars represent Rus' as part of the European state and political system. It is also important that representatives of the Rus elite carried their culture and education to the European world (Thyret and Hollingsworth, 1995; Tsekhmister, 2022). A striking example is a daughter of Prince Yaroslav the Wise, Anna, who became the wife of the French King Henry I. She probably brought the Reims Gospel to France.

The political activity of Rus is a no less important proof of its role in the system of trade routes. It was through Rus lands that the route "from the Varangians to the Greeks" passed, combining the Baltic and Black Seas and closing the trade routes in Eastern Europe. An important land trade route was the way from Kyiv to the west through Krakow, Prague, and the German city of Regensburg, which was a major trading center on the Danube (Thyret and Hollingsworth, 1995).

In the 10th century Rus' trade relations with Germany were recorded. Rus' merchants passed through the Czech and South German lands, heading west, but it is also important that German merchants were also frequent in Rus, they were interested in local or Byzantine goods, which were in Kyiv (Hrushevskyi, 1966). The presence of important trade routes in Rus contributed to its economic, cultural growth (Parshyn and Mereniuk, 2022).

These facts confirm the political activity of Rus', for which the European world was open. This state did not develop in isolation, it formed its own levers of influence on the European continent. Then-Rus was an independent state based on its own traditions combined with Byzantine and European traditions. Even after the end of political history, the cultural influence of Rus was noticeable on the historical development of Europe. The heir to the state tradition of Rus' became the Galicia–Volhynia state, and its rulers continued the actions of their predecessors (Ishchuk, 2022). At the time of Roman Mstislavich, Danylo Romanovych, Lev Danylovych, and others, the state continued to be politically active, the cultural center of Europe at that time.

5. Eurocentricity of Ukrainian lands through the ages

The thesis about the unity of Ukrainians and Russians does not correlate with historical facts. The events of ancient times testify to the ancient harmonious ties of Ukraine with the civilized world. Greek and Roman influences on the territory of Ukraine can be traced from the VII century BC, it is from this time begins the period of Greek colonization of the Northern Black Sea area (Hrushevskyi, 1966).

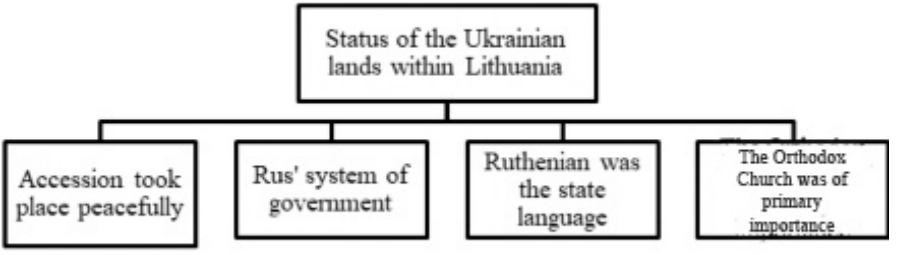
Note that medieval European values are based on the elements of Roman culture, the Greek idea of statehood. These elements also passed to Eastern Europe, which territorially encompassed Ukraine, where the idea of statehood was realized in Rus'. This first Ukrainian state of Rus' in its main parameters was a typical state formation for medieval Europe, and thus an organic part of the young European civilization (Thyret and Hollingsworth, 1995).

Rus appeared along the famous trade route "from the Varangians to the Greeks". This route was the eastern part of the continuous European network. Note that the silver coin denarius, typical of Europe, was distributed in the territory of Rus (Hrushevskyi, 1966). This demonstrates the predominance of the European connections Rus'. Analysis of the dynastic marriages of the Kyivan princes confirms that mainly their sons and daughters married Europeans. It is known that Prince Yaroslav the Wise is called in historiography "the father-in-law of Europe".

Adoption of the European religion of Christianity incorporated in the spiritual plan Rus' into the European civilization community. During the Lithuanian-Polish period of the XIV-XVIII centuries. Ukrainian lands at first voluntarily became part of Lithuania. This accession occurred mainly peacefully, primarily as a result of the principality's desire to get rid of Mongol dependence (Konta, 2017). However, even now Ukraine has not lost its orientation towards Europe and has maintained close diplomatic

relations with it. Note that the Lithuanian Statutes (the basic law in the Grand Duchy of Lithuania) were based on Rus' law (See Figure 2).

Figure No. 02. Status of the Ukrainian lands within the Grand Duchy of Lithuania



Source: Written by the authors of the article.

It should be noted that European coins were spread in Ukraine from the 10th century to the beginning of the 18th century. This is confirmed by written sources and numerous archaeological finds (Vynar, 2020). The presence of such material facts confirms that the Rus' lands had close relations with the leading European countries.

At the same time, during the Cossack period, Ukraine's relations with European countries strengthened considerably. Directly agrarian colonization of Ukrainian steppes in the 16th-XVIII centuries was a consequence of the powerful development of Europe and the growth of demand for Ukrainian agricultural products. Colonization of fertile territories of Ukrainian steppes and forest-steppe in the realities of the Tatar threat acquired armed expression (Konta, 2017).

Consequently, it is the phenomenon of the Ukrainian Cossacks that is associated with important social and economic processes in Europe at that time. Ukrainian territories were familiar with the revolutions of the 17th century that swept through Europe. It is significant that A. Cromwell, the leader of the English revolution, congratulated Bohdan Khmelnytsky, the leader of the national-liberation rebellion in Ukraine, on his victory.

The proclamation of the hetman state laid the beginning of the formation of a legal society of the European type in Ukrainian lands, which presupposed

the election of officials. At the same time, the Ukrainian cities of that time possessed democratic European principles based on Magdeburg Law and polyethnicity. The latter presupposed the choice of the head of the city. In particular, the example of Lviv can be traced to the powerful coexistence of several Christian and Muslim communities, which for the Middle Ages can be considered an exceptional practice even for then Europe (Parshyn and Mereniuk, 2022).

The judicial power was exercised independently of the state administration. It should be noted that during the Cossack period Ukraine became a place of European culture and education. The well-known traveler Pavel from Aleppo, having arrived in Hetmanshchyna, recollected that the peasants here were also literate. At the same time, the foreigner was amazed by the knowledge of the music by the population of Hetmanshchyna. The Customs and writing of the Ukrainians also surprised the famous French engineer Guillaume de Beauplan (Beauplan, 1660).

Following the example of European universities of that time in Kyiv was founded the first high school in Eastern Europe - the Kyiv-Mohyla Academy. The vast majority of the Hetmans of Ukraine studied at this institution. Among the nobility of that time, many people studied at Western universities. Since that time Latin, which was the basic language in Europe, also spread in Ukraine (Thyret and Hollingsworth, 1995). Let us mention the fact that at that time the noble entourage of the Russian Tsar Peter I was illiterate. A striking example is A. Menshikov, a Russian statesman and military leader, a favorite of Peter I.

As for the art of that time, it also developed under the influence of baroque, a style that was widespread in Europe. At the same time, in Ukraine, it had its own, autochthonous expressed features, for which it was called - Cossack Baroque. It was under the patronage of the Hetmans that this style developed. At that time isolated from European values, Muscovy was not able to create its own Baroque style and received it in the ready form from Ukrainian Hetmanshchyna.

Forced separation of Ukrainian lands from Europe began by Peter I, using his aggressive policy of “state mercantilism”. At first, he ruined Ukrainian merchants, who were taxed with a complicated duty. However, Russian merchants received the right of duty-free trade (Chupriy, 2018). In addition, there was a brutal monetary reform, which had the effect of preventing Ukrainians from using European coinage. Thus, the Russian authorities tried to pull Cossack Ukraine into the economic system of Russia (Hrushevskyi, 1966). Especially difficult time in the history of Ukraine were the years 1764 (abolition of Hetmanshchyna), 1775 (liquidation of Zaporizhian Sich), 1783 (introduction of serf system), 1801 (prohibition to build Churches in Cossack baroque style).

However, the Western Ukrainian territories were part of European countries (Austria-Hungary, Poland). Despite the lack of state sovereignty, the lands of Galicia and Volhynia generally maintained close economic and cultural relations with European countries. At that time there was a distinctive church elite in these territories, which developed Ukrainian culture and art.

Consequently, the inhabitants of these territories managed to preserve their national consciousness despite many negative historical events and circumstances. After the seizure of the Western Ukrainian lands by Soviet Russia (1939), mass brutal repressions began, which introduced collectivization and industrialization here (Ostropolska, 2021).

However, the Russian authorities, using the mechanisms of brutal repression, did not succeed in destroying the national consciousness of the Ukrainians (Ishchuk, 2022). Thus, the analysis of history refutes the theses about Ukraine as an original part of Russia. Historical facts show that the Ukrainian territory ended up first in the Russian Empire and later in the USSR not of its own free will, but as a result of the Russian harsh expansion. Eastern Ukrainian territories were part of the repressive and despotic empire 200 years ago, and western Ukrainian territories only after brutal repression after World War II.

6. Discussion

The importance of historical myths for contemporary Russian politics is very high, as researchers have repeatedly pointed out (Bînă and Dragomir, 2020). The delirium of the imperial past, which has been created for more than one hundred years, has had its specific mythologemes. They are heterogeneous, devoted to several historical periods, and have their own semantic load. In the first place, it refers to the justification of the superiority of the Russians and its rights to the surrounding lands. Such policies appeared as early as the late Middle Ages, but in essence, these messages have been unchanged for centuries. Moreover, they do not take into account the real differences between Ukrainians and Russians.

One of the frequently repeated theories is the designation of Moscow as “the third Rome”. This ideological and theological concept was first proposed by Philotheus of Pskov in 1523. Its essence was that Moscow was becoming the spiritual successor of the Roman and Byzantine empires. Rome fell because “heretical Catholics” seized it, and “the second Rome” (Constantinople) was seized by Muslims. True Christianity (Orthodoxy) remained only in Moscow, therefore after it the concept of Rome as spiritual and imperial capital cannot exist. Another myth heard even from the top officials of the Kremlin regime already during the Russian-Ukrainian war,

is that Ukraine was created by Vladimir Ulyanov (Lenin) in 1918, giving the Ukrainians territories that belonged to the Russians. By then, no such ethnic, cultural, and historical space seemed to exist. Thus, the "return" of the southeastern regions of Ukraine to the Russian state is a legitimate goal, which can be realized in different ways, including military-aggressive ones.

Such mythologies do not take into account civilizational differences between the Ukrainian and Russian nations but are based on something else. First of all, Russian propaganda presents its claims as a priori facts and reproduces them using all possible channels of information dissemination (Johnson, 2022). This creates a "numerical advantage" in the information field. Given the long and systematic work, Russian ideas have their supporters abroad. At least many influential people, until the Russian army showed its real face in Ukraine, took such arguments seriously.

Among them, in particular, was the influential multibillionaire Elon Musk, who sensibly took the thesis of ancestral Russian territories as part of Ukraine, and Pope Francis, who spoke out in favor of ending the war, but for some time did not perceive the Russians' responsibility for the crimes committed. Current trends to remove fake pages and bots' farms that spread lies, limiting the influence of lobbyists and paid influencers are effective steps to counteract machinations (Bînă and Dragomir, 2020).

Another psychological maneuver used by the Russians was the distortion of facts (Kuzio, 2021). Emphasis was placed on visible truthful details, while "inconvenient" facts were suppressed or erased (Martz, 2022). The examples of the proposed mythologies show that they do not stand up to detailed criticism. In particular, the Pskov monk declared Moscow to be the third Rome in its own right. The Christian traditions of Moscow are quite young, while much older Orthodoxy spread to Moldova, Serbia, Georgia, etc.

Indeed, after its fall and capture by the Ottoman Turks in 1453, the role of the Orthodox center in Moscow increased. At the same time, there was also Orthodoxy in the Ukrainian lands - calls for the primacy of the modern Russian capital are artificial. Also, Lenin actively used the word "Ukraine" in his activities and on his own behalf, berating tsarism (Kuzio, 2021).

However, the concept of Ukraine itself appeared much earlier, and at the time of the Bolshevik coup, the Ukrainian Central Council operated in Kyiv as the democratic parliament of the Ukrainian people within the ethnic limits of its settlement. In general, the term Ukraine was first mentioned in the Hypatian chronicle in 1187 (Hypatian chronicle, 1908: 663) Historical truth is a powerful tool in overcoming the propaganda used by the Kremlin regime.

A weighty factor was also the weakness of Ukrainian positions in 2014-2021. Ukrainian society was unprepared for the mass replication

of fakes, perceived some of them (Ishchuk, 2022). There was no effective counteraction in the information field: pro-Russian politicians had the right to vote in the Verkhovna Rada of Ukraine, openly demonstrated their views on national TV channels, and had some support from the population (Schläpfer, 2016).

The state cultural policy was weak. For this reason, explaining the civilizational differences between Russians and Ukrainians was the business of a few intellectuals and enthusiasts, whose views were drowned in the sea of Russian propaganda. The situation has changed dramatically since February 24, 2022, but now quite a few media figures who had taken a moderate or pro-Russian stance before the open phase of the war have taken the Ukrainian side (Martz, 2022). At the same time, only time will allow time to build a reliable information model capable of countering Russian fakes.

Much to demonstrate the Kremlin's war crimes have been committed by the Russians themselves. In particular, many Ukrainians believed before the open expansion in 2022 that the Holodomor of 1932-1933 was not the result of a deliberate policy of Soviet Moscow, but a coincidence of natural factors. After the atrocities of the Russian army in the occupied regions of Ukraine, doubts about the artificial causes of the Holodomor disappeared. Thus, the gradual destruction of Russian myths is also carried out by the hands of the Russians themselves.

Conclusions and Implications

So, the Russian-Ukrainian war of 2014-2022 has a long basis of the historical and civilizational plan. It is about significant differences in the psychology and mentality of two different people. Ukrainians from princely times (Kyivan Rus) gravitated to the European vector of development, while Moscow princes chose for themselves the Horde subjection and the corresponding despotic model of statehood.

As the analysis of historical coexistence showed, the differences only multiplied in the future - the conquest of Ukrainian lands and the development of their Russian nobility approved the possibility of imperial myths about the absence of the Ukrainian people as a whole.

All opponents of this viewpoint were subject to repression, which intensified after the Bolsheviks gained power. If M. Hrushevsky could still write about the history of Ukraine-Rus, during the Soviet rule Russians, Ukrainians and Belarusians were considered one people, which had disintegrated due to the Horde invasion, but always aspired to unity.

Such simplified schemes of history and cultural history have formed the basis of modern Russian propaganda. The Kremlin regime, through its

controlled media, has used considerable resources to broadcast selected materials.

At the same time, Ukraine's information policy was weak, and many Ukrainian politicians were still influenced by Russian centralism even after 2014 and the outbreak of hostilities in Crimea and eastern Ukraine. Obviously, only a revival of real research on Ukrainian history and culture will allow the civilizational differences between the Ukrainian and Russian peoples to be demonstrated.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 769-779
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Manipulation as an element of the political process in social networks

DOI: https://doi.org/10.46398/cuestpol.4176.45

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Abstract

The relevance of the research comes from the extent of the influence of information and communication technologies in socially significant areas, where the manipulation of public consciousness, in the Internet space, particularly in social networks, is an obvious phenomenon. The aim of the study was to discuss the opinion that the main driving factor in the use of social networks, as a proven platform for the manipulation of public consciousness, has been increased by social restrictions on personal contacts caused by the COVID-19 pandemic. General and special research methods were employed to achieve the stated objective. It is concluded that, despite the obvious advantages of the use of social networks in the political process, the political manipulations that currently exist in the virtual environment are often of a destructive nature and carry hidden symbolic threats to destabilize the life of a given country, as well as to worsen the quality of life of each of its citizens. Most of the time, political manipulations in the virtual environment take place at various stages of the electoral process.

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Recibido el 04/12/22 Aceptado el 12/01/23

Keywords: virtual political processes; political manipulations; public management; social networks; political communication.

La manipulación como elemento del proceso político en las redes sociales

Resumen

Relevancia de la investigación viene por la por la extensión de la influencia de las tecnologías de la información y la comunicación en ámbitos socialmente significativos, donde la manipulación de la conciencia pública, en el espacio de Internet, en particular en las redes sociales, es un fenómeno evidente. El objetivo del estudio fue discutir la opinión de que el principal factor impulsor del uso de las redes sociales, como plataforma probada para la manipulación de la conciencia pública, se ha incrementado por las restricciones sociales en los contactos personales provocadas por la pandemia del COVID-19. Para el logro del objetivo planteado se emplearon métodos de investigación generales y especiales. Se concluye que, a pesar de las evidentes ventajas del uso de las redes sociales en el proceso político, las manipulaciones políticas que existen en la actualidad en el entorno virtual son a menudo de naturaleza destructiva y conlleva amenazas simbólicas ocultas de desestabilizar la vida de un determinado país, así como de empeorar la calidad de vida de cada uno de sus ciudadanos. La mayoría de las veces, las manipulaciones políticas en el entorno virtual tienen lugar en varias fases del proceso electoral.

Palabras clave: procesos políticos virtuales; manipulaciones políticas; gestión pública; redes sociales; comunicación política.

Introduction

The role of social networks in everyday human life is significant, especially as demonstrated by the events triggered by the COVID-19 pandemic when personal contacts were restricted, and isolation measures were applied. This period of social distancing demonstrated how, with the help of the virtual environment, it is possible to successfully manipulate many people's minds without resorting to overt psychological pressure.

Thus, politics, as an important component of the social life of individuals, received already proven mechanisms of manipulation, which existed in the world before this historical moment but have not yet shown

their effectiveness in a practical way. Yes, from the very beginning it was a question of mechanisms for manipulating public consciousness, as used by the public administration system in health care. Still, subsequently, the sphere of influence spread to other spheres of social life.

Given the relevance of the research topic and its practical importance, the issue of the mechanisms of political manipulation in social networks and beyond causes a lively discussion among scholars around the world, "manipulation checks are often advisable in experimental studies, yet they rarely appear in practice" (Kane and Barabas, 2018: 240). Thus, Manuel Goyanes explores the issues of political pressure on the media and notes that "the journalistic field of Spanish public service broadcaster has traditionally been questioned for its "lack of political autonomy because of pervasive news manipulations over the course of years" (Goyanes *et al.,* 2020: 1079).

Relevant to the analysis in this study were the works of scientists devoted to the problem of the use of social networks for the implementation of manipulations at all stages of the electoral process. Nicolas Martin devoted his research paper to "the analysis of election fraud in Pakistan and India and the political manipulations that were used during the elections" (Martin and Picherit, 2019: 15).

The use of political manipulation techniques, particularly the issue of financial support for the electoral process, is also addressed by Seeun Ryu, who "examines how state tax and expenditure limitations (TELs) affect the size of fiscal reservas over election cycles" (Seeun *et al*., 2020: 379). Regarding the importance of studying the financial aspect of the political process and the manipulation that occurs in its various forms, Pierre Mandon also notes in his writings, however, it is much clearer that researchers selectively report that national leaders do manipulate fiscal tools in order to be reelected (Mandon and Cazals, 2018).

Natália S. Bueno also devoted her scholarly work to exploring the interplay of finance, manipulation, and the electoral process, noting that distribution without attribution reduces the likelihood of political budget cycles compared to distribution with attribution, which together reinforces pre-election expansion of policy benefits (Bueno, 2021).

Manipulative techniques do not exist in isolation, whichever sphere of social life they touch - politics, education, culture, or health care. "The issues of political manipulation" have been comprehensively examined in the work of Norbert Paulo, who notes that "influence (on voters) can be exerted through manifold means and to different degrees, from communicative information and rhetoric over mass media advertisements and propaganda to exploitation of psychological weaknesses, subliminal priming, etc." (Norbert and Bublitz, 2019: 58).

Draws attention to the complexity of the political process and Christopher M. Federico, in his opinion:

> Stronger need for security and certainty attracts people to a broad-based politically conservative ideology, thus, a person's preference for a political idea specifically conservatism will be influenced by its psychological need for security, which can also be used in one or another political manipulation in social media" (Federico and Malka, 2018: 38).

It is difficult to understand the nature of political manipulation by examining generalized experiences, so Jonathan Matusitz chose to study the specific case of political manipulation on social media, comparing it to terrorism, Luis Posada scandal involved more than just the terror; it also involved the questionable collaboration of several U.S. presidents, government officials, and agencies with entities in Cuban-exile communities (Matusitz and Simi, 2021).

Robert Gorwa also preferred to examine one particular object of political manipulation on social media, namely the creation and use of so-called "bots" in the political process, noting that most recently, platform companies like Facebook and Twitter have been summoned to testify about bots as part of investigations into digitally enabled foreign manipulation during the 2016 U.S. presidential election (Gorwa and Guilbeault, 2018).

Whichever element of the political process is investigated in terms of its use of social media manipulation, it is imperative to examine it comprehensively, taking into account all the causal relationships and peculiarities of its legal nature. As correctly notes Luke Fowler, "... apply Kingdon's multiple streams framework (MSF) to policy implementation to reflect a nested process separate from but interdependent with policymaking" (Fowler, 2021: 418).

The results of these scientific works testify to the powerful psychological potential of social networks for their use in the implementation to influence the public consciousness. Political manipulations implemented in the virtual environment are used for election campaigning, legal and illegal activities of different political groups of a particular country, if we are talking about their use at the national level, for information warfare at the interstate level.

1. Materials and methods

To achieve the goal and objective of the study and to conduct a comprehensive analysis of the nature of political manipulation existing in social networks, their impact on society, we used general scientific methods of research, as well as legal and sociological methods.

2. Results and discussion

In the era of globalization and the introduction of information and communication technologies, almost all socially significant areas of society, accompanied simultaneously by the democratization of political processes and the political system, cause the rapid development of network technologies, innovative means of communication, and other attributes inherent in the life of the post-industrial world community.

These changes can be implemented as liberal-democratic transformations in socio-political life, the creation of the ombudsman institution, the formation of e-government, or as nominal changes taking place at the level of populism, the content of which consists only in a claim for democratization as the main demand of society without real changes in the political process of a particular country. An example of such changes can be defined as permanent reforms with respect to state structures, reorganization, and the creation or elimination of certain state agencies.

Consequently, it is the realization of the political aspect in the digital society that is remarkable in this trend of transformation, which manifests itself, first, in the diversity of subjects, both representatives of society and direct participants in the political process, second, in the diversity of the forms in which it is directly realized, and also "findings suggest an important "interaction occurs among problems, policies, and politics during the policy implementation process" (Fowler, 2021: 418) because the forms of its implementation cover almost all spheres of social life: education, culture, science, sports, health care, etc.

Obviously, whatever political processes take place in any given country, the influence of the media and social networks on their outcome will be significant, as evidenced by studies such as, "drawing upon 45 in-depth interviews with TVE news workers, our findings first illustrate the reach and morphology of political pressures in TVE, examining how the news production management structures the anatomy of political interferences in the newsroom" (Goyanes *et al*., 2020);

> By examining both overt and subtle mechanisms of electoral manipulation and fraud during electoral seasons in India and Pakistan, this special issue moves away from the dominant legalistic framework for examining electoral malpractice and demonstrates how electoral processes in the region cannot easily be insulated from an increasingly criminalized political landscape (Martin and Picherit, 2020: 08).

From the above, we can conclude that the most vulnerable element of the political process that falls under the influence of manipulation is the electoral process, and it is through the media and social networks that it is possible to influence the sympathies or antipathies of voters, for example by forming identical messages in social networks that are repeated many times.

Social networks are actively used with the use of political manipulation, as we have noted, for campaigning, despite the fact that the voting process itself has traditionally remained offline.

Furthermore, increasing use of social media technologies appears to expand citizen input at greatly reduced cost (Piccorelli and Stivers, 2019). The use of social media and the successful use of political manipulation during the electoral process allows for less costly election administration at all levels of government.

Politics in a state does not exist in isolation from other social phenomena and has close links with culture, sociology, and psychology, "... cognitive and emotional deficiencies can affect moral y political decisions" (Norbert and Bublitz, 2019: 70).

A characteristic feature of the political process at the present stage is the total informatization of the social space, information, methods, and mechanisms of its presentation in social networks have a direct impact on its recipients, "... information manipulation theory, which postulates that information is packaged through manipulative messages; it is transmitted from a sender who gives false information to a receiver, the audience" (Matusitz and Simi. 2021: 63).

Equally important is the issue of funding the manipulation of the political process carried out on social networks. Unscrupulous participants of the process, having more economic opportunities than their opponents, often resort to dirty manipulations, such as spreading fake information about them with the help of so-called "bots".

And cases of financial manipulation in the political process are not unique to our state, so in the United States "using a panel data set of 47 U.S. states from 1986 to 2013, we find that the persistent pattern of electoral cycles in general fund balances (GFBs) disappears in states with stricter TEL" (Seeun *et al*., 2020: 382).

However, it is difficult to prove the fact of political manipulation in a virtual environment through the use of financial means in the implementation of various forms of the political "process, based on data collected from 1037 regressions in 46 studies, our meta-analysis suggests that little if any, systematic evidence can be found in the research record that national leaders do manipulate fiscal tools in order to be reelected" (Mandon and Cazals, 2018: 301).

At the present stage, some countries in the world are trying to eliminate illegal financial influence on the electoral process in order to avoid possible political manipulation. Brazilian rules banning credit claiming before elections while allowing the distribution of benefits until Election Day provides an opportunity to differentiate between distribution and credit

claiming combined with distribution as an engine that reinforces political budget cycles (Bueno, 2021).

Consequently, the political processes taking place in the constantly transforming modern digital society remain unchanged in their content. It is a peculiar interaction between the participants of the political process, the political elite, state structures, as conductors of the political activity of political subjects and society, according to a particular historical stage, only the nature of this interaction changes, which entails the reformatting of the political system in this or that country as a whole.

Social networks provide great advantages for the development of society, first of all, it is about the interactivity of the virtual environment, through which the global network acts as an effective mechanism to provide feedback between the authorities and society, the new technology opens up great opportunities for participants of the political process.

Also at the present stage, there is wide use of social networks by participants of the political process, relevant to it and perspective for the development of the political segment of the Internet in the future, propaganda is carried out by means of various Internet technologies which allows to draw more attention of the electorate to itself and leads to increase of political activity of citizens.

However, despite the obvious advantages of using social networks to implement policy objectives, we are inevitably confronted with the threats that it hides in itself. We are talking about unscrupulous participants in the political process and the manipulation techniques they use in the virtual environment of social networks.

Amid widespread reports of digital influence operations during major elections, policymakers, scholars, and journalists have become increasingly interested in the political impact of social media bots (Gorwa and Guilbeault, 2018).

An example of such political manipulation on social media is also deepfake, a set of technological transformations of images and videos created using artificial intelligence. Deepfake is a fabricated video, created from scratch or based on real-life footage, which aims to reproduce the appearance and voice of a real person performing actions or expressing speech that she never actually performed.

The basis of the action of political deepfakes is the technique of manipulating people. These techniques may use copies of images of political figures as the subject and people around the world as the object. Electronic social media play a crucial role in the promotion of deepfakes.

As social networks are getting more and more popular day by day, large numbers of users becoming constantly active social network users

(Bayrakdar *et al*., 2020), which is related to the development of human civilization and the historical events it is experiencing: "Man is a social being" "...we argue that relationships between dispositional attributes and political preferences vary in the extent to which they reflect an organic functional resonance between dispositions and preferences or identity-expressive motivation to adopt a political attitude..." (Federico and Malka, 2018: 40).

According to this, political manipulation in social networks is quite effective in achieving certain goals, for example, using the issues of national minorities of a particular country. Language maintenance and revitalization efforts are increasingly important as languages spoken by smaller languages continue to be lost as globalization prioritizes larger languages of economic and political importance (Lou-Magnuson and Onnis, 2018).

"Being suggestible to each other's expectations enables pro-social skills that are crucial for social learning and adaptation" (Duerler *et al*., 2020: 65). It is an undeniable fact that a person's expectations regarding a certain phenomenon and event are subjective and are also actively used in the implementation of political manipulation in social networks. We are talking primarily about the application: "... on communicative patterns prominent in social media: algorithms to aggregate news, filter bubbles, echo chambers, spirals of silence, false-consensus effects, fake news, and intentional disinformation" (Höttecke and Allchin, 2020: 445).

Social networks at the present stage should be seen as a trend - the direction of development of the political system. As practice shows, in large cities, which are centers of political and economic activity, this trend has already been fully implemented, it has become part of the daily life of man. In this case, we can argue about the actual informatization of political processes at the regional level.

"While the governance of the Internet is often assumed to be merely a technical matter, it is actually a fiercely contested political arena, in which institutional arrangements are still being shaped" (White, 2019, 465). Such informatization brings both positive changes to the political system and creates certain risks for it.

It is necessary to consolidate the political Internet community, preventing the disintegration of network segments based on ideological or other similar criteria. In addition, an important point in the functioning of social networks is state control over security in the virtual environment, which is not reduced to authoritarian methods of total control and non-admission of political forces in the arena of social networks based on their political perceptions, provided that the latter carry out their activities within the law.

It is also necessary to dwell on the problem of political manipulation in social networks, such as the role of the political elite in their implementation. "Many posts socialist countries are run by an elite with links to the socialist legacy and often share similar challenges and issues" (Pulatov and Ahmad, 2021: 1248). "The latter shows how sub-national transfer systems are affected by political manipulation, specifically that transfers are directed toward co-partisans of the politician who sends the funds" (Pickard, 2020: 113).

Like the media, political elites can use social media to satisfy their own needs, such as "scoring" votes for politicians. This leads to a loss of public trust in the government and the degradation of the political system as a whole, as well as the problem of manipulation in social media, which is carried out "...by the communicative tactics of provocation, warning, menacing, blackmailing, persuasion and flattery" (Bigunova and Kosovets, 2021: 100).

Conclusions

Thus, at the present stage of development of digital society, mechanisms of manipulation in social networks are one of the main means of information methods of confrontation, both between the states of the world, for the necessary "transit" of external ideas, values, symbols from the political control to destroy the traditional political space.

Social networks have a high potential to exercise covert large-scale manipulative influence on the consciousness of Internet users of a particular state and beyond its borders in the presence of external stakeholders competing with each other by improving the mechanisms of manipulation themselves and increase the effectiveness of their application in the information and communication environment.

Democratization is unthinkable without the development of network technologies, innovative means of communication, and other attributes of post-industrial society. The political processes taking place in today's transforming society remain unchanged in their underlying essence.

The possibilities of social networks have tied together on a single communication platform most of the real political processes that are unfolding on the Internet, from pre-election campaigning to the illegal activities of marginal political groups.

An important characteristic of social networks is their interactivity, through which the global network acts as an effective mechanism of feedback between the authorities and society. The new technology opens up great opportunities for participants in the political process.

Propaganda with the help of various Internet technologies and social networks allows attracts more attention from the electorate, which in turn entails an increase in the political activity of citizens.

The Internet makes it possible to organize elections at all levels of government at a lower cost, a significant factor in its development as a means of political communication is the need to protect databases, ensuring state security, and other issues of cybersecurity.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 780-791
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Lineamientos generales para la construcción de una política de salud mental en el marco del nuevo humanismo del siglo XXI

DOI: https://doi.org/10.46398/cuestpol.4176.46

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Resumen

Los problemas de salud mental se han agravado en la mayoría de las sociedades modernas, hasta el punto de que trastornos como: la depresión, la ansiedad y el estrés, figuran entre las principales causas de inhabilitación laboral en el mundo. Aunque la hipótesis psiquiátrica de la ciencia occidental que asume los trastornos mentales como el resultado de un desequilibrio neuroquímico se presente como hegemónica en el mundo de hoy, para explicar las enfermedades mentales, no cabe duda que estos trastornos empeoran en estrecha correlación con las contradicciones de los modelos políticos-socioculturales y económicos que afectan las vidas de las personas sensibles a la descomposición social o a las contradicciones sistémicas. En este sentido, el presente articulo define algunos lineamientos generales para la construcción de una política de salud mental en el marco del nuevo humanismo del siglo XXI. Metodológicamente se empleó el método fenomenológico y hermenéutico, como herramientas útiles para formular propuestas precisas con alguna utilidad política. Los resultados obtenidos permitieron concluir que, la

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Recibido el 29/11/23 Aceptado el 25/01/23

mayoría de los *neurodiversos* son, en acto o en potencia, ciudadanos que están en condiciones de participar activamente en la construcción de sus propias realidades, más allá de sus limitaciones de ánimo y de conducta.

Palabras clave: salud mental; nuevo humanismo del siglo XXI; políticas públicas; neurodiversidad; relación individuo-sociedad.

General guidelines for the construction of a mental health policy within the framework of the new humanism of the 21st century

Abstract

Mental health problems have worsened in most modern societies, to the point that disorders such as depression, anxiety and stress are among the main causes of work disablement in the world. Although the psychiatric hypothesis of Western science that assumes mental disorders as the result of a neurochemical imbalance is presented as hegemonic in today's world to explain mental illnesses, there is no doubt that these disorders worsen in close correlation with the contradictions of political, socio-cultural and economic models that affect the lives of people sensitive to social breakdown or systemic contradictions. In this sense, this article defines some general guidelines for the construction of a mental health policy within the framework of the new humanism of the 21st century. Methodologically, the phenomenological and hermeneutic methods were used as useful tools to formulate precise proposals with some political utility. The results obtained allowed us to conclude that most neurodiverse people are, in act or in potential, citizens who are able to actively participate in the construction of their own realities, beyond their limitations of mood and behavior.

Keywords: mental health; new humanism of the 21st century; public policies; neurodiversity; individual-society relationship.

Introducción

El objetivo del presente artículo científico fue definir algunos lineamientos generales para la construcción de una política de salud mental, en el marco del nuevo humanismo del siglo XXI. Metodológicamente se empleó el procedimiento fenomenológico y hermenéutico, como herramientas útiles para formular propuestas precisas con alguna utilidad política. Por lo demás, la idea de un conjunto de académicos ucranianos de escribir trabajos

de investigación en español, con predominio de fuentes iberoamericanas, responde al propósito de afianzar los vínculos académicos y científicos que en la última década se han venido desarrollando entre Europa del este, en general, y América Latina, región que se caracteriza por poseer excelentes universidades y revistas de alto impacto (Dymchenko *et al.*, 2022).

Los problemas de las enfermedades mentales son multidimensionales y difíciles de abordar, por lo tanto, pueden ser interpretados legítimamente desde la psicología, la psiquiatría, la filosofía, la sociología, la lingüística o incluso la ciencia política. De hecho, en la psiquiatría es común hablar de trastornos mentales más que de enfermedades propiamente dichas, ya que el concepto de trastorno hace alusión a un fenómeno, en este caso, de carácter bio-psico-social cuyo origen definitivo no está completamente esclarecido (González y Pérez, 2007).

No es el propósito de esta investigación discutir las concepciones actuales de la psiquiatría de mayor divulgación, sobre el alcance y significado de las enfermedades mentales (trastornos), ni avalar posturas antipsiquiatrías. Basta reconocer el hecho irrefutable de que las personas que padecen: depresión, ansiedad, estrés, bipolaridad, trastornos obsesivos-compulsivo o esquizofrenia, entre otros, sufren por partida doble: las consecuencias propias de su condición neurodiversa que normalmente rebasan lo que una sociedad determinada considera como "conducta normal" y; por el otro, se enfrentan a los prejuicios, estigmas y desconocimientos que las personas comunes despliegan sobre estos temas, sin mucho fundamento.

¿Se puede suponer entonces que las enfermedades mentales son únicamente una problemática individual sin consecuencias políticas y económicas? Toda la evidencia disponible apunta a que no, ya que como explicó en su momento el ilustre Eric Fromm, la misma idea de normalidad es problemática y ha servido políticamente para adaptar a las personas y comunidades a un conjunto de procesos económicos y socioculturales que, en muchos casos, no responden a sus necesidades y aspiraciones como personas libres. En este sentido, toda práctica, conducta o discurso que atente contra la idea hegemónica de normalidad que identifica, en acto y en potencia, a un orden de cosas, es asumido acríticamente como patológica o actividad subversiva (Fromm, 2001), de lo que se puede inferir entonces que la normalidad misma como estándar general en términos de estilo de vida es enfermiza, al negar las diversas posibilidades de ser y hacer en el mundo.

Conviene recordar que, la concepción original de la política desarrollada por los antiguos griegos supone que es político todo los concerniente a la vida de la comunidad o la Polis, de modo que, rememorando en lo posible esta visión de la política y lo político donde, por lo demás, las fronteras propias de la modernidad entre las esfera pública y privada de la vida social se torna difusa, los autores de la presente investigación asumen entonces

que las enfermedades o trastornos mentales se constituyen en un fenómeno que adquiere connotaciones políticas porque, por una parte, afecta al bienestar social general y requieren, en consecuencia, ser atendidos en cada momento por un conjunto de políticas públicas y; por el otro, porque la persona neurodiversa comúnmente desarrolla conductas y prácticas que desafían a las estructura del biopoder que normalizan y administran las mentes y los cuerpos para beneficio del *statu quo* (Foucault, 1986).

Por lo demás, el articulo se divide en tres secciones independientes, pero al mismo tiempo interconectadas. En la primera, se discuten los aspectos teóricos que sirven de sustento a nuestra idea de *salud mental* y de *nuevo humanismo*. En la segunda sección, se explican *grosso modo* los aspectos metodológicos que hicieron posible el desarrollo y consecución del objetivo planteado; seguidamente en la tercera sección, se definen los lineamientos generales que los autores proponen como marco conceptual general para la construcción de una renovada política de salud mental y, por último, se arriba a las principales conclusiones del caso.

1. Discusión teórica sobre las categorías: política de salud mental y nuevo humanismo

Los problemas de salud mental adquieren en el mundo de hoy un inusitado interés al menos por tres razones específicas**:**

1. las nuevas concepciones del bienestar asociadas, a su vez, al desarrollo humano promovidas por la filósofa Nussbaum (2012), establecen que toda capacidad de ser y hacer con libertad requiere, en principio, de la plenitud del sentir, imaginar y pensar, desde un estado donde las funciones propias de la conciencia y el cuerpo se den en completa armonía.
2. toda política de desarrollo sostenible promueve como eje transversal el desenvolvimiento de la personalidad humana, de conformidad con su dignidad intrínseca, de modo que, todo trastorno o patología que interfiera, de forma directa o indirecta, con el ejercicio pleno de las habilidades del pensamiento (logos) y con sus funciones asociadas de sentir e imaginar a plenitud, se convierte *per se* en una barrera que debe ser en lo posible superada, individual y colectivamente.
3. en sintonía con las razones anteriores, la nueva *Polis* o *Ciudad inteligente*, requiere como condición de posibilidad para su propia existencia del desarrollo de ciudadanos sanos –integralmente– y capaces de construir sus propios espacios de convivencia, en lo material y simbólico.

Un nuevo humanismo significa entonces el desarrollo de un programa filosófico postmoderno de síntesis que a la par de las ideas de igualdad, justicia y solidaridad que de alguna manera condicionaron el pensamiento político moderno, construya también una agenda deliberada sobre la inclusión de las personas, grupos y seres mas vulnerables o en condición de emergencia social, que demandan –legítimamente– de políticas de discriminación positiva para incrementar su calidad de vida.

De alguna manera, el movimiento progresista internacional que en el prisma del materialismo político de Gustavo Bueno (2003) esta conformado por un conjunto de izquierdas indefinidas o divagantes porque necesariamente no tienen en su ideología una concepción particular del Estado y de las relaciones de poder, como si la tuvo en su momento la izquierda marxista en sus variadas escuelas, ha desarrollado una agenda, no solo en la dimensión política, sino, además, en los dominios de lo sociocultural para revindicar a grupos o colectivos: feministas radicales pro-aborto, sexo-diversos como la comunidad LGBT+, veganos, animalistas, anarcosindicalistas, indigenistas, entre otros, y todos aquellos que se organizan en torno a un pensamiento contrahegemónico y diverso, típico de la democracia de base o democracia radical, de modo que:

> El pedigrí contracultural se ve en el profundo odio por la jerarquía, la burocracia y la tecnocracia que caracteriza a esta variante democrática. El objetivo de este sistema político es eliminar las barreras institucionales y los intereses creados que se interponen entre los ciudadanos y su participación activa (Heath y Potter, 2005: 375-376).

Por su puesto, cada realidad nacional en la que se desarrollan estos movimientos progresistas es particular y requiere, por lo tanto, de un tratamiento específico. De cualquier modo, queda claro que el Nuevo Humanismo puede ser en ciertos sentidos la filosofía ecléctica que sirve de sustento ideológico a estas novedosas formas de expresión política que se producen en el norte global, pero tienden a expandirse al resto de mundo, con presencia especial en países de Latinoamérica como: Argentina, Brasil y Colombia. En este sentido, el nuevo humanismo es sencillamente una formación discursiva en la que confluyen diversos relatos y narrativas que sirven de herramientas de lucha a estos grupos que insurgen para revindican mediante la "batalla cultural" sus derechos conculcados, identidades negadas y visiones alternativas del mundo.

A diferencia del humanismo de la modernidad de tipo antropocéntrico, tal como indican Voronkova *et al.,* (2022) el nuevo o renovado humanismo es de tipo post-antropocéntrico ya que entiende que el hombre no esta solo en el centro de la historia y, en consecuencia, no tiene problemas en igualar la dignidad de la personas humana a la dignidad de otras formas de vida superior que se desarrollan de conformidad con los parámetros naturales

de cada especie, hasta el punto de tipificar los derechos de la naturaleza en la Constitución de la República del Ecuador de 2008[7].

En este orden de ideas, las luchas y reivindicaciones de las personas neurodiversas han sido, en líneas generales, algo tímidas, desde la acuñación de este concepto a mediados de los noventas del siglo pasado, para lidiar en los EE. UU., contra los estigmas que la cultura popular endosa sesgadamente en frente a las personas autistas o disléxicas. Por lo tanto:

> "Neurodiversidad" es un término popular que se utiliza para describir las diferencias en el funcionamiento del cerebro de las personas. La idea es que no hay una manera "correcta" de funcionar del cerebro. En cambio, existe una amplia gama de formas en que las personas perciben y responden al mundo, y estas diferencias deben ser aceptadas y fomentadas (Child Mind Institute, 2022: s/p).

En esta perspectiva queda claro que tal como la realidad es en extremo diversa y varia de una cultura a otra, o de un tiempo a otro, la mente humana también los es, de modo que los límites y restricciones al funcionamiento cognitivo o conductual del cerebro se imponen en todo momento desde el desconocimiento y la tiranía de la tradición, en completa sintonía con los parámetros de la cultura dominante, por lo que no es descabellado atreverse a formular entonces un conjunto de lineamientos generales para la construcción de una renovada política de salud mental, que responda a los intereses y necesidades de las personas neurodivergentes, siempre vulneradas en sus derechos fundamentales.

2. Aspectos metodológicos

Lo que comúnmente se define en el ámbito científico de la Iberofonía como metodología cualitativa representa una generalización bastante impresiva para definir al conjunto de herramientas teóricas y metodológicas que surgieron desde el advenimiento de los enfoques posestructuralistas, postpositivistas y posmodernos, impulsados en la década de los sesenta del siglo XX, por autores como Michel Foucault y Jacques Derrida, por mencionar solo algunos, para revindicar el conocimiento proveniente de las ciencias sociales y humanas, en el cual se combina en igualdad de condiciones la dimensión objetiva y subjetiva del saber, lo abstracto con lo concreto y lo general con lo particular, siempre reconociendo el condicionamiento social de todo saber verídico.

7 Concretamente en el capítulo séptimo es este texto constitucional intitulado: Derechos de la naturaliza, artículo 71, se establece taxativamente que: "Art. 71.- La naturaleza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos. Toda persona, comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública el cumplimiento de los derechos de la naturaleza. Para aplicar e interpretar estos derechos se observarán los principios establecidos en la Constitución, en lo que proceda. El Estado incentivará a las personas naturales y jurídicas, y a los colectivos, para que protejan la naturaleza, y promoverá el respeto a todos los elementos que forman un ecosistema".

En este hilo conductor la filosofía fenomenológica y hermenéutica devenida ahora en metodología y simultáneamente técnica de investigación, según sea el caso, que se establece en un espacio epistemológico propicio para describir e interpretar los fenómenos constitutivos de los mundos de vida de las personas –entendidos como la estructura esencial de su mundo– siempre situadas en las coordenadas distintivas de su tiempo y espacio particular. En palabras de Ray:

> La palabra fenomenología se deriva de la palabra griega **φρικιό**, que significa "mostrarse a sí mismo", ponerse en la luz o manifestar algo que puede volverse visible en si mismo (Heidegger, 1962: 57). "La fenomenología intenta desentrañar el significado esencial de las empresas humanas," (Bishop y Scudder, 1991: 5). De conformidad con la actitud del filosofo Husserl, la fenomenología tiene que ver con la pregunta: ¿Cómo conocemos? Se trata de una búsqueda epistemológica y un compromiso con la descripción y clarificación de la estructura esencial del mundo... (Ray, 2003: 141).

En este marco metodológico, operativamente hablando la investigación que hoy se presenta transcurrió por tres etapas o momento particulares a saber: en la primera, se selecciono un conjunto de fuentes que, en el formato de libros académicos, artículos científicos y notas de prensa en español, dieron cuenta sobre el tema de la salud mental. En el segundo momento, se procedió a la descripción fenomenológica y a la interpretación hermenéutica de los símbolos y signos que surgieron de estas fuentes como un reflejo de cierta realidad problemática. Por último, se consulto con una persona neurodiversa[8], que prefirió permanecer en el anonimato, para conocer se opinión sobre la viabilidad de la propuesta política formulada por los investigadores y, en consecuencia, se agregaron sus comentarios y observaciones en la versión final del texto.

3. Lineamientos generales para la construcción de una renovada política de salud mental

Toda política pública se construye sobre la base de una realidad especifica identificando sus problemas y oportunidades, de ahí que cuando se piensa en una política en abstracto, en este caso en el ámbito de la salud mental, es más adecuado hablar de lineamientos generales, esto es, para los efectos particulares de esta investigación, un conjunto de ideas y principios axiomáticos de carácter neo-humanista que pueden ser de utilidad para orientar la labor de los gobiernos y de los hacedores de políticas.

Los principios plateados, que en este caso son 10, pueden, baso ciertas condiciones objetivas y subjetivas, impulsar el desarrollo de algunas

8 Se trato de una mujer latinoamericana de 30 años de edad, de profesión Trabajadora Social, medicada con psicofármacos y diagnosticada con: depresión, bipolaridad y trastorno obsesivo compulsivo.

capacidades en las personas neurodiversas. Conviene aclarar que para Nussbaum (2012), filósofa judía imbricada en la tradición liberal humanista, lo realmente importante, cuando se diseñan políticas, es concebir a las personas como un fin en sí mismo y preguntar en consecuencia: ¿Qué pueden lograr ser y hacer? en un umbral mínimo de bienestar, que una sociedad con un nivel aceptable de justicia se esforzará por impulsar, más allá de las múltiples dificultades que siempre se presenta.

En este orden de ideas, las políticas publicas –en general– y las que se construyen en el ámbito de la salud mental y el bienestar humana, en particular, no solo se producen y reproducen para gestionar ciertos problemas materiales o simbólicos, sino, muy especialmente para crear, impulsar o fortalecer entonces *capacidades internas* en las personas que les permitan desarrollar sus proyectos de vida, en un clima de respeto a su diversidad e identidad. Por regla general, las capacidades internas se definen como rasgos de la personalidad, capacidades intelectuales y emocionales, estado de salud y de forma física, aprendizaje interiorizado o habilidades de percepción y movimiento, las cuales configuran habilidades y destrezas particulares en cada persona (Nussbaum, 2012).

En nuestro caso concreto y sin proponer un orden jerarquizado, los lineamientos planteados de cara a la discusión, son:

1. Necesidad de revindicar los derechos fundamentales de las personas neurodiversas, que padecen algún trastorno mental, como condición de posibilidad para revitalizar su condición de personas valiosas y ciudadanos activos, a pesar de los estigmas y violencias que los han reducido históricamente a una suerte de "ciudadanía de segunda categoría".

2. Capacidad de organizar u autoorganizar socialmente a los neurodiversas como si su condición fuera un *clivaje* políticamente relevante en una sociedad moderna en la cual, solo las personas activas y organizadas reciben respuestas por parte del Estado a sus demandas, aspiraciones y requerimientos legítimos.

3. Desarrollar campañas de comunicación política que ayuden a superar los temores y prejuicios sociales en torno a las enfermedades mentales, mucho mas cuando que, estas pueden afectar a todas personas en cualquier momento de su vida.

4. Fomentar desde el Estado, en tanto máxima forma de organización social, el abordaje interdisciplinario del fenómeno de los trastornos mentales, ya que los mismos están vinculados no solo a problemas psicológicos o psiquiátricos, sino, además, a las dificultades de los modelos políticos y económicos deshumanizantes que trastornos a personas y comunidades por igual.

5. Discutir los conceptos de "persona normal" o de "locura" científicamente, en tanto categorías políticas diseñadas para estandarizar la conducta humana en función de los imperativos del poder. De modo que el desarrollo de políticas neo-humanistas sobre esta cuestión implica, en principio, entender que las estructuras de personalidad pueden ser extremadamente diversas sin que esto se convierta, necesariamente, en un problema público.
6. Incentivar el desarrollo de asignaturas en el sistema educativo que enseñen a las personas, desde muy jóvenes, a gestionar de forma inteligente, los problemas de estrés, ansiedad y depresión.
7. Revisar filosóficamente las causas ontológicas, metafísicas y epistemológicas que hacen de los trastornos mentales un fenómeno de crecimiento vertiginoso en el seno de las sociedades modernas.
8. Fomentar desde el Estado y sus instituciones en estilo de vida sano que fortalezca en cada persona su equilibrio mental, su armonía y su paz interior, lo que implica, sin duda, la superación de los excesos, vicios y conductas inapropiadas para ser y hacer a planitud.
9. Modernizar los centros hospitalarios encargados del tratamiento de las personas con trastornos mentales, para que su experiencia de curación sea realmente digna y constructiva y no un calvario adicional a sus padecimientos.
10. Diseñar y discutir las políticas públicas de salud mental, con las personas neurodiversas y no solo con los especialistas en la materia, como condición de posibilidad para comprender lo que ellos necesitan.

Muchos de estos lineamientos son, poder derecho propio, políticas en sí mismas y, otros, principios que pueden adelantar políticas. De cualquier modo, su finalidad última es la de revindicar a las personas neurodiversas que padecen algún trastorno de salud mental, elevar su calidad de vida a pesar de los impedimentos que imponen su condición y, al mismo tiempo, incluirlos en la discusión política que toca directamente a sus proyectos de vida, tal como demanda la construcción continua de consensos en una sociedad democrática en el siglo XXI.

Conclusiones y recomendaciones

Todo esfuerzo por construir dialógicamente una política de salud mental en el marco del nuevo humanismo del siglo XXI, se encuentra con dos problemas fundamentales: por un lado, con los significados predominantes que históricamente se han construido en torno a la locura, entendida como patología o trastorno que nubla, distorsionada o anula, la capacidad racional

de las personas que padecen este mal. Esto es realmente importante si se tiene en cuenta que, desde sus orígenes griegos, la política ha sido una actividad estrictamente racional –susceptible a tratamiento científico– que adecuada de forma lógica, fines y medios, recursas y actividades, planes, proyectos y acciones concretas; de modo que, si la persona neurodiversa es por completo no-racional no podría participar activamente en la discusión, elaboración e implementación de las políticas que vendrían a responder a su condición existencial particular.

Por otro lado, y como una consecuencia derivada de la anterior, en mayor o menor media los gobiernos nacionales han olvidado su compromiso para con las personas neurodiversas, quizá porque los hacedores de políticas públicas son incapaces de comprender lo que viven, sienten y necesitas estas personas hasta el punto de darles un tratamiento que deja mucho que desear. En consecuencia, se recomienda a los hacedores de políticas con responsabilidad en salud pública, desarrollar un conjunto de investigaciones sociales que, mediante métodos etnográficos, hermenéuticos y fenomenológicos, entre otros, pueden entender más allá del dato estadístico tradicional, como estas personas entienden su realidad y representan subjetivamente el mundo en el que están inmersos como sujetos incomprendidos, marginados y excluidos.

No obstante, la mayoría de las personas adultas que en el mundo global padecen hoy de trastornos mentales como: depresión, ansiedad, estrés, anorexia, bulimia o autismo, entre otras, no están impedidos cognitivamente para razonar, para evaluar críticamente sus condiciones de vidas o para entender que situaciones les convienen y cuales no. En este sentido, la mayoría de los neurodiversa son, en acto o en potencia, ciudadanos que están en condiciones de participar en la construcción de sus propias realidades, más allá de sus limitaciones de animo y de conducta. Además, no se puede descartar del todo que, tal como indico Fromm (2001) o el mismo Freud (1993), el modelo de sociedad en el que vivimos, con sus contradicciones absurdas y sus diversas formas naturalizadas de violencia, tiene mucha responsabilidad en la reproducción de los trastornos mentales.

Por último, la personas neurodiversa que sirvió de asesora en la elaboración de esta investigación, propone que los trastornos mentales deben ser conversados abiertamente en las sociedades contemporáneas, sin sesgos, ni prejuicios, como condición de posibilidad para que las personas y comunidades entiendan que, así como el cuerpo se enferma, de diabetes, hipertensión arterial, gastritis o cualquier otra manifestación patológica, que no es proclive socialmente a la estigmatización, la menta también lo hace. En conclusión, se debe normalizar el tema de la salud mental en las representaciones sociales del siglo XXI desarrolladas sobre la salud y la enfermedad, con la firme convicción de que cualquier persona puede llegar a sufrir en cualquier momento de su vida, cualquier trastorno neuro-psicológico “sin estar loco”.

La expresión individual o colectiva de toda forma de neurodiversidad no debe estar supeditada a lo que una sociedad determinada puede considerar válido, deseable o correcto. De hecho, puede resultar muy terapéutico y liberador para estas personas que sufren muchas veces en silencio, puedan expresar abiertamente y sin tapujos lo que viven y sienten, sin ser discriminados o maltratados por hacerlo. De ahí que, sus formas de resistencia y expresión ante los valores dominantes deben surgir de su subjetividad, posibilidades reales de ser y hacer o de la naturaleza del mensaje que quieran comunicar a la comunidad de las que forman parte, siempre y cuando no dañen en el proceso a nadie, ni se dañen ellos mismos (Nikitenko *et al.,* 2022).

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 792-807
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Reflexiones sobre la adopción en Ecuador: consideraciones constitucionales y legales

DOI: https://doi.org/10.46398/cuestpol.4176.47

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Resumen

La investigación apunta a determinar las disposiciones constitucionales y legales que regulan la figura jurídica de la adopción en la República del Ecuador, con especial atención a las contradicciones normativas existentes entre las mismas. La investigación es de tipo descriptivo documental, con un enfoque en los métodos analítico y hermenéutico. La Constitución reconoce a la figura de la adopción en su artículo 68. El sistema jurídico ecuatoriano no maneja la adopción plena como lo estipula el artículo 152 del Código de la Niñez y Adolescencia. En vista de que en el Código Civil se encuentra la notable conservación de los vínculos de parentesco del adoptado con su familia de origen y las excepciones que segregan a los hijos adoptados en temas de herencia con la familia del adoptante. Se concluye que, es necesario que la Asamblea Nacional al momento de expedir o reformar una nueva ley de protección a menores, realice un exhaustivo análisis normativo para que esta nueva codificación sea conexa y complementaria a las leyes que están vigentes, esto con el objetivo de que no se presenten anomalías jurídicas entre dos normas y se pueda dar una efectiva aplicación y goce de los derechos de los menores.

Palabras clave: adopción; adopción plena; adopción semiplena; Código de la Niñez y Adolescencia; Código Civil.

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Recibido el 10/12/22 Aceptado el 16/12/22

Reflections on adoption in Ecuador: constitutional and legal considerations

Abstract

The research aims to determine the constitutional and legal provisions that regulate the legal figure of adoption in the Republic of Ecuador, with special attention to the existing normative contradictions between them. The research is of a descriptive documentary type, with a focus on analytical and hermeneutic methods. The Constitution recognizes the figure of adoption in its article 68. The Ecuadorian legal system does not handle full adoption as stipulated in article 152 of the Childhood and Adolescence Code. In view of the fact that in the Civil Code there is a notable conservation of the kinship ties of the adoptee with his family of origin and the exceptions that segregate the adopted children in matters of inheritance with the adopter's family. It is concluded that it is necessary that the National Assembly, at the moment of issuing or reforming a new law for the protection of minors, carry out an exhaustive normative analysis so that this new codification is related and complementary to the laws that are in force, this with the objective that there are no legal anomalies between two norms and that an effective application and enjoyment of the rights of the minors can be given.

Keywords: adoption; full adoption; semi-full adoption; Code of Childhood and Adolescence; Civil Code.

Introducción

El ordenamiento jurídico ecuatoriano enmarca el tema de la adopción en tres cuerpos normativos: en la Constitución de la República del Ecuador que entró en vigor en el 2008, en el Código Orgánico de la Niñez y Adolescencia de 2003, y en el Código Civil de 2005, sin embargo, es importante mencionar que en estos dos últimos cuerpos normativos se han establecido pequeñas reformas legales hasta la actualidad. La Constitución reconoce a la figura de la adopción en su artículo 68, y expresa que sólo les corresponderá a parejas de distinto sexo.

En Ecuador, tanto en el Código de la Niñez y Adolescencia como en el Código Civil, se encuentran inmersos los artículos que tratan sobre la adopción, conjuntamente con sus principios, requisitos, prohibiciones y demás, por ende, el analizar y evaluar a fondo las contradicciones existentes en aquellos artículos en donde se abarca la adopción, permite ofrecer un aporte teórico y práctico a la ciencia del Derecho y, simultáneamente, cuestionar la posibilidad de que exista una reforma en el Código Civil ecuatoriano para que se proteja de mejor manera los derechos de herencia del adoptado, y así no se menoscabe el interés superior del menor.

Con el pasar de los años se ha observado que dentro del sistema legal ecuatoriano, algunas normas no están del todo claras o tienen contenidos contradictorios entre sí; provocando vacíos legales, lagunas jurídicas, oscurecimiento de las normas y en su caso más común antinomias jurídicas, siendo la consecuencia más frecuente que la aplicación de las normas se vuelva compleja y en algunas situaciones sean inaplicables, ya que existe incompatibilidad e inestabilidad en los contenidos normativos, como es el caso de la contradicción entre el Código de la Niñez y Adolescencia y los artículos del Código Civil.

En estos artículos se destaca la limitación del derecho de herencia para el adoptado y el fortalecimiento de los vínculos biológicos con su familia natural, ya que el adoptado continúa perteneciendo a la misma, con todos sus derechos, es decir, este articulado se enfoca en proteger los vínculos biológicos del adoptado y su familia de origen, a pesar de que en el artículo 152 del Código de la Niñez y Adolescencia establece que legalmente el hijo adoptado se asemeja en todo aspecto al hijo consanguíneo.

En tal sentido, el objetivo de este trabajo apunta a determinar las disposiciones constitucionales y legales que regulan la figura jurídica de la adopción en la República del Ecuador, con especial atención a las contradicciones normativas existentes entre las mismas. La investigación es de tipo descriptivo documental, con un enfoque en los métodos analítico y hermenéutico, pues se segmentan y analizan los artículos regulatorios de la adopción y, además, se realiza una interpretación exhaustiva y detallada de los mismos, a los efectos de lograr un mejor entendimiento del tema.

1. Antecedentes de la adopción como figura jurídica en el Ecuador

Fueron los romanos, y más adelante Justiniano, quienes introdujeron la clasificación de los tipos de adopción en esta institución jurídica, con el objetivo de marcar una diferencia entre la intensidad y amplitud de los derechos y atribuciones asignados al adoptado según el tipo de vínculo adoptivo que se manejaba.

En la sociedad Romana existían dos clases de adopción; la adopción propiamente dicha y la adrogación, la primera se realizaba con un alieni iuris[4] y se formalizaba mediante un contrato entre el adoptante y el paterfamilias de la familia de origen del adoptado. En este tipo de adopción intervenía un magistrado realizando un trámite de gran complejidad, y la función principal de este tipo de adopción era trasladar fuerzas laborales de una familia a otra.

4 Persona sujeta o sometida a la patria potestad de otra.

La adrogación se realizaba con un sui iuris [5], cuando un hombre tomaba como hijo a un sui iuris el trámite se realizaba por medio de un convenio entre adrogante y adrogado, sin embargo, este convenio tenía como requisito elemental la aprobación del pueblo que se reunía en comicios.

Vale recalcar que, si el adrogado tenía bienes e hijos, estos quedaban a disposición y patria potestad del adrogante. La función principal de este tipo de adopción era la de asegurar la continuación de la familia del adrogante.

Posteriormente, fue Justiniano quien transforma la adopción propiamente dicha, simplificando más que nada sus formalidades y, de esta manera, establece así dos tipos de adopción distinguiéndolas entre: la adoptio plena y la adoptio minus plena.

La adoptio plena producía los mismos efectos tradicionales de la adopción normal, es decir, la persona adoptada ingresaba como miembro de la familia del adoptante de manera completa con todos los derechos y obligaciones propios de la familia que lo acogía, por el contrario, la adoptio minus plena no desvinculaba al adoptado de su familia de origen ni lo substraía de la patria potestad del paterfamilias del grupo familiar al que naturalmente pertenecía, por ende, mantenía ahí todos sus derechos, lo que quiere decir que esta adopción sólo tenía efectos patrimoniales y limitados. Para Ferrer (2001: 35), el único efecto que producía este tipo de adopción "era otorgarle el derecho hereditario ab intestato en la sucesión del adoptante. El adoptado no salía de su familia de origen en la cual conservaba todos sus derechos". El comentado autor considera que:

> El grado de asimilación de la condición jurídica de los hijos adoptivos a la de los hijos legítimos varía de conformidad a la diversa intensidad y amplitud de los efectos asignados al vínculo adoptivo según se trate de la adopción plena de la adopción simple (también llamada adopción semiplena). En la primera se intensifican y en la segunda se atenúan. (…) La diferencia entre ambos tipos de adopción radica, pues, fundamentalmente, en el mayor o menor grado de equiparación que tienen con la filiación biológica legítima. (Ferrer, 2001: 17).

Por tanto, lo que el autor refiere en el párrafo citado es que la adopción plena, lo que hace es posicionar al adoptado en la posición jurídica de hijo legítimo del adoptante, insertándolo así en su familia y creando de esta manera relaciones de parentesco entre el adoptado y los parientes del adoptante, por ende, se extinguen los vínculos del adoptado y su familia de origen, y este tipo de adopción es irrevocable.

Los efectos de la adopción simple en cambio son más restringidos, pues aun cuando su función es posicionar al adoptado como hijo legítimo del adoptante no crea relaciones de parentesco entre el adoptado y la familia del adoptante, dejando así subsistente la vinculación del adoptado con su familia de sangre siendo también revocable (Ferrer, 2001)

5 Persona que no estaba sometida a la autoridad de nadie.

En tal sentido, se observa que la adopción es una institución jurídica muy antigua a nivel mundial, sin embargo, en el Ecuador aparece por primera vez enmarcada en la sexta edición del Código Civil de 1956 (publicada en 1960), ya que, en los Códigos Civiles de los años 1860, 1871, 1889, 1930 y 1950, no se preveía la legalización de esta institución jurídica.

Así, fue en el Código Civil de 1956, publicado realmente en el año de 1960, que la adopción se definió y estuvo determinada en el artículo 317 de la siguiente manera:

> La adopción es una institución en virtud de la cual una persona llamada adoptante, adquiere derechos y contrae obligaciones de padre o madre señaladas en este título respecto de un menor de edad que no es su hijo y que se llama adoptado. (Código Civil , Sexta Edición , 1960).

En Ecuador, se consagraba la adopción semiplena o simple en el Código de Menores de 1976, la cual se mantuvo de esta manera hasta que se expidió el Código de Menores de 1992, caracterizado porque trajo consigo la puesta en vigencia de la "adopción plena".

Este tipo de adopción se mantuvo y se fortaleció normativamente aún más cuando entró en vigencia el Código de la Niñez y Adolescencia en el 2003, instrumento vigente hasta la actualidad en el sistema legislativo ecuatoriano, aun cuando ha verificado algunas reformas.

Es así como, en el Título XIII específicamente en el artículo 332 de la séptima edición del Código Civil -publicada en 1970-, un apartado hace referencia a la adopción, enunciando conceptualmente en que consiste esta institución, en concordancia con el artículo 74 del Código de Menores de 1976, que menciona que la adopción es: "Una institución jurídica de protección familiar y social", con la aclaración de que el menor adoptado "no es su hijo".

En otras palabras, en los artículos señalados se especifica que el tipo de adopción que se manejaba en el país antes de 1992 es la adopción simple o también llamada semiplena, ya que se menciona claramente que para el adoptante el hijo adoptado no es similar a un hijo consanguíneo, pues está la barrera del Código de Menores de 1976, que menciona que; "el menor adoptado no es su hijo" respecto del adoptante. (Código de Menores, 1976).

A este respecto, Pinto Muñoz (1984) en su obra "La adopción en menores", establece lo siguiente:

> Los enunciados casi idénticos de los artículos 332 y 74 del Código Civil y Código de Menores respectivamente, dicen que el adoptante adquiere los derechos y contrae las obligaciones de padre o madre, respecto del adoptado; sin embargo, más adelante dispone en el artículo 334 del Código Civil que "se exceptúa el derecho de herencia de los padres de los adoptantes (...)". (Código Civil , Septima Edición, 1970). En iguales términos está dispuesta la excepción en el Código de Menores, que configura con precisión la adopción semiplena; es decir aquella

institución del Derecho Clásico, denominada *adoptio minus plena, en la cual el adoptado no adquiría los derechos familiares y sólo en el caso de que el padre adoptado muriera intestado, se le concedía el ius sui heredis al adoptado*. (Pinto Muñoz , 1984: 21).

2. Características de la adopción como institución jurídica

Según autores es sumamente difícil catalogar o enumerar las características de la adopción pues varían según la legislación del país al que estemos estudiando, en el caso de Ecuador las características de la adopción están estrechamente ligadas con los artículos del Código Civil y Código de la Niñez y Adolescencia que tratan la materia de la adopción.

- Incondicionalidad: La adopción en Ecuador no está sujeta a modalidades, lo que quiere decir que es un acto incondicional, pues no está sujeto modalidad alguna como condición, plazo, modo o gravamen alguno y "cualquier condición que se imponga por parte de quienes deben prestar su consentimiento se tendrá por no escrita, sin afectarse por ello la validez de la adopción", esto se menciona claramente en el artículo 154 del Código de la Niñez y Adolescencia y el artículo 330 del Código Civil Ecuatoriano.
- Irrevocabilidad: Según el artículo 154 del Código de la Niñez y Adolescencia una vez perfeccionada la adopción es irrevocable, es decir, no puede dejarse sin efecto, ni ser reformada, por lo tanto, una vez dada la adopción, los adoptantes no pueden dar marcha atrás, en concordancia a lo mencionado el artículo 329 del Código Civil señala que; "la adopción no es revocable sino por causas graves, debidamente comprobadas (…)"
- Voluntariedad y Consentimiento: La adopción es un acto voluntario, el artículo 321 del Código Civil menciona que "para la adopción de un menor se necesita la voluntad del adoptante y el consentimiento de los padres del adoptado", de igual manera, el artículo 161 del Código de la Niñez y Adolescencia (2003) señala que para la adopción se requieren los siguientes consentimientos: 1. Del adolescente que va ser adoptado; 2. Del padre y la madre del niño, niña o adolescente que se va a adoptar, que no hayan sido privados de la patria potestad; 3. Del tutor del niño, niña o adolescente; 4. Del cónyuge o conviviente del adoptante, ¡en los casos de matrimonio o unión de hecho que reúna los requisitos legales; y, 5. Los progenitores del padre o madre adolescente que consienta para la adopción de su hijo.
- Es importante mencionar que es el Juez quien tiene la obligación de constatar personalmente, en la audiencia correspondiente, que el consentimiento se ha otorgado en forma libre y espontánea.

- Solemnidad: La adopción es un acto jurídico solemne, debido a la intervención del Estado a través de un juez, del Ministerio de Inclusión Económica y Social y de un funcionario público.
- Buena fe: El artículo 155 del Código de la Niñez y Adolescencia (2003) señala que está expresamente prohibido obtener beneficios económicos indebidos como resultado de la adopción, y todo aquel que condicione el consentimiento para la adopción a cambio de una contraprestación económica y el que intermedie en esta materia con fines de lucro, será sancionado.
- Capacidad: Esta característica de la adopción se encuentra enmarcada en el artículo 316 del Código Civil, que manifiesta que para que una persona pueda adoptar a un menor se requiere principalmente que el adoptante sea legalmente capaz.

3. Regulación constitucional y legal de la adopción en el Ecuador

Actualmente la legislación ecuatoriana enmarca el tema de la adopción en tres cuerpos legales distintos: en la Constitución de la República del Ecuador que entró en vigor en el 2008, en el Código Orgánico de la Niñez y Adolescencia de 2003, y en el Código Civil de 2005, sin embargo, es importante mencionar que en estos dos últimos cuerpos normativos se han establecido pequeñas reformas legales hasta la actualidad.

En el artículo 68 de la Constitución de la República del Ecuador (2008) se menciona que la adopción corresponde únicamente a parejas de distinto sexo, es decir, en Ecuador no está legalizada la adopción entre parejas del mismo sexo. A su vez el artículo 69 constitucional, hace referencia a que todas las hijas e hijos sin considerar antecedentes de filiación o adopción tendrán los mismos derechos, es decir, ratifica el cumplimiento de uno de los principales principios de la adopción plena, que es que los hijos adoptados se asemejan en derechos a los hijos consanguíneos.

Ahora bien, el Código Orgánico de la Niñez y Adolescencia (2003) establece una explicación acertada de las generalidades, requisitos, principios y fases de la adopción conjuntamente con una descripción detallada del proceso de adopción en el país. En tal sentido, el artículo 151 de la comentada norma menciona que la finalidad principal de la adopción es que el menor pueda tener una familia idónea, permanente y definitiva, que le brinde la seguridad y los cuidados necesarios para asegurar el correcto desarrollo de la infancia del menor. En el artículo siguiente, es decir el 152, se expresa que la única clase de adopción que se maneja en el Ecuador es la adopción plena, por consiguiente, tanto el adoptado como el

adoptante se hacen acreedores de todos los derechos, deberes, obligaciones y prohibiciones correspondientes a los padres e hijos consanguíneos y *"jurídicamente el hijo adoptivo se asimila en todo al hijo consanguíneo"*

Por otro lado, en el artículo 157 de este mismo Código se manifiesta que solo se puede adoptar personas menores a 18 años, es decir, solo infantes, impúberes y menores de edad, salvo las siguientes excepciones como: que exista parentesco, que el menor se encuentre en acogimiento familiar no más de dos años, que hayan permanecido en un hogar de acogida desde su niñez o adolescencia no menos de 4 años y en adopciones de los hijos del cónyuge, y se recalca en este artículo más que todo que no cabe la adopción de personas mayores de 21 años. Consecuentemente, el artículo 158 siguiendo el mismo sentido del artículo anterior, señala que es potestad del juez conceder la adopción de un menor que se encuentre en estado de orfandad de los dos padres biológicos, también cuando no se sabe quiénes son sus progenitores biológicos y por consentimiento de los padres.

En el artículo 159 del Código Orgánico de la Niñez y Adolescencia (2003) se estipula los requisitos que los adoptantes deben cumplir para poder adoptar, siendo estos: el tener domicilio en el Ecuador o en los Estados en donde se haya suscrito y ratificado Convenios con nuestro país, tener capacidad legal, gozar de derechos políticos, tener una edad mayor de 25 años y tener una diferencia de edad con el adoptado que no sea inferior de 14 años ni superior a 45 años. Con respecto a las preferencias sexuales de la pareja que desea adoptar, esta debe ser heterosexual, y debe estar ya sea unida en matrimonio o por unión de hecho por un tiempo superior a 3 años, finalmente, la pareja debe tener salud física y mental, los recursos económicos suficientes para mantener a un hijo, y no tener antecedentes penales por delitos con pena de reclusión.

Posteriormente, después de los requisitos es importante hacer referencia a los consentimientos necesarios para la adopción, enmarcados en el artículo 161 del referido Código, de los cuales ya se mencionaron anteriormente.

Ahora bien, la adopción posee una fase administrativa y una jurisdiccional. En el artículo 162, se establece quien es la entidad administrativa competente para brindar el asesoramiento gratuito a quienes deben dar el consentimiento de la adopción, esta entidad es la Unidad Técnica de Adopciones del Ministerio de Bienestar Social (hoy denominado Ministerio de Inclusión Económica y Social).

Por su parte, en el artículo 165 se establece que es en la fase administrativa donde se analizarán todas las circunstancias sociales, económicas y mentales de los candidatos adoptantes, es decir, se evaluará si son aptos o no para adoptar, dando como resultado una resolución administrativa. De igual manera, en el artículo 167 se asignan y declaran como organismos de la fase administrativa a las Unidades Técnicas de Adopciones del Ministerio

de Inclusión Económica y Social y los Comités de Asignación Familiar, y si es el caso de que se le niegue la solicitud de adopción a los candidatos adoptantes se puede interponer un recurso administrativo dirigido al Ministro de Inclusión Económica y Social, según lo establecido en el artículo 169.

Por último, una vez explicado en lo que consistía la fase administrativa de la adopción en los artículos siguientes encontramos detallado el desarrollo de la fase jurisdiccional. Como primer punto, en el artículo 175 se prevé que el juicio de adopción inicia cuando se ha concluido la fase administrativa, y posterior a esto la sentencia se debe inscribir en el Registro Civil, en virtud de lo determinado en el artículo 176.

En el artículo 177 se establecen las causales de nulidad de la adopción, estas pueden ser: la falsedad de documentos, el incumplimiento del requisito de edad del adoptado, falta de requisitos previstos en la ley, cuando no exista el consentimiento o por incumplimiento de los deberes del tutor. Según el artículo 178 del Código Orgánico de la Niñez y Adolescencia (2003), la acción de nulidad solo podrá ser interpuesta por el adoptado, por aquellos que no dieron su consentimiento para la adopción, y por la Defensoría del Pueblo, sin embargo, esta acción prescribe en 2 años.

Del artículo 180 al 188 del mencionado Código, se regula la adopción internacional, sus requisitos, las entidades autorizadas de adopción, lo que corresponde a la presentación de la solicitud de adopción, el procedimiento administrativo, entre otros puntos. Vale recalcar que la adopción internacional, es aquella en la que los candidatos a adoptantes, cualquiera sea su nacionalidad, tienen su domicilio habitual en otro Estado con el que el Ecuador haya suscrito un convenio de adopción, y desean adoptar a un menor ecuatoriano, así también se puede dar el caso en el que el o los candidatos a adoptantes son extranjeros, domiciliados en el Ecuador por un tiempo inferior a 3 años.

En este aspecto, la Convención Interamericana sobre Conflictos de Leyes en Materia de Adopción de Menores del 24 de mayo de 1984, convención internacional que está ratificada por Ecuador, en su artículo 9 menciona lo siguiente en lo que respecta a la adopción internacional:

> En caso de adopción plena, legitimación adoptiva y figuras afines: a. Las relaciones entre adoptante (o adoptantes) y adoptado, inclusive las alimentarias, y las del adoptado con la familia del adoptante (o adoptantes), se regirán por la misma ley que rige las relaciones del adoptante (o adoptantes) con su familia legítima; b. Los vínculos del adoptado con su familia de origen se considerarán disueltos. Sin embargo, subsistirán los impedimentos para contraer matrimonio.

Por su parte, el Código Civil (2005) también cuenta con una serie de artículos correspondientes a la adopción, explicando más a fondo las excepciones en materia de herencia para el adoptado. En el artículo 325

se señala que el adoptado continúa perteneciendo a su familia natural, es decir su familia de origen, donde conserva todos sus derechos, sin embargo, los padres pierden la patria potestad del menor ya que consienten en la adopción que este pase al adoptante.

En lo que respecta a los derechos y excepciones del adoptado en el artículo 326 del Código Civil (2005), se menciona que por la adopción el adoptante y el adoptado adquieren los derechos y obligaciones correspondientes a los padres e hijo, no obstante, algo de suma relevancia es que se exceptúa el derecho de herencia de los padres de los adoptantes, consecuentemente el artículo 327 recalca de manera expresa, que la adopción no confiere derechos hereditarios ni al adoptante respecto del adoptado ni de los parientes de éste, ni al adoptado respecto de los parientes del adoptante.

Es de destacar que, cuando una persona muere, se crean distintos derechos hereditarios sobre los bienes adquiridos en vida por el causante, estos derechos son ejercidos por las personas a las que les corresponde una parte de la masa hereditaria de la persona fallecida.

El Código Civil (2005) menciona lo siguiente: "*artículo 997: La sucesión en los bienes de una persona se abre al momento de su muerte (…)"*. Es decir, los derechos hereditarios tienen su origen desde que inicia la sucesión por causa de muerte, en pocas palabras, estos derechos se transmiten mediante testamento o por mandato de la ley su patrimonio, a quien o quienes sobreviven y tienen lazos consanguíneos, familiares o afectivos con él, y a su vez estas personas se convierten en su heredero o sus herederos.

Como se ha manifestado en líneas anteriores, uno de los efectos de la adopción es que el adoptado pasa a formar parte de la familia de los adoptantes, como hijo de éstos, adquiriendo todos los derechos y atribuciones de un hijo consanguíneo, no obstante, con respecto a los derechos de herencia se encuentran algunas excepciones para el adoptado. Así, el artículo 326 del Código Civil (2005) señala lo siguiente:

> Por la adopción adquieren el adoptante y el adoptado los derechos y obligaciones correspondientes a los padres e hijos. ¡Se exceptúa el derecho de herencia de los padres de los adoptantes; pues, de concurrir éstos con uno o más menores adoptados, exclusivamente, la herencia se dividirá en dos partes iguales, una para dicho padre o padres, y otra para él o los adoptados. Esta disposición no perjudica los derechos del cónyuge sobreviviente.

En otros términos, se plantea que, aunque a causa de la adopción el adoptante y el adoptado adquieren todos los derechos y obligaciones correspondientes a los padres e hijos consanguíneos, queda excepto el derecho de herencia de los padres de los adoptantes. Sin embargo, de haber uno o más menores adoptados, la herencia se dividirá en dos partes iguales, una para dicho padre o padres, y otra para él o los adoptados.

De igual manera, en el artículo 327 del Código Civil (2005) se regula la excepción expresa de que la adopción no confiere derechos hereditarios al adoptado respecto a los parientes del adoptante, estableciendo que "ni al adoptante respecto del adoptado ni de los parientes de éste, ni al adoptado respecto de los parientes del adoptante".

Por el contrario, en lo correspondiente a la adopción internacional y los derechos hereditarios, el artículo 11 de la Convención Interamericana sobre Conflictos de Leyes en Materia de Adopción de Menores del 24 de mayo de 1984, señala algo muy diferente a lo dispuesto en el Código Civil Ecuatoriano:

> Los derechos sucesorios que corresponden al adoptado o adoptante (o adoptantes) se regirán por las normas aplicables a las respectivas sucesiones. En los casos de adopción plena, legitimación adoptiva y figuras afines, el adoptado, el adoptante (o adoptantes) y la familia de éste (o de éstos), tendrán los mismos derechos sucesorios que corresponden a la filiación legítima.

Tal como se ha mencionado, el artículo 152 del Código de la Niñez y Adolescencia (2003) establece a la adopción como plena, por lo tanto, los efectos jurídicos que trae consigo este tipo de adopción son que los hijos adoptados tengan los mismos derechos y obligaciones de los hijos que se tienen por filiación natural, es decir los hijos biológicos son legalmente iguales a los hijos adoptivos, mientras que por el contrario los artículos 325, 326, 327 del Código Civil ecuatoriano establecen que el adoptado continúa perteneciendo a su familia natural con todos sus derechos y que la adopción no genera derechos de herencia respecto a la familia del adoptante, lo que consecuentemente produce una contradicción o antinomia normativa que causa inseguridad jurídica y vulneración de los derechos del adoptado y menoscaba el Interés Superior del Niño.

La antonimia jurídica es aquella contradicción existente entre dos normas o disposiciones de diferentes cuerpos normativos pero que pertenecen al mismo ordenamiento jurídico y que contemplan un mismo tema.

Piccato Rodríguez (2017) en su libro Teoría del Derecho sugiere que "existe una antinomia siempre que dos normas jurídicas con los mismos ámbitos de validez asignan al mismo supuesto de hecho o a la misma conducta, modalidades deónticas o consecuencias jurídicas contradictorias entre sí."

Respecto a esto, se considera que la norma preponderante que se debe considerar para la resolución de esta antinomia jurídica es el Código de la Niñez y Adolescencia, debido a que existe una derogación tácita de los artículos 325, 326 y 327 del Código Civil, a causa de que el Art. 152 del Código de la Niñez y Adolescencia (que contempla la adopción como plena) proviene de la ley Especial aplicable para el presente caso ya que

la finalidad de este cuerpo legal está ligada a la protección integral de todos los niños, niñas y adolescentes que viven en el Ecuador y el disfrute pleno de sus derechos, y en este caso el problema jurídico gira en torno a los menores adoptados; por ende en concordancia con el Art. 3 numeral 1 de la Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, debe aplicarse lo estipulado en el artículo 152 del Código de la Niñez y Adolescencia protegiendo y beneficiando así los derechos de los menores adoptados, lo que consecuentemente permite llegar a la conclusión de que la norma preponderante en este caso es la que más se ajusta a atender al principio del interés superior del menor.

Sobre la base de lo anterior, resulta pertinente hacer algunas consideraciones sobre la figura de la adopción y el interés superior del menor. A este efecto, se plantea que el interés superior del menor es un principio que se encuentra enmarcado en la Constitución de la República y el Código de la Niñez y Adolescencia, este principio está orientado a satisfacer el ejercicio efectivo de los derechos de los niños, niñas y adolescentes y de esta forma también imponer el deber a todas aquellas autoridades administrativas y judiciales e instituciones públicas y privadas de ajustar sus acciones y resoluciones al correcto cumplimiento del Interés Superior del Niño.

El artículo 44 de la Constitución de la República del Ecuador (2008) dispone lo siguiente: El Estado, la sociedad y la familia promoverán de forma prioritaria el desarrollo integral de las niñas, niños y adolescentes, y asegurarán el ejercicio pleno de sus derechos; se atenderá al principio de su interés superior y sus derechos prevalecerán sobre los de las demás personas.

En este sentido el Código de la Niñez y Adolescencia (2003) en su artículo primero menciona lo referente a la aplicación de este cuerpo legal en concordancia con el Interés Superior del Niño:

> Este Código dispone sobre la protección integral que el Estado, la sociedad y la familia deben garantizar a todos los niños, niñas y adolescentes que viven en el Ecuador, con el fin de lograr su desarrollo integral y el disfrute pleno de sus derechos, en un marco de libertad, dignidad y equidad. Para este efecto, regula el goce y ejercicio de los derechos, deberes y responsabilidades de los niños, niñas y adolescentes y los medios para hacerlos efectivos, garantizarlos y protegerlos, conforme al principio del interés superior de la niñez y adolescencia y a la doctrina de protección integral.

Así mismo, el artículo 11 del mencionado Código expresa lo siguiente:

> El interés superior del niño, es un principio que está orientado a satisfacer el ejercicio efectivo del conjunto de los derechos de los niños, niñas y adolescentes; e impone a todas las autoridades administrativas y judiciales y a las instituciones públicas y privadas, el deber de ajustar sus decisiones y acciones para su cumplimiento.

En lo que respecta al interés superior del menor en la adopción internacional, el artículo 21, literal C, de la Convención sobre los Derechos del Niño del 20 de noviembre de 1989, dispone que:

> Los Estados Partes que reconocen o permiten el sistema de adopción cuidarán de que el interés superior del niño sea la consideración primordial y: c) Velarán por que el niño que haya de ser adoptado en otro país goce de salvaguardias y normas equivalentes a las existentes respecto de la adopción en el país de origen.

A continuación, se aprecian algunos conceptos doctrinarios para entender mejor lo que significa el Interés Superior del Niño.

Para Susana Navas (2003), catedrática de Derecho Civil y Directora del Departamento de Derecho privado en la Universidad Autónoma de Barcelona, considera que:

> El Interés Superior del Niño, es una garantía que actúa imponiendo una obligación, a quien deba tomar una decisión, y la misma debe ajustarse para garantizar ese bienestar. Este bienestar para los Niños, Niñas y Adolescentes consiste en el óptimo desarrollo de su personalidad a través del ejercicio de los derechos fundamentales de los que es titular, donde el óptimo desarrollo personal es en diversos ámbitos, en los que se destacan el físico, el psíquico, el moral, el social o de relación con sus semejantes. (2003: 689).

De igual manera para Jean Zermatten (2003), presidente del Comité de los Derechos del Niño de la ONU señala que:

> El Interés Superior del Niño es una herramienta jurídica, que busca asegurar el bienestar del niño en el plan físico, psíquico, y social, considera que es obligación de las instancias e instituciones públicas o privadas, analizar si este criterio esta realizado, en el momento en el que una decisión debe ser tomada con respecto a un niño y que representa una garantía para el niños de que su intereses a futuro, serán tenidos en cuenta, este principio debe ser preponderante, cuando varios intereses entran en conflicto.

Algunos autores consideran que no es posible encontrar una definición exacta y concreta sobre todo lo que engloba el Interés Superior del Niño en la sociedad, y tratar de encontrarle una definición general que pueda ser utilizada para todos los efectos administrativos y jurídicos, no sería posible ni lógico ya que esta sería imprecisa e incompleta.

Consideraciones finales

El sistema jurídico ecuatoriano no maneja la adopción plena como lo estipula el Código de la Niñez y Adolescencia en su artículo 152, ya que la noción doctrinaria y normativa que se tiene de este tipo de adopción es que la persona adoptada ingresa como miembro de la familia del adoptante de manera completa con todos los derechos y obligaciones propios de la

familia que lo acoge, por el contrario los efectos de la adopción semiplena son que no se crean relaciones de parentesco entre el adoptado y la familia del adoptante y se mantienen los vínculos del adoptado con su familia de sangre, y en vista de que en el Código Civil se encuentra la notable conservación de los vínculos de parentesco del adoptado con su familia de origen y las excepciones que segregan a los hijos adoptados en temas de herencia con la familia del adoptante, se puede concluir que el tipo de adopción que realmente se maneja en el orden jurídico ecuatoriano es la adopción semiplena.

Por esta razón, la Asamblea Nacional, por ser el órgano en nuestro país que tiene entre sus funciones y atribuciones la creación, expedición, codificación, reformas y derogación de leyes, debe realizar una derogación parcial de los artículos 325 y 326 del Código Civil omitiendo de esta manera la primera parte del artículo 325 que señala que: "El adoptado continúa perteneciendo a su familia natural, donde conserva todos sus derechos", ya que como se ha concluido previamente, esto no concuerda con la noción de la adopción plena que desvincula completamente al adoptado de su familia de origen. En este sentido, también se recomienda suprimir el segundo inciso del artículo 326, que refiere que para el adoptado:

> Se exceptúa el derecho de herencia de los padres de los adoptantes; pues, de concurrir éstos con uno o más menores adoptados, exclusivamente, la herencia se dividirá en dos partes iguales, una para dicho padre o padres, y otra para él o los adoptados (Código Civil, 2005: 22).

y, que consecuentemente, se derogue de manera completa el artículo 327 que manifiesta que: "La adopción no confiere derechos hereditarios ni al adoptante respecto del adoptado ni de los parientes de éste, ni al adoptado respecto de los parientes del adoptante", con el objetivo que se pueda garantizar de una mejor manera los derechos hereditarios que ofrece la adopción plena al adoptado, como lo es heredar lo que por ley le corresponde a un hijo, y se extinga el vínculo de parentesco con su familia de origen, ya que no sería justo que al hijo adoptado no se le concedan los mismos derechos que a un hijo consanguíneo.

En el proyecto del Código Orgánico de Protección Integral a Niños, Niñas y Adolescentes (COPINNA), que fue entregado el 16 de enero del 2020 a la Asamblea Nacional, actualmente solo ha llegado hasta segundo debate, se debe integrar un capítulo correspondiente a la adopción enfatizando el hecho de que en el país se maneja exclusivamente la adopción plena, y recalcando entre sus artículos los derechos y atribuciones que goza el adoptado. En este sentido, es necesario que la Asamblea Nacional que al momento de expedir o reformar esta nueva ley de protección a menores, los legisladores realicen un exhaustivo análisis normativo para que esta nueva codificación sea conexa y complementaria a las leyes que están vigentes pero que fueron expedidas con anterioridad, esto con el objetivo de que no

se presenten anomalías jurídicas entre dos normas complementarias (como es el caso del Código de la Niñez y Adolescencia y El Código Civil) y se pueda dar una efectiva aplicación y goce de los derechos de los menores.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 808-828
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

La justicia desde la perspectiva liberal de Rawls y Nussbaum

DOI: https://doi.org/10.46398/cuestpol.4176.48

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Resumen

En esta investigación el objetivo fue analizar la justicia desde la perspectiva liberal de John Rawls y Martha Nussbaum, con un enfoque comparado. Se realizó una revisión documental del material bibliográfico acerca de las producciones de Rawls (1975, 1971, 1986, 1996, 1997) y Nussbaum (1992, 2007, 2012, 2014 y 2016), considerando además el planteamiento de expertos en la temática. Es una investigación cualitativa de tipo descriptiva, con diseño metodológico de corte teórico, documental y diacrónico. La técnica de recolección de datos, fue el fichaje o registro de referencias de autor, documentales y de contenido. Como resultados se estableció una comparación analítica referida a algunos criterios sobre la noción de justicia y, se concluye al analizar los postulados de estos dos filósofos, que los sustentos teóricos de Rawls, se alejan de la sociedad real, al asumir que todos los bienes sociales primarios; libertad, igualdad de oportunidades, renta, riqueza y las bases del respeto mutuo, han de ser distribuidos de un modo igual, mientras que para Nussbaum, la justicia deberá producir en sus ciudadanos la capacidad de deliberar, pensar, discutir, elegir e intentar superar el concepto de justicia propio del contractualismo asegurando el respeto al valor y la dignidad de cada individuo.

Palabras clave: justicia; pensamiento liberal; contractualismo; John Rawls; Martha Nussbaum.

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Recibido el 15/10/22 Aceptado el 22/12/22

Justice from the liberal perspective of Rawls and Nussbaum

Abstract

In this research, the objective was to analyze justice from the liberal perspective of John Rawls and Martha Nussbaum, with a comparative approach. A documentary review of the bibliographic material about the productions of Rawls (1975, 1971, 1986, 1996, 1097), and Nussbaum (1992, 2007, 2012, 2014, 2016) was carried out, also considering the approach of experts in the subject. It is a qualitative research of descriptive type, with methodological design of theoretical, documentary and diachronic cut. The data collection technique was the signing or registration of author, documentary and content references. As a result, an analytical comparison was established referring to some criteria on the notion of justice, and it is concluded by analyzing the postulates of these two philosophers, that the theoretical supports of Rawls, are far from the real society, by assuming that all primary social goods; freedom, equal opportunities, income, wealth and the bases of mutual respect, must be distributed in an equal way, while for Nussbaum justice must produce in its citizens the ability to deliberate, think, discuss, choose and tries to overcome the concept of justice proper to contractualism ensuring respect for the value and dignity of each individual.

Keywords: justice; liberal thought; contractualism; John Rawls; Martha Nussbaum.

Introducción

Cuando de justicia se trata, son muchos los filósofos, políticos, sociólogos, economistas, que intentan dar su versión acerca de esta condición, valor, como quiere llamarse, partiendo de la concepción que todos los seres humanos son iguales y, por tanto, tienen los mismos deberes y derechos en la sociedad, sin hacer distinciones. No obstante, se precisa luego en especificar los deberes, los derechos, las oportunidades y puede considerarse que cada quien, entiende esto de una manera particular, de hecho, se describen en función de contextos que resultan distintos y por eso, es difícil comprender que la justicia es igual para todos.

La justicia es una posibilidad que cada ser humano tiene para poder ser libres y por ende, ser acreedor de las mismas oportunidades que cualquiera. "Es un principio que está ligado a la toma de decisiones incluyentes" (Durango, 2011:36) y por ello, se supone que una decisión es justa si ha sido tomada de conformidad con la norma o sistema de normas consideradas vinculantes por la sociedad en conjunto y no discrimina abiertamente a un

amplio grupo de esta y relaciona elementos de la política, el Derecho, la Economía y la Filosofía, entre otras disciplinas, de allí que toda sociedad incorpora de una u otra manera una idea de justicia en sus decisiones.

Ahora bien, aunque se asuma que la justicia tiene una definición similar para muchos, no siempre en su práctica es igual, porque cada quien la sustenta según su perspectiva, caso se asume en este estudio al respecto de las reflexiones que John Rawls, filósofo liberal, quien fundamentado en los sustentos del contrato social, donde: "Hipotéticamente el estado de naturaleza se corresponde con la posición original de igualdad en que los participantes se ubican y relacionan bajo el velo de ignorancia" (Vidal, 2009:5), explicando que esta noción no debe entenderse como el ingreso a un tipo de sociedad o adoptar un cierto tipo de gobierno y sugiere la pluralidad de relaciones entre personas que participan de la cooperación social, de sus diversos y conflictivos intereses, como del requisito de que la división correcta de ventajas tiene que hacerse acorde a principios aceptables y públicos para todas las partes.

Para Rawls, la justicia es una condición importante en cualquier sociedad justa y ordenada, definiéndola, si se analiza en su profundidad, como una virtud utópica, tal como la describe en sus principios, donde expone su ideal de igualdad y libertad, pero no establece que las personas son diferentes, piensan, sienten y por ello, tienen comportamientos distintos, aunque los deberes y derechos normatizados, sean iguales para todos y, por ello:

> Enfatiza en su Teoría de la Justicia que una sociedad justa otorga a sus integrantes el más extenso catálogo de libertades posibles, en términos de equidad, y organiza los asuntos económicos de tal forma que las desigualdades son permitidas únicamente cuando sirven el propósito de mejorar la situación de los más débiles (Nussbaum, 2014: 8).

Rawls plantea la sociedad justa y ordenada, desde un ideal, porque en la práctica es difícil encontrar una sociedad cuyas características reales sean éstas, explicando que puede ser lograda: "En contra del capitalismo, creemos que el desafío puesto a la concepción de la justicia social rawlsiana en el contexto capitalista, es el modo de mostrar los límites inherentes que posee para afrontar las consecuencias de este sistema hegemónico" (Vidal, 2009: 15).

Tal planteamiento, encuentra muchas críticas por cuanto, a pesar que una sociedad no sea capitalista, la justicia en la práctica no se da por igual para todos y por ello, se propone la distribución de las riquezas, con la máxima de que quienes más tienen riquezas deben distribuirla con quienes no la tienen, por cuanto para Rawls la justicia se asume más en función de los desfavorecidos, de quienes no poseen poder y riquezas, lo cual en muchas ocasiones, antes e igual en la actualidad, no se logra, creando la idea convincente de ese grupo de personas que esperan que los demás le cubran sus necesidades y lo ayuden a alcanzar sus expectativas, pudiendo

decirse con responsabilidad que esto no estimula al trabajo, a formarse y demostrar las capacidades para pensar, sentir y actuar de una manera progresista y desarrollista, autónoma y emprendedora.

En cuanto a la distribución de los bienes, Rawls, se refiere a los primarios con los cuales podrían las personas asegurarlos para llevar a cabo sus intenciones y alcanzar sus fines, los cuales son: primero: las libertades básicas, como la libertad de pensamiento y de conciencia, libertad de asociación, definida por la libertad y la integridad de las personas, así como por el imperio de la ley, finalmente, las libertades políticas; segundo: la libertad de movimiento y elección de ocupación sobre un trasfondo de oportunidades diversas; tercero, los poderes y las prerrogativas de cargos y posiciones de responsabilidad, particularmente de las principales instituciones políticas y económicas; cuarto, renta y riqueza; quinto, las bases sociales del respeto de sí mismo (Rawls, 1971: 60-61).

No obstante, en respuesta al planteamiento de Rawls acerca de distribuir las riquezas de los que más tienen en quienes no, Sen (1993) considerando que lo que se debe distribuir son las capacidades que se refieren al hecho de que los seres humanos poseen un gran número de potencialidades que las situaciones adversas nos impiden desarrollar; por esta razón, cualquier principio de distribución "debe centrarse en la mejora de las circunstancias que permiten desarrollar las capacidades. Esta noción se relaciona con las ideas de igualdad, de libertad, de bienestar y de agencia" (Dieterlen, 2012:43).

En ese orden de ideas, se encuentra el postulado de Nussbaum, quien plantea el enfoque de las capacidades como "la contrateoría que necesitamos en esta era de problemas humanos acuciantes y de desigualdades injustificables" (Nussbaum, 2012:16), considerando que las políticas de redistribución de la riqueza deben brindar oportunidades para cada persona, haciendo énfasis en el desarrollo humano, indicando que toda persona tiene habilidades y estas le hacen propicia para un trabajo, una función y de acuerdo a como manifieste de lo que es capaz de hacer y de ser, sus opciones serán dirigidas a respetar la igualdad y la dignidad de cada quien, según sea y puedan hacer. Con ello, indica que las alternativas de poder satisfacer las necesidades y expectativas de quienes menos tienen, no está en darle, sino, en prepararlos para que tenga las mismas opciones de los demás, y pueda gestionar sus asuntos, decidir y elegir, que es el basamento de la libertad.

Entonces, se habla de libertad, pero habría que analizar qué significa para Rawls y qué concepto maneja Nussbaum, porque para ambos es característica propia de la justicia, sin embargo, la manera de alcanzarla es distinta porque el primero la considera: "Dentro de una estructura básica normativa. El percibe la libertad circunscrita al marco constitucional, plantea la figura de ciudadanos libres e iguales" (Jansen y Azuaje, 2015:116),

tomando en cuenta que, en su discurso, en sus diferentes producciones, identifica la justicia con la libertad, pero al emitir posiciones determinantes para corregir las desigualdades, deja un vacío concreto donde desde su teoría no hay una verdadera libertad, porque con su planteamiento no resuelve el problema en sí.

Por tanto, el liberalismo político de Rawls tiene el mérito de situarse en una posición equidistante entre el liberalismo individualista, que al despreciar los derechos sociales traiciona sus propias demandas de libertad individual generalizada, y el comunitarismo más conservador, que, con su insistencia exclusiva en los vínculos comunitarios, ignora a los ciudadanos: "Como fuentes autooriginantes de pretensiones válidas" (Orellana, 1998) y, como sujetos de derechos que pueden hacer valer incluso ante la comunidad de la que forman parte. En su postulado: "Rechaza el utilitarismo porque, al establecer como criterio de una sociedad bien ordenada el principio de maximización neta del bienestar de la sociedad en su conjunto", obvia la libertad de algunos si ello conduce a una mayor satisfacción en la sociedad, lo cual, al analizarlo, evidencia con en esa posición, que no hay libertad, ni justicia como tampoco, asume la igualdad.

Por su parte, Nussbaum considera la libertad como la capacidad que tienen las personas de poder decidir y elegir, con las oportunidades asociadas a esos procesos de decisión, siendo que al enfocarse en el desarrollo humano y las capacidades que todo individuo puede alcanzar mediante la educación y los beneficios que el estado le ofrezca, entiende que esa persona podrá en todos sus sentidos, de manera consciente, asumir lo que debe hacer, porque hacerlo y como, lo cual implica el orden y la norma, pero sin hacer distinciones de cuando se puede ser libre y cuando no.

Otro aspecto importante de la posición de Rawls es considerar que la justicia debe asumirse con estabilidad como una noción moral, interpretación que hace por la autonomía de los individuos en una sociedad bien-ordenada, y tiene sentido en el contexto del problema explicando en su teoría que la justicia es estable cuando al ser aceptada libremente genera su propio apoyo, y para que ocurra debe considerarse la naturaleza racional de los individuos y ha de ser congruente con su propia noción del bien y su autoestima; en una palabra ha de propiciar y favorecer el desarrollo de su autonomía, condiciones que se cumplen, desde la postura contractualista donde no hay contradicción entre autonomía y objetividad, entre libertad y razón (Orellana, 1998)

Al respecto, de la estabilidad como noción moral, Nussbaum, critica a Rawls al expresar que el filósofo: "Incluye no solamente el mantenimiento de los arreglos políticos, sino la vigencia del valor del respeto imbuida en las instituciones y en las actitudes de los ciudadanos que las soportan" (Nussbaum, 2014:7), afirmando que una sociedad no puede permanecer estable de forma duradera por las razones correctas, debido al uso ordenado

y libre de la fuerza por oposición a su uso opresivo, mientras trate a las personas sin el merecido respeto, sin tomar en cuenta sus capacidades. En Liberalismo político, la justicia se marca además de la estabilidad de la sociedad con respeto a la persona, por la cooperación, mencionando Nussbaum (2014) a Rawls cuando asume que:

> En la medida en que nos respetamos unos a otros buscamos un tipo de sociedad en la cual podamos vivir juntos bajo términos de cooperación que sean equitativos para todos, y que puedan, al mismo tiempo, ser tenidos públicamente como equitativos para todos (Nussbaum, 2014: 8).

Por ello, la posición original y los principios políticos alcanzados son los que modelan tal idea de Justicia. De allí que es importante mostrar cooperación siendo equitativos para todos, lo cual resulta indispensable para alcanzar la estabilidad, con motivos correctos, considerándose que, si la cooperación se implementa adecuadamente, se puede alcanzar la estabilidad. Para darle sustento a esto, el liberalismo político rawlsiano las acepta, siempre que sean razonables, dándole reconocimiento a ciertos derechos, libertades y oportunidades, que suelen ser propios de los regímenes democráticos.

Estas condiciones acerca de la concepción política expuesta en Liberalismo político de Rawls (1996), amplían la base de la unidad social en relación con aquello que ya no depende de que la estructura básica de la sociedad esté regulada por una determinada concepción pública de la justicia, bastando que uno de los miembros de la familia tenga una concepción liberal razonable, o una mezcla de ellos. Y según Rawls, el hecho de darse estas condiciones permite sea considerada la concepción ideal, adecuada, caracterizada por la estructura básica de la sociedad, constituida por las instituciones sociales, políticas y económicas fundamentales.

Para Rawls lo esencial de la concepción política de la justicia al entender la sociedad un sistema justo de cooperación, donde los ciudadanos, son libres e iguales, y la idea de una sociedad bien ordenada. Por tanto, una sociedad es un sistema justo de cooperación, concebida como una idea organizadora central, cuya base del constructo de la posición original, es contar con ciudadanos, libres e iguales, es la versión política de la concepción moral de la persona, sin referencia a la cual no puede entenderse la elección de los principios de justicia en la posición original; manteniendo lo esencial de una sociedad bien ordenada, aquella que está efectivamente regulada por una concepción pública de la justicia. Lo único que cambia es la forma de presentar la fuente de la estabilidad.

Destaca como uno de los aspectos más importantes y novedosos del Liberalismo político de Rawls (1996), el consenso superpuesto, es decir, la manera de considerar la justicia, por cuanto, las convicciones de los ciudadanos al mismo tiempo que difieren en varios aspectos, coinciden en

asuntos clave, relacionados con los principios básicos de justicia, considerada la última respuesta a la cuestión sobre la estabilidad, explicando en este caso que en la medida que: "Los ciudadanos advierten que la concepción política los respeta, porque respeta tanto sus libertades y oportunidades como su fidelidad a una determinada doctrina comprehensiva, estarán entonces más dispuestos a prestarle más que una lealtad a regañadientes" (Nussbaum, 2014:12)

Lo expuesto se explica por cuanto al no sentirse los individuos comprometidos y agradados con lo que le exige la sociedad, apoyarán tal concepción como la base de un tipo de convivencia caracterizada por la reciprocidad y el respeto mutuo. Por su parte, sobre el consenso superpuesto, se explica que es:

> Un acuerdo entre individuos razonables que únicamente adhieren a doctrinas abarcativas también razonables. Y solamente podemos estimar que se ha alcanzado ese acuerdo en caso que las personas acepten de manera general la concepción de justicia, otorgando contenido a sus juicios políticos referentes a las instituciones básicas, y simultáneamente las doctrinas comprehensivas irrazonables no conciten respaldo bastante para vulnerar la justicia esencial de la sociedad (Quintero, 2008:384).

Por tanto, se consigue el consenso superpuesto cuando se respeta el pluralismo razonable, donde cada individuo se adhiere a la concepción pública de la justicia, desde su concepción particular del bien, lográndose si es vista por todos, como razonable o incluso verdadera, lo cual constituye una manifestación de la denominada razón pública que comparte la sociedad en su conjunto. La noción de razón pública cobra relevancia para los nuevos planteamientos rawlsianos, al justificar la forma como es factible una constitución estable y justa en el marco de una sociedad plural. Sin embargo, esta innovación no alcanza indicios tan trascendentales como la idea de un consenso superpuesto (Quintero, 2008).

Además, en Liberalismo Político de Rawls (1996), hay una renuncia al segundo principio de justicia: el igualitario principio de diferencia, mostrando gran preocupación por conseguir la estabilidad de la concepción política de justicia. En pocas palabras, ya formulada la teoría de la justicia, ésta debe someterse a un test de estabilidad y la validez de la teoría depende de su estabilidad, constituyendo esto una opción teórica especialmente polémica. En caso de concluirse que carece de la suficiente estabilidad, la concepción política de la justicia debe revisarse.

Con la intención de profundizar en los planteamientos antes expuestos, donde se evidencian contradicciones o posiciones contrarias, se expone en esta investigación como objetivo analizar la justicia desde la perspectiva liberal de John Rawls y Martha Nussbaum, precisando para ello, fundamentos expuestos por los dos filósofos en cuestión, para luego compararlos.

1. Rawls y sus Principios de justicia

Rawls plantea la justa igualdad de oportunidades en una sociedad justa, y la explica a través de sus principios de justicia, adoptados por los miembros de la posición original son:

a) Todas las personas son iguales en punto a exigir un esquema adecuado de derechos y libertades básicos iguales, esquema que es compatible con el mismo esquema para todos, y en ese esquema se garantiza su valor equitativo a las libertades políticas iguales, y sólo a esas libertades. b) Las desigualdades sociales y económicas tienen que satisfacer dos condiciones: primero, deben andar vinculadas a posiciones y cargos abiertos a todos en condiciones de igualdad equitativa de oportunidades, y segundo, deben promover el mayor beneficio para los miembros menos aventajados de la sociedad (Ralws, 1996: 35)

El primer principio fundamental de igual libertad, es definido por: "El patrón de derechos y deberes, poderes y responsabilidades, establecido por una práctica" (Rawls, 1957: 131) los cuales deben ser tratados de forma similar conforme con las reglas y, además, por sus capacidades manifiestas. Indica Rawls (1997:302): "Cada persona tiene el mismo derecho a la mayor extensión de un sistema en una sociedad justa, de libertades básicas iguales compatible con un sistema similar de libertades para todos", evidenciándose la visión política que establece para afirmar que el hombre tiene libertad, asumiéndose igual libertad para todos, compatible con iguales esquemas, donde el Estado le permite practicar la convivencia sin intromisiones, certificando ciertas normas de convivencia, es decir, donde el interés de todos es respetado.

Se resalta en este principio que a través de la libertad que toda persona tiene, respete la libertad del otro, y aprenda a vivir democráticamente, participando de manera justa según lo plantean las normas de la sociedad. De presentarse un conflicto, prima la libertad civil por sobre la libertad de participación, asumiendo que debe elegirse entre libertades políticas con libertad de conciencia y de la persona, procurando que: "El gobierno de un buen soberano que reconociese estas últimas y que mantuviese las reglas de la ley" (Rawls, 1996: 264), buscando que el gobierno respete los derechos y el bienestar de los gobernados.

Con relación con este principio expresa en su obra Teoría de Justicia: "He dicho que la posición original es el *statu quo* inicial apropiado que asegura que los acuerdos fundamentales alcanzados en él sean imparciales" (Rawls, 1971: 29), indicando con esto que las personas entienden los factores con influencia en la elección racional y las leyes y principios que rigen los asuntos humanos, expresándose en la teoría que es una hipótesis utilizada para entender lo que la justicia.

El segundo principio fundamental de la Teoría de Justicia de Rawls, se refiere al principio de la diferencia, planteando las desigualdades económicas, las cuales son aceptables si y solo si redundan en beneficio de los individuos de la sociedad peor posicionados, de manera, que pueda llegarse a: "Una justa igualdad de oportunidades (no solo una igualdad formal)" (Rawls, 1993: 313) lo cual significa, ofrecerle iguales oportunidades de enseñanza y cultura a los individuos que están capacitados de manera similar, brindando opciones de buenas escuelas para lograrlo, así como actividades económicas que permitan la libre elección de ocupación, aspectos que debe garantizar el gobierno.

Destaca en este principio, la intervención del Gobierno, a quien le corresponde promover las libertades y buscar mayor igualdad social y económica, como lo plantea en el acceso a puestos que les permitan esas oportunidades a los individuos, por ello, de acuerdo con Rawls, para que se den desigualdades sociales y económicas deben resolverse de forma que ambas permitan esperar razonablemente, que sea en beneficio de todo el mundo y estén vinculadas a oficios y a cargos abiertos para todos.

Las desigualdades se refieren a los beneficios y cargas vinculadas directa o indirectamente a las personas en razón de su prestigio y sus riquezas: "O sujeción a imposición fiscal y a servicios obligatorios" (Migliore, 2011:132). Este principio de diferencia está relacionado con lo expuesto por Rawls sobre la distribución de las riquezas, que una práctica establece o hace posible, de las cosas que los hombres se esfuerzan por alcanzar o por evitar, haciendo énfasis en que en la sociedad muchos individuos se aprovechan de las oportunidades de que disponen para concentrar riqueza que puede desarrollarse en un sistema de precios libres que admite amplias ganancias empresariales o especulativas.

2. Martha Nussbaum y su enfoque de justicia desde las capacidades del hombre

Martha Nussbaum considera la justicia desde las capacidades del hombre, y por ello, desarrolla acertadamente la vinculación aristotélica del enfoque de la capacidad. Aunque, también, pretende profundizar el carácter aristotélico, avanzando hacia una mayor objetivación del enfoque, realiza un listado de capacidades, su posición ha sido fundamental hoy para el desarrollo como para una gran cantidad de estudios y enfoques en todas las ciencias sociales.

Nussbaum entiende la justicia dentro del horizonte liberal de "los mínimos políticos" y, por otra, transpone "el enfoque de las capacidades" (Martínez, 2015:72), perfeccionado en recíproca influencia con Amartya Sen, a la tarea de determinar, conforme con la justicia política, una lista

única y entrecruzada de funcionamientos que no deberían faltar en un animal conforme con lo que es. Expresa que: "El enfoque de las capacidades plantea una teoría de la justicia capaz de servir de base para el derecho constitucional y las políticas públicas de una nación que aspire a la justicia social" (Nussbaum, 2012: 49).

Distingue Nussbaum entre las capacidades básicas: las innatas, nutridas y desarrolladas posteriormente o no y el funcionamiento, que define como haceres y seres, la realización activa de una o más capacidades. La libertad tiene valor intrínseco, y lo conlleva el mejor uso o aprovechamiento de sus libertades sustanciales. Entonces para la autora *in comento*, la capacidad hace referencia a las combinaciones alternativas de funcionamientos que le resulta factible alcanzar a una persona determinada. Es una especie de libertad, pero no son simples habilidades pues además incluyen el entorno político, social y económico.

Es fundamental en el planteamiento del enfoque de la capacidad, la concreción de "las diez capacidades centrales para que la vida esté a la altura de la dignidad humana" siendo así para todos por igual considerando que es justo darle la oportunidad de sentirlo y vivirlo, de allí que expresa que debe ser tarea de un gobierno de un orden político aceptable, proveer al ciudadano de:

1) Vida, como duración normal de la misma, y no se vea demasiado reducida.

2) Salud física, buena salud, incluyendo la reproductiva, y alimentación, lugar apropiado para vivir,

3) Integridad física, poder desplazarse libremente, no sufrir ataques, incluidos entre estos los sexuales, incluso en el ámbito doméstico,

4) Sentidos, imaginación y pensamiento, y hacerlo en un modo verdaderamente humano, a través de una educación adecuada, incluyendo en esta capacidad para la experimentación y producción de obras y actos religiosos, literarios, musicales y similares, en condiciones de libertad de expresión,

5) Emociones, poder sentir apego por cosas y personas, amar, sentir duelo, desarrollo emocional,

6) Razón práctica, como formación de una concepción del bien y una planificación de la propia vida,

7) Afiliación, para poder vivir con y para los demás, y disponer de las bases sociales suficientes para sentir respeto por uno mismo,

8) Otras especies, como relación con el mundo natural próxima y respetuosa,

9) Juego, reír, jugar y disfrutar,

10) Control sobre el propio entorno, político, como poder de participación y material, como poder de poseer propiedades y ostentar derechos en igualdad con las demás personas (Nussbaum, 2016:186).

Se observan en estas 10 capacidades un completo análisis de lo que es la persona por sí misma, atendiendo a la vida, salud, las emociones, las relaciones, así como la parte social con las actividades inherentes a su interacción con los demás, donde, además, da control al entorno, lo político, la participación y oportunidad de tener derechos y propiedades. Se enmarca más en el individuo, y no como Rawls, en la sociedad.

Nussbaum (2016) se basa en el caso de Vasanti, una mujer india separada de casta media que era maltratada por su marido, para explicar básicamente en qué consiste el enfoque de la capacidad y cómo este enfoque y no el crecimiento económico la ayuda a mejorar su vida. Por tanto, es una aproximación particular a la evaluación de la calidad de vida y a la teorización sobre la justicia social básica que se fundamenta en la respuesta a la pregunta ¿qué es capaz de hacer y ser cada persona? La persona es un fin en sí misma y el enfoque de la capacidad está centrado en la elección o en la libertad, siendo pluralista en cuanto a valores, se ocupa de la injusticia y la desigualdad social arraigada, asignando una tarea urgente al Estado y a las políticas públicas.

Para Nussbaum es necesario virar hacia el enfoque de la capacidad desde la óptica de los derechos, criticando la división de generaciones de derechos porque se ha mostrado inoperante en la práctica. Al centrarse en esta perspectiva, el listado objetivo de capacidades debe ser incorporado en los consensos político-constitucionales legales. Propone una lucha contra el relativismo y el subjetivismo, empezando, con la formulación del listado de las capacidades básicas objetivas, y acaba enmarcándose en la propuesta rawlsiana del liberalismo político y del consenso superpuesto, de allí cierta convergencia entre ellos.

Junto con Sen la autora *sub examine*, funda: "Una nueva ética para el desarrollo que pretende superar al enfoque del ingreso, al enfoque de los bienes primarios de Rawls y al enfoque de las necesidades básicas" (Nussbaum, 2016:194), pero con todo sigue siendo un enfoque ligado a las necesidades básicas y los medios, por un lado, y por otro, genera un lenguaje que es ambiguo, fácilmente malinterpretado por su propia ambigüedad y complejidad.

Nussbaum muestra un desarrollo del enfoque de la capacidad como superación de los derechos humanos con un listado de capacidades básicas de profundo carácter aristotélico. Se ha visto también como el enfoque de la capacidad como libertad en su aspecto de agencia, es el elemento

fundamental para entender el propio enfoque, como su propio ejercicio y desarrollo debe constituir el propio proceso de desarrollo del mismo. Se ha caracterizado por analizar la justicia a partir de las capacidades del hombre y las oportunidades que se le brindan para que se desarrollen.

De hecho, el enfoque busca: "Determinar lo justo para las personas, no renuncia a responder la pregunta, orientada por una clara evaluación ética, acerca de qué es lo que hace que una sociedad sea mínimamente justa" (Nussbaum, 2007:113), por lo cual, ofrece bases filosóficas para una explicación de los principios constitucionales básicos que deberían ser respetados e implementados por los gobiernos de todas las naciones, como mínimo indispensable para cumplir la exigencia de respeto hacia la dignidad humana, por ello, es parte de la justicia de la cual habla donde la persona debe defender sus derechos como parte justa y el Estado debe aceptar esta posición.

Sobre la base de los razonamientos expuestos *ut supra*, se presenta un cuadro comparativo de los postulados de estos dos filósofos, a los fines de propender a una sistematización del pensamiento desarrollado.

Cuadro No. 01. Criterios comparativos de la Justicia según Rawls y Nussbaum

Criterios comparativos	**John Rawls** Pensamiento Liberal igualitarista	**Martha Nussbaum** Pensamiento Liberal político
Ideas en su teoría	Libertad, igualdad y recompensa por servicios, fundamentales que forman parte de la cultura política de una sociedad, puede ser aceptada por cualquier doctrina comprehensiva razonable.	Hace énfasis en las capacidades como aquellas condiciones que le permiten a la persona ser capaz de ser y hacer, las cuales están combinadas, compuestas por las capacidades internas y el entorno
Concepto de justicia	Tiene que ver con los beneficios especialmente sociales. Plantea superar el modelo utilitarista y las posiciones restrictivas de liberalismo libertario. Todos tienen derechos. -Cada persona que participa en una práctica, o se ve afectada por ella, tiene igual derecho a la más amplia libertad. -Las desigualdades son arbitrarias. De carácter moral, y socio jurídico.	Entiende la justicia a partir de las capacidades del hombre y las oportunidades que se le brindan para que estas se desarrollen.1) Vida 2) Salud física, 3) Integridad física, 4)Sentidos, imaginación, pensamiento, 5) Emociones, 6) Razón práctica, 7) Afiliación, 8) Otras especies, como relación con el mundo natural, 9) Juego, reír, jugar y disfrutar, 10) Control sobre el propio entorno, político.

Fundamento	Imparcialidad Teoría universalista aplicable a cada individuo	Enfoque de la capacidad centrado en la elección o en la libertad, siendo pluralista en cuanto a valores, se ocupa de la injusticia y la desigualdad sociales arraigadas.
Percepción de la persona	La interpreta en su teoría de manera diferente según sean las circunstancias, plantea más sus ideas en las instituciones sociales	Importante la persona con sus capacidades
Sociedad	Asume la cooperación y ayuda mutua. Sociedad justa y, por lo tanto, de la naturaleza de la justicia. Aquella con la que se estaría de acuerdo, aunque no se supiera las circunstancias en las que se va a vivir Es institucionalmente organizada	Habla que la justicia política debe velar por derechos sociales, como base de los civiles, del mínimo político queda incorporada la calidad de vida y el bienestar en sentido no utilitario al conectar el desarrollo de las personas y de los pueblos con el florecimiento desde las capacidades.
Desigualdades	Considera las arbitrariedades moralmente, producidas tanto por las contingencias sociales como por las contingencias naturales, trata entonces de corregirlas a través del principio de la justa igualdad de oportunidades y el principio de diferencia.	Todos tienen las mismas oportunidades, pero cada quien según lo que es y sabe hacer. Presencia de personas que difieren según la etnia, la casta, la religión y profundas divisiones políticas.
Derechos	Aplicación de valores universales Elección racional porque los individuos deciden de lo que experimentan en su sociedad	Vida, salud, afecto, emociones, afiliación, control, atención, trabajo, diversión.
Distribución de las riquezas	Plantea la distribución de las riquezas, quien tiene más debe aportar a los desventajados socialmente	Plantea que se vuelve insuficiente la preocupación exclusiva por la justicia distributiva, pues el centro es el logro de una vida que esté a la altura de la dignidad humana y pueda ser valorada como merecedora de ser vivida.
Dirección de sus principios	Sus principios llevan a: 1. Generalidad 2.Universalidad 3.Carácter público 4.Ordenamiento 5.Carácter definitivo	Lograr el respeto hacia la dignidad humana. Justicia capaz de servir de base para el derecho constitucional y las políticas públicas de una nación que aspire a la justicia social
Estado	Establece las normas y la persona acepta sin conocer sus posibilidades de escogencia. Esto impide lo que para una persona es libertad	Asigna una tarea urgente al Estado y a las políticas públicas para el respeto hacia la persona y a sus capacidades, el Estado debe aceptar esta posición
Bienes	Habla de los bienes primarios incluyendo los de naturaleza social como derechos, libertades, poderes y oportunidades, los ingresos y la riqueza, a disposición de la sociedad	Riquezas obtenidas a través de la formación, en la educación. La nación debe desarrollar oportunidades para que el individuo crezca individualmente para su beneficio propio y de la sociedad.

Fuente: Elaboración propia (2022).

3. Interpretación textual y contextual

En referencia a los principios que caracterizan la justicia para Rawls, puede identificarse que para el filósofo liberal, es importante resaltar que para él todas las personas tienen los mismos derechos especialmente a la libertad, y según su posición las desigualdades son arbitrarias, sin enfocar que realmente en una sociedad es posible conseguir distintos modos de producción, y esto, tal como se analiza en el contrato social, genera diferencias, tanto así que en sus principios indica la necesidad de lograr nivelarlos y estabilizarlos.

De allí, "El escollo de la estabilidad por el lado de la legitimación, nos pregunta sobre si estamos de acuerdo o no con la propuesta de sociedad que se desprende de dos principios de justicia como equidad" (Alútiz, 2007:233), pudiendo dar lugar a una quiebra de la estabilidad normativa por parte de los más perjudicados, si llegaran a poner en cuestión los principios de organización social que los han situado en una posición de desventaja para alcanzar sus expectativas de autorrealización personal y/o social.

Para Rawls (1986), todos tienen las mismas oportunidades, de allí que en una primera versión de su artículo Justicia como equidad, planteara que no había que confundir el sentido de la igualdad que es un aspecto del concepto de justicia, el sentido de la igualdad que forma parte de un ideal social más comprehensivo. Esta posición del filósofo parte del hecho de estar claro que las desigualdades existen, a veces, de manera justa, pero en su real concepto, no deberían darse, hecho que lo distancia de la realidad y las circunstancias sociales en cualquier región o país. En esta explicación que da el autor previamente citado, la igualdad llama a ser imparcial, a no discriminar, a actuar con todos de manera similar puesto que en una sociedad justa.

Por ello, la teoría de la justicia de Rawls, tiene una postura social al asumir el autor la necesidad de distribuir las riquezas de manera similar entre todos los integrantes de la sociedad, sin obviar que posiblemente existan quienes tienen más y, por ende, deben compartir con quienes no están aventajados, buscando la cooperación social y la ayuda mutua con un equilibrio reflexivo y nivelado de las riquezas. Se explica esto mediante una realidad, cuando el Estado reparte alimentos entre las familias más necesitadas, les entrega a todas, la misma cantidad, lo cual: "Es una distribución inequitativa, por tanto, injusta, porque, aunque haya sido igual, no se toma en cuenta las características de cada grupo familiar, como integrantes, edades, necesidades individuales" (Bracho, 2021b: 128).

Por su parte, cuando se analiza la postura de Nussbaum en cuanto a los principios de justicia, la filósofa considera muy importante tomar en cuenta que cada persona nace con ciertas condiciones que le permite desarrollar cualidades específicas, pero asume que si todos reciben las mismas

oportunidades y, da responsabilidad de esto al Estado y la sociedad, será posible que todos sean iguales al tener vida, salud, integridad, sentidos, emociones, razón práctica, necesidad de afiliarse, relacionándose con otras personas, y dentro de todo disfrutan de la vida y tienen derecho a controlarla, a elegir, a decidir que son las bases de la libertad de cada uno. De allí que su fundamento al hablar de justicia, son las capacidades de cada persona, mientras para Rawls, son universales, y se enfoca en la actuación del hombre en la sociedad, sin darle la importancia como ser individual, sino colectivo o social.

Puede observarse al realizar el análisis comparativo que Rawls se refiere explícitamente a: "Los talentos naturales de cada uno como formando parte de un acervo común: de ahí que nadie pueda invocar dichos talentos como propios, con el objeto de apropiarse de modo exclusivo de los frutos que obtenga con ellos" (Bracho, 2021a:62), lo cual resulta justo defender un sistema institucional en el cual los más talentosos sean llevados a poner sus talentos al servicio de los menos talentosos.

Explica Nussbaum (2016) que si una nación quiere promover ese tipo de democracia humana, sensible a las personas, una dedicada a la promoción de oportunidades para "la vida, la libertad y la búsqueda de la felicidad" para todos y cada uno, qué habilidades, necesitará producir en sus ciudadanos la capacidad de deliberar, pensar, discutir, situación totalmente contraria a la posición inicial y al velo de ignorancia como principios de la justicia de Rawls, donde supone al hombre un ser pasivo, y si se quiere conformista. Por lo menos, plantea las siguientes que parecen cruciales:

> La capacidad de deliberar bien acerca de los problemas políticos que afectan a la nación, para examinar, reflexionar, discutir y debatir, sin diferir de la tradición ni de la autoridad. La capacidad de pensar en el bien de la nación como un todo, no sólo del propio grupo local, y para ver la propia nación, a su vez, como parte de un orden mundial complicado en el que problemas de muchos tipos requieren de una deliberación transnacional inteligente para su resolución. La capacidad de preocuparse por la vida de otros, de imaginar lo que las políticas de muchos tipos significan, en cuanto a las oportunidades y experiencias de uno de sus conciudadanos, de muchos tipos, y para la gente fuera de su propia nación (Nussbaum, 2016:17).

Nussbaum manifiesta que las capacidades del hombre le permiten deliberar, pensando y discutiendo por aquellas cosas y situaciones que le preocupan y afectan, siendo un problema personal el lograr la justicia ante sus planteamientos, de allí, supone la actuación del individuo muy particular según sus capacidades y a pesar de considerar la igualdad, no ve como Rawls que todos sean iguales, sino que todos tienen las mismas oportunidades, pero cada quien según lo que es y sabe hacer. por ello, Wolff argumenta que los principios de justicia no son la solución al juego del regateo porque las partes saben demasiado, es decir, conocen las diferencias

entre sus respectivos talentos y las opciones racionales que se les ofrece no admiten una propuesta unánime, dado que no existen las condiciones de incertidumbre necesarias (Wolff, 1981).

Su planteamiento se ubica básicamente en la formación, en la educación, que con justicia una nación debe desarrollar para proveer a cada ciudadano de oportunidades de crecer individualmente para su beneficio propio y de la sociedad, asumiendo un pensamiento crítico que es particularmente crucial para la buena ciudadanía en una sociedad que tiene que luchar a brazo partido con la presencia de personas que difieren según la etnia, la casta, la religión y profundas divisiones políticas.

El enfoque de las capacidades de Nussbaum, pretende ser una doctrina política y, como tal, se encamina a determinar parcialmente derechos específicamente políticos. Establece concepción normativa que dé lugar al pluralismo y la libertad. De acuerdo con el análisis desarrollado, "las capacidades son aquellas condiciones que le permiten a la persona ser capaz de ser y hacer, las cuales están combinadas, compuestas por las capacidades internas y el entorno" (Ibáñez, 2014:158) explica que todas las personas deben superar un umbral de capacidades combinadas para ser tratados con igual respeto.

Por el contrario, Rawls en su teoría de la Justicia y en sus obras siguientes, mantiene los principios bajo la posición inicial y el velo de ignorancia, manteniendo su condición de distribución de las riquezas, enmarcado en la igualdad entre las personas en una sociedad ordenada y justa, planteamiento que para Nussbaum no es posible, por cuanto el individuo tiene capacidades que lo hacen diferente de los otros, y aunque los derechos son iguales para todos, es justo ser tomado en cuenta por lo que sabe hacer y es, aunado a considerar difícil que una persona quiera obviar las posibilidades de desarrollarse y crecer que se le ofrecen a unos y es difícil para otros, de allí las diferencias y discriminaciones.

Razona que: "Sólo tendremos la oportunidad de un diálogo adecuado, que atraviese fronteras, si los ciudadanos jóvenes saben cómo participar en el diálogo y la deliberación en primer lugar" (Nussbaum, 2016:20), explicando que sólo sabrán cómo hacerlo si aprenden a examinarse a sí mismos y a pensar en las razones por las cuales son proclives a apoyar una cosa en lugar de otra; dejando atrás el debate político simplemente como una forma de jactarse, o conseguir una ventaja para su propio lado.

En este sentido, en la exigencia de respetar y velar por ciertos umbrales mínimos de capacidades se manifiesta, "Al entender Nussbaum, la tan anhelada síntesis entre lo «justo» y lo «bueno», entre justica política y justicia social" (Martínez, 2015:75), arguyendo que el problema de la dignidad se centra en dar cuenta de los parámetros que permiten determinar en qué consiste una vida digna y, justamente, en este momento se conecta

el concepto con las capacidades. Esto puede concretarse en la medida que la exigencia del Estado no es promover funcionamientos, sino capacidades, de esta manera, se resguarda la libertad.

Al analizar la posición de Rawls en cuanto a la dirección de los principios, puede evidenciarse que para el filósofo estos son generales, universales, de carácter público, definitivo y por ordenamiento, mientras para Nussbaum, estos principios se dirigen a darle la importancia a la persona considerando el respeto que merece y que la sociedad y el Estado debe darle, de manera que se sienta libre, digna, y según sus capacidades físicas y mentales, prestarle el adecuado servicio a la sociedad, que reconocerá lo que cada individuo puede hacer.

En relación con esto, no se vinculan las ideas de inviolabilidad, respeto y "dignidad humana", pero si enfatiza en los principios políticos para poder dotar dicha ideas indefinidas, de un contenido determinado (Rawls, 1971), además, no emplea el término dignidad, pero captura bien la noción de inviolabilidad de la persona que moldea sus argumentos: "Se trata de un concepto familiar para las tradiciones constitucionales de la mayoría de la democracias liberales moderna" (Nussbaum, 2014:5), entendiendo el filósofo según los fundamentos kantianos que como correlato del respeto, está la dignidad, explicando que las personas son fines, tienen dignidad, poseen algo especial que torna indebido cualquier intento de desconocimiento para satisfacer el interés general, o cualquier fin ulterior. Con este principio se garantiza: "El goce de la libertad civil o libertad de los modernos, por la que se reconoce a cada individuo, en un sentido kantiano, una esfera de autonomía lo más amplia posible compatible con la libertad de los otros" (Migliore, 2011:19).

Como lo explica el autor *supra* citado, toda persona debe tener garantizada la misma oportunidad que se les ofrece a los demás, con equidad y libertad para escoger, por lo cual, indica Rawls, que el respeto es una actitud que reconoce la dignidad, y la reconoce de forma igual para todos. A pesar que es fácil asociar estas ideas con la filosofía moral kantiana, donde cada persona tiene una posición social observándose muchas en situación de desventaja sin distinguir entre aquellas que por circunstancias fortuitas tienen más privilegios que otras: "También es cierto que las mismas son compartidas por diferentes tradiciones morales y religiosas" (Nussbaum, 2014:5) y cada persona tiene derecho a una posición social lograda según su formación, educación, dándole oportunidad de crecer individualmente para su beneficio propio y de la sociedad.

Para Nussbaum las personas nacieron para ser respetadas en su dignidad y capacidad, por ello, están en la posibilidad de generar cambios en su vida, por lo que argumenta en sus producciones lo importante que es la educación, y es compromiso del Estado, trabajar para ello y poder desarrollar ciudadanos con "la capacidad de pensar de manera crítica, la

capacidad de trascender las lealtades locales y acercarse a los problemas mundiales como un: "Ciudadano del mundo" y la capacidad de imaginar comprensivamente la situación del otro" (Nussbaum, 2016:15).

Al respecto de la posición política, Nussbaum criticaba la forma de como los políticos traen propaganda simplista a su manera, ya que en todos los países tienen una manera de hacerlo, los jóvenes sólo tendrían esperanza de preservar su independencia si saben cómo pensar críticamente sobre lo que escuchan, poniendo a prueba su lógica e imaginando alternativas para ésta. Por eso manifiesta que:

> En algunas áreas fundamentales del funcionamiento humano, una condición necesaria de justicia para un acuerdo político público es que ofrezca a los ciudadanos un grado básico de capacidad. Si las personas se están encontrando sistemáticamente por debajo del umbral en alguna de estas áreas clave, esto debería ser considerado como una situación tanto injusta como trágica (Nussbaum, 1992: 202).

Arguye la autora bajo análisis, que el lenguaje de los derechos permite llegar a poderosas conclusiones normativas sobre la base de la existencia de capacidades básicas, que son igualmente fundamentales, y rechaza la prioridad de la libertad expuesta por Rawls, porque se hace difícil percibir cómo los movimientos políticos que abogan por la mejora del bienestar humano pueden dejar de abarcar las creencias relacionadas con la persona como tal. También se considera que: "La ciudadanía tiene la obligación de vigilar que las políticas cumplan con el objetivo propuesto. Esta posición conlleva una visión del Estado como respetuoso de la ciudadanía y preocupado por ella" (Dieterlen, 2014:45).

Otro punto que se discute cuando Rawls habla de los sujetos de la distribución, se refiere a aquéllos que tienen la responsabilidad de otorgarlos, por lo cual, afirma que el Estado tiene una responsabilidad con los ciudadanos y, si se consideran los derechos económicos y sociales, tiene la obligación de evitar que exista la pobreza. La idea que subyace a esta visión es que el Estado, mediante sus instituciones, debe promover políticas públicas exitosas cuyo objetivo sea el combate frontal y fuerte contra la pobreza.

Conclusiones

El desarrollo de esta investigación, ha implicado cuestiones filosóficas, políticas e inclusive, sociales y económicas, por la manera de concebir Rawls la justicia versus a como la siente y piensa Nussbaum, partiendo del hecho que para el primero, justicia es libertad, igualdad, haciendo su valoración desde la perspectiva del liberalismo social, asumiendo con responsabilidad que es insatisfactoria la relación de libertad y justicia

por la forma confusa como las expone en cuanto a su concepción política de la justicia y las distintas doctrinas comprehensivas razonables y para la segunda, es libertad, oportunidad de desarrollar cada persona, sus capacidades y hacerlas valer.

Un aspecto interesante al contrastar las posturas de Rawls y Nussbaum es con respecto a la libertad de ser y hacer y con esto, de analizar, argumentar y debatir acerca de diversas situaciones sociales que surgen, y mientras Rawls en sus principios, enuncia el velo de ignorancia, indicando que las personas no deben tener conocimiento de lo que podrían ser o tener, sino aceptar lo que son, según su posición original, generando con esto una debilidad en los individuos y en su propia argumentación, la cual, fue modificando según las distintas críticas que recibió su teoría de la justicia.

Por tanto, Rawls, generaliza la concepción de justicia y asume que todos los seres tienen las mismas posibilidades, aunque siempre plantea los que tienen y los menos aventajados. Enmarca aspectos específicos como son la estructura básica con una sociedad ordenada, la distribución de las riquezas, la equidad, igualdad, equilibrio, consenso superpuesto, mientras Nussbaum concibe la justicia desde las bases filosóficas para una explicación de los principios constitucionales básicos que deberían ser respetados e implementados por los gobiernos de todas las naciones, como mínimo indispensable para cumplir la exigencia de respeto hacia la dignidad humana.

Con respecto a los resultados que se esperan acerca de la justicia, al analizar los postulados de estos dos filósofos, puede considerarse que los sustentos teóricos de Rawls, se alejan de la sociedad real, la cual es poco práctica. Todos los bienes sociales primarios; libertad, igualdad de oportunidades, renta, riqueza y las bases del respeto mutuo, han de ser distribuidos de un modo igual, a menos que una distribución desigual de uno o de todos los bienes, redunde en beneficio de los menos aventajados. Por su parte, la idea y resultado que espera Nussbaum es que la justicia deberá producir en sus ciudadanos la capacidad de deliberar, pensar, discutir, elegir e intenta superar, el concepto de justicia propio del contractualismo por considerarle limitante de la inclusividad y al del utilitarismo por no asegurar el respeto al valor y la dignidad de cada individuo.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 829-848
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Responsabilidad social clientelar: hacia la reconfiguración de un nuevo paradigma dominante en política

DOI: https://doi.org/10.46398/cuestpol.4176.49

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Resumen

Mediante una metodología reflexiva y documental, el articulo examina la conexión del clientelismo en la responsabilidad social. Entendiendo la responsabilidad social como un esfuerzo de colaboración para promover la felicidad por parte de los miembros del aparato económico, político y cultural. Además, se explora el paradigma de servicio y dominio de la teoría burocrática, que, al menos en teoría, aumenta la eficiencia, eficacia y efectividad de la organización. Se concluye que, el clientelismo en la administración busca una burocracia delineada en el poder y el servicio, donde rige la lógica y el punto de vista del cliente. Aquellos que tienen la capacidad de juzgar y discriminar entre lo que es verdadero y, lo que no lo es, pueden valorar estas cuestiones críticamente. La razón, que es innata en el ser humano, crea una variedad de ideologías articuladas. Estas ideas están respaldadas por la teoría burocrática de Weber y los planteamientos del discurso del método de Descartes, según lo cual la búsqueda de la verdad por parte del cliente se rige por dos perspectivas esenciales: la colaboración con las ciencias humanas y el servicio para la vida.

Palabras clave: responsabilidad social; clientelismo; paradigma dominante; pensamiento político contemporáneo; discurso del método.

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Recibido el 18/11/22 Aceptado el 10/01/23

Clientelistic social responsibility: towards the reconfiguration of a new dominant paradigm in politics

Abstract

Through a reflexive and documentary methodology, the article examines the connection between clientelism and social responsibility. Understanding social responsibility as a collaborative effort to promote happiness by members of the economic, political and cultural apparatus. Furthermore, it explores the service and mastery paradigm of bureaucratic theory, which, at least in theory, increases organizational efficiency, efficacy and effectiveness. It is concluded that clientelism in administration seeks a bureaucracy delineated in power and service, where the logic and point of view of the client rules. Those who have the ability to judge and discriminate between what is true and what is not, can critically assess these issues. Reason, which is innate in human beings, creates a variety of articulated ideologies. These ideas are supported by Weber's bureaucratic theory and Descartes' method discourse approaches, according to which the client's search for truth is governed by two essential perspectives: collaboration with the human sciences and service for life.

Keywords: social responsibility; clientelism; dominant paradigm; contemporary political thought; discourse of method.

Introducción

Actualmente, el problema del clientelismo no se centra en una cuestión del ejercicio de control ni mucho menos de la instrumentación de sanciones, normas o regulaciones estrictas, sino, en un paradigma de posturas vistas desde dos aristas: el cliente y la razón. El clientelismo dominante ha existido y seguirá existiendo a expensas de los gobiernos, quienes han utilizado estrategias paliativas para que las responsabilidades ciudadanas se configuren en torno a una construcción axiológica, ontológica y de compromiso social.

El paradigma del pensamiento clientelar ha representado un problema en el abordaje de la dominación de las partes en el servicio para el buen vivir de la sociedad. Es así como la diversidad de acciones que originan la relación entre el cliente, la razón y el producto se concatenan con las ideas del discurso ideológico de los tiempos. Un claro ejemplo de ello es Descartes y su método de postura apofántica, el cual valora la relación entre racionalidad y realidad (Descartes, 2004).

Desde estas ideas metódicas, empíricas y epistémicas en la racionalidad del discurso, se representa desde un enfoque socio-ciudadano y apofántico

en virtud de lo que debe ser. Por ello, resulta fundamental que la interacción ciudadana se compenetre con la responsabilidad social (RS) desde una postura proactiva, en función de la reinversión y la retribución al entorno local, regional, municipal o nacional, de acuerdo con cada caso.

Desde el desarrollo del paradigma dominante de la ciencia, el clientelismo siempre presentó diversidad de interacciones que permanecen en la actualidad. En este sentido, para Descartes (2004), las materias que se estudiaban en aquel entonces no se interesaban por el clientelismo, sus acciones o la búsqueda de la verdad; en contraste, resultaban ser una actividad placentera como la literatura o la retórica, o con un enfoque más práctico como ciertas materias técnicas.

A raíz de estos ideales se configuró todo un entramado que afianza las ideas del artículo, con el fin de exponer cómo los países se han estancado en el desarrollo del paradigma dominante, en donde claramente se evidencia que lo que les interesa es una parte y no el todo; es decir, el enriquecimiento personal.

La naturaleza de esta ideología es la dominación sobre el otro, sin pensar en el servicio ni en la retribución que debe y puede tener la RS, hecho que se manifiesta de distintas maneras. Por ejemplo, ciertos países abordan la interacción social como el pilar del clientelismo en la educación. Este es el caso de Singapur, donde los billetes tienen estampada una universidad acompañada por el eslogan "Educación". Por el contrario, en Latinoamérica se coloca a un prócer, presidente u otra figura representativa de la historia que se apega a una postura escasamente innovadora del clientelismo (Oppenheimer, 2009).

En concordancia con Oppenheimer (2009), el modelo clientelar que predomina en los medios ciudadanos se evidencia en la explotación ilimitada y la ultranza de los dones que difieren según el contexto de cada sociedad, pero que tiene un mismo resultado: más empobrecimiento de las grandes mayorías poblacionales, sobre todo, de sus alrededores, lo que se traduce en un índice de desinterés de la cultura sociointegral clientelar. No obstante, el autor está lejos de sostener una visión ejemplar de este binomio (cliente-razón), pues la humanidad tiene grandes recursos que emanan de la voluntad y la nobleza del espíritu para superar las graves dificultades y escollos de la vida.

Es precisamente aquí donde aflora la caridad, la fe y el deseo de interacción humana libre de viveza criolla o el común denominador: enriquecerse a expensas del prójimo. La postura de que todo es relativo en los ideales de las filosofías clientelares arraigadas por siglos, como las aristotélicas y las platónicas, que plantean que primero se piensa para luego existir, se enfoca en la razón clientelar. En ese orden de ideas, cabe preguntarse lo siguiente: ¿La RS sería el argumento para velar por la acumulación de la riqueza dominante y que responde ante una realidad equitativa?

Hoy en día, la riqueza prolifera como un mal social. De este modo, la respuesta estaría en por qué surgen perspectivas filosóficas que se apartan totalmente de aquella práctica de razón y especulan en beneficio propio. Dicha incógnita, por el contrario, llama a encaminar a la razón por aquel anhelo de tomar riendas características en la equidad, como el ideal realizado por Descartes en cuanto a la conducta ciudadana apegada a la bondad y el pensamiento equitativo (Descartes, 2004). La esperanza se acrecienta por el hecho de que el movimiento internacional en materia de reglamentación, que gira en torno al contexto de cada nación y la lucha contra la pobreza, surte un importante y profundo efecto en la esfera de los valores y la ética de los ciudadanos. Así, frente a la inercia clientelar, la resistencia al cambio de las pesadas y lentas estructuras de las relaciones sociales, la economía politizada, el dinamismo y la proactividad de cada individuo, los paradigmas enraizados en los valores y la ética deben florecer para luchar, combatir los antiguos esquemas y direccionar el cambio social irracional hacia una postura racional basada en un enfoque axiológico y emergente desde el subyacer empírico y epistémico.

En la ciencia política, la interacción del clientelismo expone una serie de prerrogativas extraordinariamente amplias que abarcan actividades de influencia paradigmática enmarcadas en la asociación política. Dicho de otro modo, el Gobierno es liderado por profesionales que, en muchos casos, buscan beneficios personales ante la ausencia de valores sociales. La consideración sociológica del clientelismo y su interacción con el paradigma político se reconoce como una competencia exclusiva que, por lo general, se enfoca en la reinversión social desde las acciones de retribución, obteniendo una rentabilidad del medio. Por lo tanto, se trata de entender la existencia de un paradigma clientelar de postura dominante (Weber, 2000).

1. Fundamento teórico

1.1. La responsabilidad social: ¿Una acción ciudadana o una axiología humana?

De acuerdo con diversos estudios, socioestudios, corrientes filosóficas y la neurociencia, la única verdad es la que se obtiene a partir de los números o estadísticas, o la que cada uno presenta en su pensamiento; aunque, en realidad, el ser humano no es dueño de la verdad. Dicha verdad, entendida como un paradigma que permite alcanzar la RS, tendría que cambiar las raíces del político como ejemplo de gobernabilidad. Esto recae en un discurso del método expresado con base en el sistema económico, social, político y cultural, y que está en hegemonía de la convivencia. Por consiguiente, esto debería cambiar para mantener una relación de equidad ciudadana, teniendo en cuenta que, para existir, es necesario tener una axiología de vida apofántica (Aaker, 1990).

Orientar el binomio cliente-razón desde la acción humana representa la panacea de la RS y el cúmulo de la riqueza orientado en el beneficio de las partes por igual, lo que no debería estar sujeto a las ganancias que un individuo tiene sobre otro, donde la superación, el éxito y el clientelismo dominante del individuo dependen del prójimo. Desde ese punto de vista, se entiende que el éxito está en sobrevalorar al otro. Entonces, los patrones de interacción política en la colección de un sistema de insaciable acumulación de capital, que resulta ser un sistema insostenible e insoslayable de cara al futuro, prevalecen como paradigma social (Descartes, 2004).

Desde un paradigma de interacción de sociedad-naturaleza que permite entender las dificultades de la RS clientelar como una temática que preocupa a los sectores de reinversión social para unos a expensas de otros, la supervivencia de la humanidad es un tema que cada ciudadano ha de valorar desde las corrientes dominantes clientelares en cada entorno social, donde la RS representa a ciertos valores humanos, pero no ciudadanos; dado que la ciudadanía se concibe como clientes. Bajo dicha lógica, los gerentes, los dueños y los proveedores de servicios generan mayor división entre los grupos de poder y las clases sociales bajas (Argandoña, 1998).

Esta afirmación apoya la racionalidad del discurso del clientelismo dominante, sobre todo político, que articula las directrices económicas, sociales, educativas y culturales que rigen el sistema. Como planteó Weber (2000), "tantas ganas, tanto inviertes", reflexión que se podría aplicar a la RS, principalmente en un entorno económico y jurídico caracterizado por una tendencia al llamado "socialismo del siglo XXI", cuyas implicaciones tienen un alcance a nivel de inversión social clientelar y con un enfoque de la estructura social *per se. Por esta razón, se debería plantear una utópica estructura de distribución equitativa de la riqueza y de igualdad de condiciones. Sin embargo, esta tendencia política equidista totalmente de su propia primicia de igualdad y se sumerge en un sistema de mayores riquezas de unos en desmedro de otros.*

En ese orden de ideas, el clientelismo político representado por el Estado en la interacción ciudadana reclama una convivencia justa, equitativa y en busca del buen vivir. De esa manera, se orientaría socialmente para lograr la mayor seguridad del ser como máxima de gestión por y para el pueblo que lo eligió. En este contexto, es fundamental exponer que, para los filósofos como Weber (2014), el clientelismo se define como un proceso que necesita de líderes que sepan cumplir con los designios postulados en la Carta Magna, la cual, como en toda nación, es el instrumento que rige al sistema y busca -o así debería ser- fomentar una convivencia plena de los ciudadanos.

En la RS clientelar que surge en los países en vías de desarrollo, particularmente a nivel latinoamericano, los enfoques políticos buscan armonizar la acumulación de la riqueza y el bienestar social; es decir, como

una suerte de capitalismo con rostro humano que se aleja de los extremos individualistas del neoliberalismo, pero no pierde su esencia capitalista. Un sistema donde la libertad individual impere y se garantice la inviolabilidad de la propiedad privada ha de promover la erradicación del clientelismo dominante por uno liberador, protagónico y participativo que promueva la RS dentro de todo un territorio, región o comunidad.

Para que verdaderamente la RS adquiera un nuevo significado y un renovado paradigma de vigor, esta postura de inclusión trasmuta de un enfoque utilitario a un enfoque altruista, desde una concepción de ayuda social hacia una estrategia de marketing con objetivos de retorno sobre la inversión en el entorno social que rodea a la empresa, el comerciante u otros. Cabe mencionar que dichos objetivos deben ser claramente identificables y cuantificables de acuerdo con la verdadera filosofía, es decir, "cuánto ganas, cuánto inviertes".

Esta filosofía se aborda como una corresponsabilidad social, dejando de ser un acto voluntario y tornándose en algo obligatorio que se tiene que realizar por un deber ético. Incluso, en varias naciones, esta corresponsabilidad social se entiende como el camino a recorrer para cumplir con los principios constitucionales que permiten patrocinar los espacios ciudadanos con procesos enmarcados en la plena responsabilidad por el bien comunal.

Ahora bien, dicha responsabilidad depende de la arista y el desarrollo clientelar social que se desarrolle, donde la estrecha relación existente se enmarca bajo un único concepto. Aunque su naturaleza es mucho más compleja, la predominante es la empresaria, gerencial o de liderazgo. Este empoderamiento de unos sobre otros comprende el desarrollo de las naciones, pues, desde la política, el desarrollo cultural, económico y político teje una secuencia de acciones para que las acciones humanas funcionen sistémicamente, con el fin de lograr la plena felicidad de todos por igual.

Para Argyris (2009), la RS confluye entre la moral, la ética y los valores, tres determinantes que rigen el comportamiento que debe tener el clientelismo frente al contexto social en el que se desarrolla. Por lo tanto, los derechos, los deberes, las responsabilidades, la probidad, la honestidad, la etnicidad, la eticidad, la solidaridad, la transparencia y el desarrollo productivo se desenvuelven como actores del clientelismo dentro de una cierta responsabilidad holística.

De esa manera, los nuevos paradigmas en RS promueven el clientelismo político, moderno y de mercado. A aquellos que siguen una tendencia clientelar tradicional, los invita a que se desenvuelvan bajo una figura de líder supremo que soluciona las problemáticas ciudadanas, patrocina propuestas de mejora sociales y asesora e impulsa la gestión de las entidades sin ánimos de lucro. La RS clientelar, como tópico, se enmarca en

un ámbito disciplinario más amplio de la ética *empresarial y la política*. *En ese sentido,* Brickley *et al.* (2005) identificaron algunos referentes teóricos que abordan este tema:

- Relación ética y acción empresarial de Weber.
- Teoría del bien común y los *stakeholders de Argandoña.*
- *Teoría sobre la gestión clientelar éticas de Samper.*
- *Teoría sobre la RS de las empresas Fernández y Llano.*

Todas estas teorías abordan la cultura ética, política y empresarial -pertinente al peso relativo- que tiene la ética empresarial como medio, servicio del utilitarismo individual, su naturaleza política como fin en sí misma y servicio de la humanidad (Weber, 2014). En el fondo, el problema ético y radical de la RS clientelar radica en la antigua cuestión del bien individual frente al bien común, del egoísmo frente al altruismo, del interés propio y del interés colectivo.

Al final, deriva en la necesidad de tomar una decisión trascendental de cara al futuro de la humanidad: seguir por el camino de una economía enfocada en el bien común, contando con el apoyo de actores comprometidos con el bienestar individual (Brickley *et al.*, 2005); o caminar por un nuevo sendero de una economía que logre el bien colectivo, con actores verdaderamente comprometidos con la humanización de cada lugar de vida.

2. La responsabilidad social en el camino humanista

Sin duda, es posible plantear un camino del clientelismo político con un enfoque económico que logre el bien común; sin embargo, se requiere de individuos realmente involucrados en lograrlo, cuyo propósito inicial no sea alcanzar su bienestar, pues este surge como resultado inherente a su labor. Por supuesto, este planteamiento no se debe confundir con esta idea inconcebible de tener una economía en la que los individuos hagan su labor por humanitarismo, donde cada uno obtiene lo que necesita gracias al humanitarismo del resto.

Esto implicaría una sociedad sin utilitarismo y sin mercado, donde la producción y la distribución de bienes y servicios se hiciese por ética y no por el interés de la acumulación de la riqueza. Si bien el alcance del presente estudio no pretende llegar al desarrollo de semejante teoría económica, sí es pertinente considerarla como una posibilidad frente al individualismo de Adam Smith y al cooperativismo de John Nash (Brickley *et al.*, 2005).

Además de las consideraciones éticas burocráticas de Weber, otra dimensión fundamental sobre la reinversión en RS es la llamada “eficiencia

del gasto". Según Aron (2004), diversas posturas clientelares determinan la eficacia de la RS en la medida en que dicho gasto sea eficiente en términos de resultados: rentabilidad, participación de mercado, entre otros. En este contexto, la equidad no necesariamente se opone a la eficiencia, lo cual deben comprender los empresarios de cara al futuro, pues en el camino de buscar la equidad, la estructura de la eficiencia clientelar se tiende a desestabilizar ante la aparición de situaciones adversas; por ejemplo, los incentivos para los trabajadores que logran, con mayor mesura, su gestión laboral.

Bajo dicha perspectiva, la verdadera capacidad que tiene el individuo para conseguir ciertos logros clientelares está condicionada por las ventajas a nivel económico y social, así como por su libertad en términos políticos y su competencia para generar iniciativas. Todas estas aristas se complementan entre sí y son necesarias para lograr resultados sostenibles.

La relación cliente-mercado (comercio), como un modelo sostenible de negociación, dotación y generación de recursos, alude a la dimensión teórica de la libertad individual vs. la igualdad o la equidad. Desde una perspectiva ética, la desigualdad transgrede el principio de libertad individual. Se entiende que la igualdad se conforma por las posibilidades que tienen todos los individuos para gozar del mismo tipo de libertad u oportunidades para ejercerla, por lo que un postulado adecuado sería eliminar el clientelismo dominante de masificación de riqueza en pocas manos.

Si se considera que ser libre es un hecho realmente importante, es inconcebible que la libertad sea exclusiva de un grupo reducido. En términos de una relación clientelar, esto quiere decir que una de las partes veta ciertos beneficios a la otra, hecho que equidista totalmente de ser una relación transparente y equitativa (Melinkoff, 2015). En tal marco, la RS clientelar tiene distintas implicaciones cuando se toma conciencia de que el éxito de una relación se logra con oportunidades y condiciones favorables para todos; por ende, en el mercado actual, la relación "tantas ganas, tanto inviertes" es totalmente inequitativa.

3. Tipología de la dominación en responsabilidad social

Respecto al pensamiento tradicional, carismático y racional burocrático, Weber (2000) consideró que, en la relación cliente-comercio-obtención de bienes, el objetivo se conoce en función del recurso para la interacción clientelar, donde la racionalidad de la acción que se realiza está determinada por el nivel de conocimiento que tenga en la adquisición, costo-beneficio o la generación de responsabilidad. En relación con un valor, la postura burocrática del acto racional expone que el fin definido real y el establecido empírico implican cuestiones de honor, dado que el clientelismo representa

un acto en el que debe prevalecer la RS racionalmente aceptada por todos, no con el fin de alcanzar logros extrínsecos, sino para mantenerse leal al concepto de honor. De esa manera, la acción se ve determinada por el nivel de conciencia y el estado emocional de la persona.

En cuanto a las tipologías dominantes tradicionales en la interacción cliente, comercio, individuo, bien o búsqueda de condiciones sociales, culturales o vivenciales necesarias para las partes, según Weber (2014), son las que determinan las prácticas propias de cada persona y sus creencias. Estas responden a ciertas experiencias de vida diaria o al conformismo progresivo del actuar en sentido figurado por la forma de entender la monotonía en comunidad.

De acuerdo con la reflexión de Aron (2004), la racionalización es una característica de la sociedad actual. Por este motivo, los actos que realiza cada persona pueden clasificarse apegados a la filosofía de Weber; es decir, según el nexo que existe entre la solidaridad, la eticidad, la equidad, el desarrollo de la ciencia y la política. En este contexto, Weber (citado por: Aron, 2004) abordó el acto carismático desde el sabio, entendiéndolo como un ser cuyo fin es lograr la plena felicidad de las partes clientelares y que sea válida en términos universales.

En ese sentido, la investigación científica surge como una estructura totalmente racional, en aras de demostrar una verdad. Este proceso se encuentra limitado por los juicios que cada individuo tiene con respecto a lo que considera verdadero, sobre todo ante situaciones aceptadas como verdaderas de manera universal.

El modelo de dominación racional (enfocado desde la RS clientelar) surgió a raíz del respeto por las leyes inherentes a la vida, pues, al transgredirlas, los resultados no pueden considerarse legítimos. Por ello, la ciencia es un elemento sustancial, sobre todo en las actuales culturas occidentales (Weber, 2010). Según Aron (2004), la ciencia positiva y la lógica a la que se apegó Weber son elementos intrínsecos del desarrollo de la racionalización que se ha dado durante la historia. El autor afirmó que hay dos elementos que determinan el alcance que tiene una verdad científica: lo inconcluso y la objetividad. Esta última se entiende como la autenticidad de la ciencia, es decir, el proceso de búsqueda de la verdad donde no entran en juego los juicios de valor (Aron, 2004).

Lo inconcluso es una característica inherente de la ciencia actual, debido a que se encuentra en una constante transformación, búsqueda de la verdad en la relación intelectual de causa-efecto, interpretación del ser en cuanto a lo que piensa, siente y desarrolla. Puesto que dicha búsqueda implica actualizar permanentemente las grandes interrogantes -y sus respuestas- de la existencia humana, es necesario indagar hasta desmotar los mitos de lo verdadero, lo falso, lo imaginario, e incluso, lo fantasioso de la existencia del mundo en su infinito.

En este marco, el conocimiento de la realidad, creación o evolución en su totalidad representa una primicia que es imposible de lograr y se encuentra en la cúspide de un espiral hasta el momento sin terminación, donde la ciencia simboliza el devenir en la posibilidad de comprobar realidades. Por lo tanto, el conocimiento está sujeto a las interrogantes que el sabio se plantee con respecto a estas diatribas.

Así, por más que se le busquen respuestas, siempre existirá aquella relacionada con lo divino por la capacidad de cuestionarse que es imaginable pensar al hombre creando montañas de la nada o que los robots inteligentes dejaron un mundo para ser poblado por humanos. En fin, la mitología de lo que se ve, escucha y se sabe varía de acuerdo con la época, la sociedad, los valores y la cultura que se renuevan a través de la historia y plantean nuevas problemáticas que deben resolverse desde los pensamientos que cada día aparecen (Aron, 2004).

Lo anterior permite afirmar que la autenticidad y la lógica que la ciencia tiene a nivel universal obligan a que el sabio sea imparcial y controle sus juicios, con el propósito de obtener resultados certeros. Ahora bien, esto no quiere decir que el sujeto esté inhabilitado para exteriorizar su curiosidad; todo lo contrario, puede hacerlo siempre y cuando sus juicios no rijan una veracidad que sea ficticia en su comprobación científica. Como es lógico, el ser humano difiere en valores y principios, por lo que las obras que realice darán cuenta de ellos.

Desde el ámbito de la RS, haciendo especial énfasis en cuánto se gana y cuánto se invierte con el fin de lograr armonía del entorno social que rodea a cada generador de capitales, Weber (2000) planteó la siguiente pregunta: ¿Cómo es posible que exista una ciencia objetiva de obras colmadas de valores si la burocracia política tiene mayor reconocimiento que la misma ética social? En aquella máxima de los conceptos de Weber, la necesidad de tener actitudes racionales comprende dos grandes incógnitas: ¿Cómo se pueden plantear los juicios ante hechos definidos como creaciones de valores? ¿Cómo lograr una axiología apofántica en una sociedad donde la disposición social acapara los espacios comunales?

Ante estas diatribas e incógnitas preocupantes, Weber (citado por: Aron, 2004), diferenció el juicio de valor y la interrelación con la moral, la cultura y la ética social. Por un lado, el juicio de valor tiene su propia naturaleza en cada persona, es algo individual y de carácter subjetivo que, al emitirse, evidencia la personalidad de cada sujeto. Por el contrario, la interrelación con los valores no es más que el hecho de que la persona pueda aceptarlos o no, es decir, no existe como tal un juicio, sino la relación que tiene el hecho per se con el valor. De este modo, el juicio de valor es una aseveración basada en la moralidad, lo que debe ser y en función de la deontología situacional; mientras que la relación de los valores se deriva de un proceso objetivo donde se selecciona y organiza la información.

Cabe mencionar que el ser humano tiende a explicar los sucesos a través de proposiciones que se corroboran mediante la experiencia, siendo capaz de entenderlas. En su finita vida, pero en miras infinitas de razonamiento, el ser humano comprende a través de un proceso donde intervienen varios conceptos y experiencias. Esta comprensión se vuelve inmediata cuando considera que es verdad para sí mismo o real, dado que la conducta es inteligible y propia de la persona. Esto se debe a que los individuos tienen conciencia de sus actos (Aron, 2004).

4. El clientelismo

El clientelismo se define como la acción ciudadana, el conjunto de los grupos de profesionales, no profesionales u otra figura para el cumplimiento particular de las relaciones que generan compromisos de empleo, pagos, bienes y servicios, así como el intercambio de acciones en el que se regulan los servicios o las prestaciones que de ellos se deriven, lo que crea una responsabilidad y compromiso entre las partes. De esta manera, se logra una relación recíproca de acciones entre grupos, políticos, clientes, ciudadanos, entre otros.

En un sistema clientelar, el propósito es ejecutar acciones entre las dos partes -que beneficien en ambos sentidos-, para la adquisición de bienes o servicios. Bajo dicho panorama, la toma decisiones debe favorecer al cliente, quien tiene la premisa de atención y la acción racional y protagónica (Sabater, 2019). La relación entre cliente, patrón y comerciante (o cualquier otra) se fortalece mediante la interacción que tienen los involucrados. Además, las características de esta relación clientelar aparecen ante la necesidad de llevar a cabo un proceso comercial, sea desde una acción integral o una mediación formal o informal.

La definición de clientelismo es propia de la relación entre dos o más personas que deciden entablar una acción compartida para la adquisición de bienes y servicios, materiales, recursos o acciones patronales que se estructuran según su enfoque, el cual puede ser tradicional, moderno, político o de mercado (Rodríguez, 2020). El clientelismo, bajo una apariencia legal paradigmática, se utiliza de manera discreta, individualista y puede resultar en varios casos como un secreto a voces, sobre todo en escucha de los detentadores del poder político que, bajo su mirada, desarrollan acciones que transgreden las normas y los derechos de convivencia, lo que conlleva a actos de corrupción que, por lo general, son penados jurídicamente.

Sin duda, existen pocos incentivos para acabar con el sistema clientelar que beneficia a aquellos que están en el cargo, quienes logran riquezas a costa de decisiones que transgreden todo ámbito legal. De acuerdo con Weber (2000), desde la sociología y cualquier perspectiva objetiva, el

entendimiento de esta postura es irracional, más aún si se considera que una estrategia populista y frecuente en este sistema democrático es apelar a la Constitución para prometer soluciones ciudadanas que son, en realidad, obras sencillas que se ejecutan con sobreprecios o nunca se desarrollan.

Las redes clientelares representan organizaciones con fines comunes al servicio de la ciudadanía, pero, desde el elemento material de intercambio del clientelismo, los efectos se presentan en la postura social y política de los participantes. Si bien la relación entre cliente-patrón -en el caso de la organización- posibilita una generación de necesidad de labor, las acciones del cliente-gerencia logran beneficios para ambas partes (Malcolm, 2016).

En la dimensión racional, la lógica del juicio ético se construye como una postura apofántica, donde los factores determinan la relación clientelar y el carácter de transacción. Esto sucede también en las sociedades primitivas, donde la separación del espacio, el tiempo y las acciones del hecho para la subsistencia de vida se traducen en una forma de intercambio entre la naturaleza, el bien, el consumo y la propia vida. En dicha filosofía, se aprecia que, desde tiempos memoriales, el clientelismo ha permanecido en beneficio de una parte en desmedro de la otra. De esa manera, el hombre se aprovecha de la naturaleza y destruye sin devolver su belleza (Weber, 2000).

En la dimensión normativa se parte de la legislación, es decir, el instrumento que norma la convivencia de los ciudadanos en función de las diferentes acciones de comercio, los modelos de intercambio o la gestión de bienes y servicio. En este contexto, la relación comercial entre cliente, patronos, establecimientos, gerentes o la simple razón compraventa concreta una acción entre partes que demandan: uno bienes y otros servicios. Esta dualidad de interacción debería estar orientada u ordenada por la máxima de la dignidad humana y no como negocio en función del aprovechamiento del ciudadano para el beneficio propio de uno sobre el otro.

Así, las dimensiones clientelares se configuran desde las dimensiones personales y empresariales, donde uno adquiere un bien y el otro lo distribuye, bien sea de manera grupal o individualizada. Puede suceder que las relaciones clientelares se confundan con las afinidades personales, familiares, culturales, étnicas, religiosas, sociales, políticas o deportivas (Brickley *et al.,* 2005). Las estructuras dimensionales del clientelismo representan factores subjetivos que vinculan patrones de medida entre cliente y comercio. De este modo, se transforman en indispensables para la relación clientelar acostumbrada a que se beneficie a una de las partes y no de manera equitativa.

Dicha figura del clientelismo dominante se define como la gestión de las políticas públicas ciudadanas que engranan el entramado de lo político, lo social, lo económico y lo cultural en descomposición social, sin pertinencia

de caso omiso a las estructuras del orden jurisdiccional. Además, requiere basarse en principios normativos que, en muchos casos, son flexibles, adaptándose a las diversas realidades en el llamando clientelismo de participación protagónica ciudadana.

Estos principios, normas y legislaciones emanan del orden constitucional o *alma mater de las naciones, en determinación de la reglas para deberes y derechos de interacción humana, donde la gestión y las diferentes actividades en las que interviene el ciudadano, con el fin de obtener, facilitar, comercializar o desarrollarse desde la relación clientelar, representan responsabilidad de acciones públicas que necesitan considerarse en la obligatoriedad de las ordenanzas para la paz del buen vivir* (Argandoña, 1998).

En concordancia con Villegas (2018), los principios más relevantes de gestión clientelar son los siguientes:

1. Atención enfocada en el cliente: la meta primordial es la atención del cliente (o el desarrollo ciudadano).
2. Esquema jerárquico: direccionalidad de las acciones verticales.
3. Definir responsabilidades: establecer claramente los responsables de la toma de decisiones.
4. Transparencia de los medios de participación social clientelar: la actividad de los actores sociales debe estar estrechamente relacionada con las metas planteadas.
5. Personal capacitado: cada individuo se desenvuelve en la posición que le compete de acuerdo con sus habilidades, conocimientos y aptitudes.
6. Adecuada coordinación: es necesario tener fluidez dentro de todo el proceso para lograr resultados eficientes.
7. Comunicación constante: es necesario contar con recursos comunicacionales que aporten a tener relaciones adecuadas.

Por lo tanto, un modelo clientelar que facilite una gestión política y ciudadana adecuada basa su estructura en cómo esté concebido, las metas que se hayan planteado, y los procesos y las actividades a seguir para alcanzarlas.

4.1. Tipos de clientelismo

En cuanto a la especificación de los tipos de clientes, la literatura representa una diatriba de entendimiento basada en el bien y el servicio. De esta forma, el tipo de clientelismo se ve condicionado por la exigencia, el conformista y el que decide referenciar la situación causa- efecto, es decir,

buscarle la relación lógica para la acción clientelar. La eficacia, la política y la cultura en los tipos de clientelismo cuentan con modelos formales, democráticos, subjetivos, ambiguos y políticos, entre otros. En muchos casos, estos modelos predisponen a una sociedad para el consumo sin valorar el buen vivir, puesto que es usual el beneficio propio sobre el del otro.

Los modelos antiguos de clientelismo, los tradicionales, actuales o modernos han buscado o buscan lograr un fin en la interacción de bienes y servicios a través de la adecuada gestión piramidal y no transversal; es decir, está el dador, líder, gerente y vendedor, y el empleado, cliente y comprador. En otras palabras, el ser humano que interactúa en la cadena clientelar para el buen vivir es el que se denomina "cliente tradicional".

El clientelismo tradicional representa el resultado de estructuras no iguales que se conjugan entre sí y ponen mayor atención a las diversas características organizacionales, empresariales, locales o de establecimientos donde predomina el enfoque del patrón y sus diferentes acciones. En este caso, las instituciones se definen como entes lineales y a sus decisiones como verticales, donde no se permite la intervención del talento perteneciente al proceso institucional o clientelar. Por otro lado, para Weber (2000), en el clientelismo de las organizaciones, los directivos, los gerentes, los dueños y los líderes emplean medios adecuados para alcanzar las metas. Aquí, el llamado jefe, patrón o director tiene facultad y autoridad para tomar decisiones ante el talento o los arquetipos propios institucionales. En este contexto, la relación de las actividades clientelares no da cabida a que se desarrollen relaciones informales o subjetivas.

El clientelismo subjetivo se presenta con un proceso donde el predomino del liderazgo pone el acento en la interacción entre sus diferentes componentes de los modelos sistemáticos, jerárquicos, burocráticos y racionales; es decir, la razón de la oferta y la demanda, empleado-empleador, comprador-vendedor, y toda relación que se genere de un proceso clientelar, lo que es propio del ciclo de vida o costumbre desarrollada desde tiempos experienciales.

En cuanto al clientelismo subjetivo, la organización tiene un enfoque cíclico que está determinado por sus involucrados e incluye aquellos enfoques que dan más importancia a los procesos por experiencia en predominio de unos sobre otros. En este caso, los valores y las creencias de las personas se anteponen ante situaciones concretas, como sucede en el modelo formal; es decir, abogan por las creencias e interpretaciones por encima de cualquier situación en concreto, pues conciben este sistema como algo definido que no cambia y, finalmente, enfocan su atención en las relaciones que se desenvuelven a su alrededor (Weber, 2010).

Por otra parte, el clientelismo ambiguo hace referencia a lo inestable y lo complejo que resulta de la existencia de la institución. Así, las decisiones se ejecutan, de manera formal o informal, según lo requiera la situación, el interés y el beneficio de los involucrados. En este caso, las instituciones mantienen una filosofía ambigua, hecho que limita a ejecutar acciones más adecuadas, ya sea por inseguridades o falta de conocimiento (Guerrero, 2015).

En el clientelismo democrático, las organizaciones entablan sus normas mediante el consentimiento de los participantes; por lo tanto, se toma en cuenta las ideas de cada individuo y se considera que todos son capaces de decidir. Es por ello por lo que se construyen decisiones compartidas y aceptadas (Malcolm, 2016). Por otro lado, en el clientelismo moderno o político, las organizaciones son un espacio donde se entablan acciones clientelares y en los que las decisiones se toman dentro de un espacio de negociación. El análisis de este enfoque se destina a distribuir el poder a lo largo de la organización, los negocios y los tratos que se efectúan (Weber, 2010).

Como se aprecia en las ideas de Descartes, el clientelismo ha transcurrido por una serie de modelos que responden a los cambios de las posturas políticas ciudadanas, de ahí que, en esta postura clientelar de las ideas cartesianas, la modernidad asume al clientelismo político como aquel que impera en las organizaciones de los Estados y engrana el entramado social, económico, cultural y administrativo. De acuerdo con Guerrero (2015), entre los otros tipos de clientelismo se hallan los siguientes:

1. Clientelismo tradicional: surgió con base en el estudio sobre el caciquismo y patronazgo y se caracteriza porque existe una cierta relación comercial donde se desarrolla un proceso de intercambio entre el patrón y el cliente. Así, el caudillismo y el clientelismo son una manera de interactuar que representa cierta lealtad.

2. Clientelismo moderno: hace alusión a todas las acciones públicas que el Estado concentra para la toma de decisiones. De esa manera, se planifican las posturas de la ciudadanía con carácter gubernamental y se dotan recursos para sueldos, reparaciones, materiales de vías, necesidades propias de la población. Asimismo, existe una concentración del capital humano y de recursos controlados por el Gobierno. No es extraño que los estudios clientelares se enfoquen en este clientelismo que, si bien se relaciona con un sistema burocrático y democrático, posibilita presenciales enfoques premodernos que se asemejan a las relaciones patronales.

3. Clientelismo de mercado: se basa en la participación de la mediana empresa, donde las figuras políticas son esenciales para lograr reformas que aporten con procesos de descentralización,

globalización, elecciones populares y formas de participación ciudadana que, en todos los casos, se afianzan en la Constitución de cada país.

4. Clientelismo político: implica acciones ciudadanas desde la organización del Estado en competencias de ordenanzas del buen vivir.

De lo anterior se infiere que el clientelismo ha generado perturbaciones en el colectivo ciudadano, lo que se evidencia en un cierto grado de intercambio donde se regulan las prestaciones de servicio (obtenidas de manera particular o política). Dichas alteraciones se utilizan como excusa para que las autoridades incrementen el patrimonio y, de esa manera, adquieran el poder necesario para obtener la reelección.

5. Paradigma del clientelismo como nueva imagen ciudadana sin dominación

Cuando se experimenta un cambio en el paradigma del clientelismo, es necesario analizar lo que piensan, sienten y desean los ciudadanos. Entonces, es fundamental que cada uno se pregunte lo siguiente: ¿Qué se puedo hacer? ¿Qué está permitido? ¿Cómo se puede lograr? Así, el objetivo es adoptar unos nuevos paradigmas y entrar en la búsqueda de una postura: la de mancomunidad, en la que se busque la realización individual y colectiva mediante la experiencia empírica o profesional.

En este sentido, el paradigma hace referencia las ideas que se conjugan entre sí, una suerte de "matriz disciplinaria" que agiliza la interacción de la comunidad, la cual se define como el conjunto de ciudadanos. Por ello, el objetivo es evidenciar la forma en que los cambios paradigmáticos inciden en el escenario clientelar enfocado en la RS, en vista de que varios paradigmas de la modernidad, relacionados con la ciencia, el ámbito social y cultural, siguen vigentes.

Los cambios de paradigmas comprenden la estructura y la relación que mantiene el cliente y el gerente, y representan el entorno donde se establece el sistema de un "nosotros", el que debería sustituir el "yo" o el "tú" por una relación de interdependencia. La teoría del clientelismo moderno y político niega el nexo del objeto con el accionar del mercado, debido a que el pensamiento y la postura del cliente son situaciones que se desencadenan en la mente; por lo tanto, se enfoca en comprender cómo desarrollar el proceso de buen vivir para las partes.

Para el desarrollo de los nuevos paradigmas, Weber (2000) se basó en cuatro antecedes sobre la tipología del idealismo social y la comprensión de la política ciudadana, con el fin de erradicar el llamado clientelismo dominante:

1. El acto racional respecto con un fin: el individuo está claro respecto con el fin.
2. El acto racional afectivo o emocional: está dado por un estado de consciencia y emocionalidad del individuo, es decir, cómo la persona reacciona ante diversas situaciones.
3. El acto tradicional: hábitos, costumbres y creencias que determinan la forma de actuar de la persona.
4. Acto racional respecto con un fin: el significado que cada persona da a su conducta.

En el orden del proceso clientelar, comprender la investigación científica surgió en la filosofía de la estructura totalmente racional, en aras de demostrar una verdad. Cabe señalar que este proceso se encuentra limitado por los juicios que cada individuo tenga con respecto a lo que considera verdadero, sobre todo ante situaciones que son aceptadas como verdad de manera universal. Según Weber (2000), los antecedentes que llevan al clientelismo, desde la postura paradigmática de dominio en la ciencia, son parte del modelo racionalista que es propio de la cultura occidental. Precisamente, la ciencia positivista y racional está inmersa en este modelo.

6. Teoría burocrática de Weber

Para Weber (2014), en contraste con Habermas y la teoría crítica, la burocracia dominante en el ser representa una manera eficaz de organización, con una estructura jerárquica definida, donde se establecen normas claras que todos los involucrados deben respetar. La RS, como una de ellas, en su dominada postura del clientelismo de clases, permea todo un camino, una forma de construir conocimientos, un proceso de interacción entre las partes clientelares, donde es posible hablar de burocracia típico-ideal, política, de dominación y de autoridad, dominación carismática (familiar y religiosa) y dominación tradicional.

La teoría burocrática parte de la organización plena, con autoridad y liderazgo enfocada en la RS que está engranada con la relación entre pensamiento y realidad. Precisamente, la importancia de esta teoría radica en esta relación que resulta ser el problema entre el sujeto y el objeto. De acuerdo con Weber (2000), el marxismo, el empirismo y el positivismo no despejan la relación entre teoría y realidad, pues parten de una postura burocrática que entrelaza el método típico-ideal como una opción frente a las potestades del clientelismo político que se adueña de las decisiones ciudadanas.

Por último, en su teoría burocrática, Weber (2014) distinguió los tipos ideales de una organización postmoderna, con normas y reglamentos claros de protección y orientación a un socialismo de clases, con principios que se encuentran en la base de los tipos ideales de la absoluta e irreconciliable separación entre pensamiento y realidad.

Conclusiones

La realidad del sujeto cognoscente en el clientelismo, independientemente de su tipo, forma o estructura, es inagotable. Lo anterior, puesto que se fundamenta en que un paradigma de dominación lo seguirá siendo hasta que el binomio cliente-razón, axiológicamente, sea dominado por la RS. En este contexto, el compromiso de dejar el "yo" independiente y el "tú" dependiente, trasciende a un "nosotros" que se constituye como un modelo interdependiente. Así, la RS clientelar deja de ser el modelo que impera en las sociedades capitalistas y socialistas que están ideologizadas por el enriquecimiento personal a costa del prójimo.

En el desarrollo pragmático del artículo, se interactuó con un andamiaje de conocimientos que permiten entender desde el discurso del método hasta las acciones burocráticas dominantes de la sociedad. La política, la educación, la cultura y la economía son las aristas que conforman los Estados y se presentan como desiguales, por lo que es importante considerar lo siguiente:

- Asumir una actitud escéptica y radical, y negar cualquier posibilidad de conocimiento: esta es posición absurda, así sustente que es posible el conocimiento desde la verdad de cada individuo, pues el intelecto puede recrear fragmentos de esa realidad como responsable de la acción social.
- Integrar plenamente la teoría y la realidad: su postura idealista, egocentrista y yoísta debe dejarse a un lado, lo que carece de pertinencia con el pensamiento burocrático de la organización con fines éticos, reglas claras y armonía de todos para todos, desde las clases hasta el capitalismo ideológico en cooperación colaborativa.
- El idealismo burocrático que plantea Weber: queda fuera de la construcción ideal que realiza el intelecto, por lo que debe prevalecer la realidad que condena al pensamiento a mantener una postura protagónica, empática, asimétrica y lateral.
- Lo que debe interesarle al estudioso de los fenómenos sociales del clientelismo en materia de la dominación, desde la RS burocrática weberiana, es nutrir su imaginación con la experiencia que le proporcione la comparación de los hechos de la vida. Así, podrá erigir conexiones causales adecuadas.

- Los tipos ideales representan modelos que la fantasía juzga adecuadamente, es decir, son objetivamente posibles de acuerdo con el saber universal.

Por otro lado, dentro de los postulados del estudio, se obtuvo un nuevo enfoque que permite comprender el paradigma del clientelismo marcado por la RS en postura de la convivencia participativa, protagónica y emancipadora, conjugada esta con una crítica del ser que impregna los espacios con organización que norma el espíritu de la colectividad. Todo ello, entendido como un todo para el fin de la dominación en presencia burocrática.

Por consiguiente, a través de las ideas weberianas, se concluye la necesidad de tomar en cuenta la definición del conocimiento dentro de las disciplinas socioculturales contentivas de movimientos indisociables, entre ellos, la comprensión y la explicación del clientelismo social, y la razón de su argumentación para lograr un cambio dentro de los pensamientos hegemónicos por uno holístico y emancipador.

Finalmente, se logró establecer, desde las teorías de la acción social, los siguientes elementos: la construcción del individuo histórico, la elaboración del objeto científico y la implicación causal. Estos representan una posibilidad objetiva, causación adecuada y reglas basadas en experiencias; es decir, el rol clientelar parte desde la interacción de las acciones totales entre todos, para compartir el resultado armónicamente impregnado por el altruismo y el bienestar colectivo.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 849-861
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Determining punishment in light of victim characteristics and actions, with an emphasis on gender: comparative view of the laws of England

DOI: https://doi.org/10.46398/cuestpol.4176.50

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Abstract

The legislative principles to which a judge must pay attention in determining the Ta'ziri (discretionary) penalty are included in the four clauses that have been proposed in Article 18 of the Islamic Penal Code. These four clauses are: a) the perpetrator's motive and psychological state; b) the ways of committing the crime; c) the perpetrator's actions after committing the crime, and; d) the personal background. In such a view, the victim has no place and, therefore, no effect of his intervention is seen. The victim status, by emphasis on gender, is the objective that the present work intends to examine with a descriptive-analytical method. For this research purpose in a comparative look, the laws of Iran and England have been studied. It is concluded that, what can be extracted from the criminal laws of Iran and England is that, in the field of substantive laws, the legislators of these countries, while accepting the vulnerability of women in crimes in general, have tried to criminalize some behaviors and actions that cannot be considered as assaults, in the general conditions of protecting them.

Keywords: Ta'ziri sentencing; victim; gender; women; purchased law.

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Recibido el 22/10/22 Aceptado el 15/12/22

Determinación del castigo a la luz de las características y acciones de la víctima, con énfasis en el género: visión comparada de las leyes de Inglaterra

Resumen

Los principios legislativos a los que un juez debe prestar atención para determinar la pena Ta'ziri (discrecional) se incluyen en las cuatro cláusulas que se han propuesto en el artículo 18 del Código Penal Islámico. Estas cuatro cláusulas son: a) el móvil del autor y su estado psíquico; b) las formas de comisión del delito; c) Las actuaciones del autor después de cometer el delito, y; d) Los antecedentes personales. En tal visión, la víctima no tiene lugar y, por lo tanto, no se ve ningún efecto de su intervención. El estado de víctima, por énfasis en el género, es el objetivo que el presente trabajo pretende examinar con un método descriptivo-analítico. Para este propósito de investigación en una mirada comparada, se han estudiado las leyes de Irán e Inglaterra. Se concluye que, lo que se puede extraer de las leyes penales de Irán e Inglaterra es que, en el campo de las leyes sustantivas, los legisladores de estos países, si bien aceptan la vulnerabilidad de las mujeres en los delitos en general, han intentado tipificar como delito algunas conductas y actuaciones que no pueden ser consideradas como agresiones, en las condiciones generales de protección de las mismas.

Palabras clave: determinación de la pena Ta'ziri; víctima; género; mujer; derecho comprado.

Introduction

Punishment in itself has harassment, suffering and torment, and in terms of severity, it is described as severe, but its harassment has different degrees. When the punishment is less annoyance, it is considered mild. In other words, less punishment will equal less annoyance. Proportion between crime and punishment means that the punishment is reasonable based on the criteria that justify the increase or decrease of the severity of the punishment annoyance.

Undoubtedly, determining the punishment for the perpetrator in the light of the contribution of the crime's victim in the formation of the criminal phenomenon as well as his special characteristics, is one of the issues that has always been and is always the concern of the legislators and can be considered an important factor for determining the appropriate punishments and reducing them, and to ignore it means to relinquish the existing facts.

The type of relationship between the crime victim and the criminal, guilt, physical and psychological, religious and religious beliefs, gender, race characteristics, the amount of crime victim's property and other factors are among the factors that are considered in the criminal laws of Iran and other countries in mitigation, conversion of sentence and exemption from perpetrator punishment is considered a fundamental factor, And in some cases, they play a unique role in making to proportionate and fair the crime and punishment.

In the initial part of the paper, the factor of the victim's gender in the determination of discretionary punishment will be discussed with an emphasis on mitigation, conversion and exemption from punishment. Of course, all members of the society are not equally exposed to the risk of crime. The occurrence of a crime comes from the intersection of three interconnected elements, a motivated criminal, a suitable victim, and the absence of an obstacle to its occurrence (Farrell and Philip, 1995).

The characteristics of the victim, which from the point of view of a criminal has the least cost of crime, will be a fundamental and important factor to encourage and prefer him to commit criminal acts and even repeat them. Features and attractions such as easy access, lack of risk or low risk, controllability, impossibility of prosecution or inability of victim to announce the prosecution of the criminal and similar factors play a fundamental role in the choice of the crime victim to commit a crime.

The crime victim, due to the fact that he endures the crime occurrence and loses situations and resources in most cases, undoubtedly needs support. But some of its species deserve special protections, due to their more vulnerable characteristics, especially in criminal and non-criminal aspects (Mohammadi et al., 1394).

Vulnerability of this type of victims means that the crime occurrence and its effects and consequences are far more than others. In other words, the crime and its consequences will cause more damage to them.

Since in all this paper, it is emphasized that the victim plays an essential role in determining the punishment, if we want to consider the severity of crime as the basic basis of punishment and consider the severity of crime including the degree of blameworthiness and harm caused to a victim, then we will assume that the amount of punishment will depend on these two elements. In other words, if the severity of crime is greater, punishment will be greater and vice versa.

If vulnerable people become victims of crime, the level of blameworthiness of a criminal and damage caused to them will be higher than non-vulnerable ones. It is natural that if the countries have prepared and adjusted their criminal policy in terms of substance and form in determining punishment based on the severity of crime, the punishment of criminals of this type of

victims will be designed more than others. In the second part of the research, the factor of victim's gender in determination of discretionary punishment will be discussed with an emphasis on intensifying punishment.

1. The gender of victim and the causes of mitigation, conversion and exemption from punishment

Regardless of the difference in the creation of men and women and their physical organs, which there is no difference of opinion, but what is always disputed throughout history is the difference in personality, the difference with the equality of their individual and social rights. From ancient times until now, extreme attitudes towards women can be found among different groups of people in the society (Hosseini, 1388).

Examining the history of the evolution of women's status in society shows that women's rights, like other legal rules and regulations, have always been in line with the general expectations of society (Hekmatnia, 1400). And if he is considered a source of evil and ruin and inferior in nature, his rights and privileges will be far less than men.

In ancient times, women were owned and traded as commodities in the hands of men (Ahmedvand and Zivari Mirzai, 1400). By looking at the oldest legal writing, known as Hammurabi's law, which is fairer than other regulations of its time, shows that that a husband could use women and children as a pledge of debt, and in determining the punishment, they have never had equal rights with men. In ancient Rome, the legal status of women was not better than in other places, and women were under the authority of the head of family (Sanei, 1382).

Her legal relationship was only determined with the male children, and women had no legal status. Social developments, the economic and public expectations that have arisen over the centuries have caused the difference in rights between men and women to decrease gradually. Today, in Western countries, including England, there are rarely regulations that the woman gender determines their individual and social effective rights than the opposite sex.

In the criminal regulations of England, the gender factor does not play a role in determining the type and reducing the punishment of criminal, as it exists in the criminal laws of Iran. Nevertheless, some researches in this country show that women have less punishment than men because they have less criminal history and more informal mechanisms govern them and they receive less prison sentences.

Women are less likely to be prosecuted (46.5% vs. 90% for men) and women have a higher chance of being released on pledge than men (50%

vs. zero), their psychological defenses and then use of their reduced responsibility, is more than men (Wilzynski, 2007).

In ancient Iran, public views and expectations from women were such that they were given an honorable position. Although in urban communities, their rights and privileges were less than men and they were practically under the influence and domination of men (Sanei, 1382).

The position of women in Arabs before Islam was more serious than in other parts of the world. They were deprived of individual and social rights and were in the ranks of animals. In the shadow of this thought is that Mothers have the rule of vessels that are created only for sperm (Sobhani Tabrizi, 2019).

The history of women and girls among the Arabs is a strange story that the Quran mentions it as one of the ugliest human behaviors, and thinks it is far from humanity. Whenever they were told about the birth of a girl, they blamed God and became black with sadness and anger and hide themselves from the bad news and pressure of public opinion. They used to think that they should bear the humiliation of keeping it or bury it alive in the soil (Shiri Vernamkhashti, 2017).

The religion of Islam appeared in such a land and with its popularity as an idea and brought about a profound change in the affairs of the individual and social life of the society. Islam declared that all members of the Islamic society, both male and female, from any race and country, have equal rights and only their degree of superiority is divine piety.

It is for this reason that the Quran (book of Muslims), in various commands, states general rulings for Muslims regardless of their gender, and does not distinguish between men and women in determining punishments, and considers everyone to have a single ruling.

The expansion of the religion of Islam to other lands, including Iran, has had a profound effect on the regulations governing their personal and social conditions. Among these laws are provisions on how to determine punishment, especially in the case of a woman who is a criminal or a victim of a crime. Despite lack of specifying the existence of this difference in the most important source of Islamic rulings, i.e., the Qur'an, on the one hand, and emphasizing equality in determining the punishment of individuals, in the other hand, Islamic scholars have expressed a difference of opinion regarding the difference in the punishment of men and women.

Iran's legislator has made a distinction in some punishments in cases where the victim and the criminal are not of the same gender. In other words, the gender of the victim and the criminal becomes relevant in determining the punishment and plays a fundamental role in determining the punishment.

According to legal regulations, if a man intentionally kills a woman, the murderer will not be avenged, unless the parents of the victim pay half of the murderer's ransom, or in the case of unintentional murder and fault, the woman's blood money will be half of the man's blood money.

Or if a man (against a woman) is sentenced to retaliation, until the blood money of the incomplete member does not reach a third or more than a third of the full blood money, they will be equal to each other, and the woman can only to retaliate when half of the blood money of that member is equal, must to pay it to man.

In addition to the mentioned cases, it is possible to mention cases where punishments are reduced and delayed due to the woman's gender, in Article 182 of the Islamic Penal Law Bill, while the punishment of lashing and exile is specified for a pimp man, and so for women, only the lash punishment is mentioned. The punishment for homosexuality between women (Masahaqa) in the mentioned law is the only punishment of lashing, while the punishment for the same act (lawat) between men is death by execution.

In the formal laws, there is the attention to the special biological-physiological considerations of women, which indicates a friendly policy towards them. That corporal punishment should not be applied during pregnancy and childbirth (Article 91 of the Civil Code) and the implementation of the cover limit for a pregnant or lactating woman is delayed in case of fear of harm to the pregnancy or the infant (Article 92 of the same law), as well as the provisions related to the implementation of the punishment of retaliation for the woman (Article 262 of the same law) and Article 3 of the letter on how to implement the punishments of death, stoning, crucifixion, amputation or organs disability of the judiciary approved in 1370, all indicate the amicable view of the legislator in determining and implementing punishment in Iran towards women.

Regardless of the justifications that have been stated for such regulations, it seems that firstly, there is no explicit text in the provisions of the Qur'an regarding the discrimination of punishment between men and women, and it cannot be inferred from the verses of the Qur'an that women are inferior in terms of the amount and type of punishment (Mehrpour, 1384). Secondly, the provisions related to retaliation and blood money is one of the signing rules of Islam and it was issued according to the economic, social and cultural conditions of the society of that day. Therefore, it cannot be said that the non-change of this type of rulings is the same as the rulings and punishments mentioned in the Qur'an.

Thirdly, the rulings related to the difference between men and women's blood money have been stated based on traditions and hadiths that have conflicting traditions and hadiths against them, which have more strength and confirmation in terms of foundations and documentation (Shiri, 2017).

Fourthly, the lack of consensus of the Islamic sects in this regard and even the Imamiyah religion, on the approval of the difference in punishment between men and women, and finally, considering the social and cultural life conditions of the society and despite the existence of some of these types of provisions, the legislator has not considered them as immutable provisions. It is necessary for the legislator to revise this part of the regulations and to solve this difference according to the realities of the current society and the evolution in the social, economic and cultural life of women.

2. The gender of the victim and the aggravating factors of punishment

A woman (due to her gender), as well as her age, is one of the other problems that, under the influence of biological-physiological considerations, can be a suitable target for criminals to commit a crime. The vulnerability of this type of victim is intensified when oldness of age accompanies them and it is thought that they have wealth or valuable property (Kazhempour and Farjiha, 2018).

Violence against women is a fact that is more prominent than other types of violence in criminology and victimology discussions (Rayejian asli, 2018). Cultural considerations and the social situation of every society and the physical condition of women, has caused countries to adopt stricter measures regarding crimes that are victims based on gender (being a woman). These three axes are: the lack of influence of gender in supporting them, taking a different approach in supporting them and depriving them of the same support than men (Mehra, 2004).

Looking at the criminal laws of Iran shows that although in most of the crimes committed against women, there is no difference between them and men and they adopt the first approach and, in some cases, they take the second approach, but in other cases, they are also in the criminalization stage. And in determining the punishment, criminal protection of this type of vulnerable victims has arisen in a more severe way (compared to men) (Azimzadeh, 2014).

Intensification of punishment for insulting and harassing women in public places compared to men, protection of pregnant women against physical violence, punishment for desertion, obligation to register marriages and divorces in order to prevent men from abusing women (for example, not paying alimony to them) and punishing people who cheat in marriage with them, destroying a girl's virginity, criminal protection against stealing and prohibiting the marriage of women before puberty and punishing those who are responsible for it and committing adultery with reluctance and violence and determining the death penalty for the reluctance (the subject

of Article 82 AH). M. A. 1370) is the main effort that the Iranian legislature has taken for criminal protection and adopting a more severe differential approach in determining the punishment compared to similar cases for female victims.

Another title of crimes against persons that women are its subject, is the crime of human trafficking. One of the most important and widespread types of human trafficking is the women and children trafficking. Prostitution and buying and selling of women are not a new social phenomenon of slavery, but it has existed in human societies for a long time.

Business women in Europe are engaged in this work under the title the White Slavery, a so wide networks and gangs such as "Triad, Yakuza and Mafia" are active in this case, use women in what is called the so-called business or sex industry in Europe or in the Far East countries including Philippines, South Korea and Thailand employ them as slaves.

In this industry, women are priced like commodities and are abused as means of pleasure (Attazadeh, 2013). Many of them leave their country with the promise of work or marriage and then become captives of corruption centers.

According to the report of the International Center Immigration in Eastern and Central European countries, about 250,000 to 300,000 women and girls were victims of prostitution gangs every year. This is despite the fact that in many of these countries, there was no punishment for traffickers and the probability of their arrest and punishment was very low.

According to the report of experts group of the Council of Europe estimated the annual income from this trade to 13 billion dollars. Women in these gangs are sometimes bought and sold up to 18 times. According to this report, women in Moldova were bought for 150 dollars and then after entering Italy, they are sold to dealers at a rate of 5 thousand dollars.

The legislator of Iran has dealt favorably with various angles of misbehavior and abuse of women. The existence of the trust of these victims and the lack of information about their fate, living in a place where they are known as immigrants, cultural conflict and living in a context that they are alien to it, and the fact that most of these victims lack the identity and residency documents and lack of access to official and unofficial authorities. For legal protection, there are many cases that increase the vulnerability of this type of victims (Azimian, 2018).

The law combating against human trafficking approved in 2013 imposes heavy punishments, including death, on the perpetrators of criminal acts that cause the exploitation and abuse of women, and by expanding the titles of criminals such as intention of abusing them or starting to carry out this type of criminal acts, both in the level of criminalization and in the amount of their punishment, has dealt with more extent and severity.

Another issue that is important and fundamental to mention in crimes against women is actions and behaviors that occur against women in the family environment. In the family, due to various cultural, religious, linguistic, financial differences or any other reasons, some victims of family violence are more vulnerable than others and are abused in some cases. Iran's legislator has paid attention to this issue in some cases and by criminalizing those who use a child for seduction (mostly their parents or relatives) in 1375; they have been punished with up to two years of imprisonment.

Adultery with incest is also It is one of these actions for which the death penalty is imposed (the subject of clauses A and B of article 82 of 1370 I.P. Code of the Islamic Republic of Iran). However, regarding crimes that occur in the family, the gender of the woman has no difference in determining the punishment of the perpetrator and it is the same as other victims and no special criminal protection has been provided for them.

Among other actions and behaviors that cause deviation and corruption and damage the dignity and position of a person is pornography. Such actions, whose victims are mostly women and children, include things such as photos or erotic writings, which can actually be a kind of artistic representation of men's violence against women in this context. Pornography is not limited to obscene images, but obscene writings are included too.

In the Islamic Penal Code of 1375, in dealing with these types of crimes, which mainly women are the victims, various criminal regulations have been prescribed and for the perpetrators, various punishments including imprisonment, lashing and fines have been stated, which indicates the sensitivity of the legislator in this regard.

Considering the criminal laws of England, it indicates that it rejects the third approach (no less protection for them than men) among the three methods presented for women who are victims of crime, but with the criteria presented to determine the severity of the crime and that vulnerability of the victim is considered as one of the cases of aggravating punishment, gender as an example of vulnerability is considered as one of the aggravating factors of the crime, violence in the family and the dangers that exist for women are among the things that cause concerns for the politicians of this country. In 2001, it was announced that the cases of domestic violence against women reached to 150,218 cases.

The police announced that one person asked for help in family crimes every week. Meanwhile, this figure for men was about five percent. In the field of crimes that led to murder, one third of the victims were women who were killed by their partners.

The increase in family violence and the duty of the government to respond to the calls of this type of victims and to be aware of their needs

and the costs of notification, have caused the government of this country at first communicate this message to the decision-making centers, including the police, the prosecutor's office, and the court, through a circular, that family crimes are like crimes committed by strangers and should not be considered less severe in determining the punishment for the perpetrators.

In these circulars, the presumption of the perpetrator's arrest has been created and in view of this, in 2003, special "family violence" courts have been created to deal specifically with these crimes. Creating efficiency for the criminal justice system and facilities, providing information, advocacy, obtaining consent and building trust for this type of victims are the foundations of the establishment of these courts. This caused these courts to reach 25 courts across the country in 2005. According to the forecasts, the number of these courts across the country will reach 300 by 2025 year.

Among the measures taken for criminal protection of these victims there was seen the Law of Family Violence, Crime and Victims of 2004, which provides special protection for this type of victims. It is stated in the provisions of Article 5 of this law, in cases where a child is under the age of 16 or a vulnerable adult (according to the guidelines of the sentencing council, women are considered vulnerable cases), as a result of an intentional illegal act, due to violence or Abuse, or in the event that, as a result of tolerance, she suffered severe physical injury or caused her death, will be sentenced to the punishment corresponding to any of the crimes committed.

In general, any action to prevent the victim from reporting the criminal act, expelling the victim from home and the place of residence, committing the crime in front of children and preventing the victim from helping the victim in family crimes, based on the guidelines of the Council for Determining the Punishment is from the aggravated cases of punishment and the courts in determining punishment of perpetrator should take them into assessing severity of crime and then determining the punishment.

Another law that can be mentioned in order to protect women in England is the 2003 Sexual Offenses Act, which has developed the general nature of crimes regarding rape. According to articles 1 to 4 of the mentioned law, while determining the punishment of life imprisonment for sexual assault (in the special sense of sexual penetration) against the consent of a woman, sexual contact with the body of victim (woman) and engaging her in a sexual act without her consent is considered a crime, and predicted a punishment of up to 10 years of imprisonment for the perpetrator (Naffine, 2017).

Meanwhile, according to Article 637 of the Islamic Penal Code in Iran, this criminal act is only punishable by up to 99 lashes. Human trafficking and Sexual abuse and exploitation in England are the crimes that have been given special attention in the Sexual Crimes Act of 2003.

According to articles 57 to 60 of the aforementioned law, those who intentionally and knowingly engage in human trafficking and entering and exiting of persons and facilitate and arrange this action, the punishment for perpetrator (based on the indictment in the criminal court) will be up to 14 years of imprisonment (Keren-Paz, 2013), the punishment will be applied for another person who exploits and sexually abuses the trafficked person too.

Among the other regulations that can be mentioned in this regard, Article (1) of the Law of Intentional Murder (Law on the Abolition of the Death Penalty) approved in 1965 states that in case of committing an intentional murder, the perpetrator shall be imprisoned for life imprisonment. But this does not mean that he will spend his entire life in prison, but he can be released from prison after serving at least time and based on the judgment of the court for the rest of his imprisonment.

According to Articles 269 to 277 and Table No. 21 of the Criminal Justice Law of 2003, spending the minimum term of imprisonment and using the mentioned freedom is different for persons 18 years old and above and persons under 18 years old. The law has specified this period as 15 years for the first age group and 12 years for the second age group, but it is stated in the mentioned provisions, if the intentional homicide occurred during sexual or sadistic behavior (harassment) and the victim was killed intentionally.

In the case, the mentioned minimum is increased to 30 years of imprisonment (Randall, 2010) The law of powers of the criminal courts of 2000 also adopted such an approach. In article 109 of this law, it is stated that if a criminal commits for the second time, commits the crime of rape or initiates it, the court is obliged to issue mandatory life imprisonment to the offender and cannot issue a lesser punishment to him.

Conclusion

The legislative principles that the judge should pay attention to it in determining the punishment; There are 4 clauses that are mentioned in Article 18 of the Islamic Penal Code: In this article, the legislator has stated that court in issuing Ta'ziri (discretionary) judgements, by complying with the legal provisions, takes the following into consideration:

a. the motive of the perpetrator and his mental and psychological state during the crime commission;

b. the ways of committing the crime, scope of the breach of duty and its harmful results;

c. The actions of the perpetrator after crime committing and;

d. personal, family and social background and status of perpetrator and to impact punishment on him, which is not considered in this article and has been discussed in this research, it is the condition of victim and its effect on the determination of punishment.

In this paper, the effect of the victim's gender in determining the punishment in two debates, mitigating and aggravating the punishment, has been studied. In many cases, the gender of a woman can cause a friendly look due to the attention given to the biological-physiological considerations of women, which the legislator of Iran has shown in many cases.

What can be extracted from the codes of criminal laws in Iran and England is that legislators of these countries have tried to criminalize some behaviors and actions that may not be considered crimes in general conditions in the field of substantive laws, including criminalization to protect them, and in the field of formal laws by allocating special courts like what is done today in England, express their criminal support for them. However, it can be said that the support of the English legislator is more extensive in compared to what exists in Iran's criminal laws.

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Cuestiones Políticas Vol. 41, N° 76 (2023), 862-878
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Sistemas Electorales en América Latina

DOI: https://doi.org/10.46398/cuestpol.4176.51

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Resumen

El presente artículo científico tuvo como finalidad comparar el Indicador Compuesto de Competitividad (IC) en los sistemas electorales de Venezuela, México y Chile. La investigación tuvo un diseño documental y el método empleado fue el comparativo. Como resultado, se demostró la incidencia que tiene el comportamiento político, junto con las condiciones políticas, el papel de los partidos políticos, las instituciones, etc., en el cambio de sistema electoral de cada país. En conclusión, queda en evidencia cómo las dinámicas de los contextos políticos y sociales a través de los años determinan el sistema electoral, variándose de competitivo a no competitivo, como fue el caso de los países comparados en cuestión.

Palabras clave: sistema electoral; elecciones; democracia; competitividad; partidos políticos.

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Recibido el 15/08/22 Aceptado el 23/11/22

Electoral Systems in Latin America

Abstract

The purpose of this scientific article was to compare the Composite Competitiveness Indicator (CI) in the Electoral Systems of Venezuela, Mexico and Chile. The research was documentary, which implied that the study data were obtained from bibliographic documents. The method used was the comparative one. As a result, the impact of political behavior, together with political conditions, the role of political parties, institutions, etc., in the change of the electoral system of each country is demonstrated. In conclusion, it was evidenced how the dynamics of the political and social contexts over the years determine the electoral system, varying from competitive to non-competitive, as was the case of the compared countries.

Keywords: electoral system; elections; democracy; democracy; competitiveness; political parties

Introducción

En las democracias contemporáneas surge la necesidad de medir la competitividad electoral como parte de una exigencia de la Ciencia Política moderna, que pretende identificar las principales fuerzas políticas de un sistema y determinar las aproximaciones acerca de la legitimidad y el grado de institucionalidad del proceso electoral, que en última instancia deben desembocar en la instauración de un sistema electoral que sea competitivo.

Si bien existe diversos autores que se dedican al estudio comparado de los sistemas electorales en América Latina, el presente estudio tiene el objetivo de comparar el Indicador Compuesto de Competitividad en los sistemas electorales de Venezuela, México y Chile entre el periodo comprendido de 1930-2020, en un esfuerzo por explicar la relación entre la elección de un sistema electoral en específico con la competitividad electoral en América Latina.

Dicho instrumento de medición fue propuesto por la autora mexicana Irma Méndez y comprende tres ejes centrales del análisis de la competitividad electoral: el Margen de Victorias, la Fuerza de la Oposición y la Diferencia entre el número de victorias por partidos, en donde nos enfocaremos con mayor empeño en el primero de ellos por ser el pionero en el estudio de la competitividad y el de mayor alcance a los fines de este estudio comparado.

Con el auxilio de la obra de Facundo Cruz, "Volatilidad y competitividad electoral en américa latina. Un estudio exploratorio de seis sistemas partidarios" del año 2016, se delimita el marco teórico que explica las

razones por las que un Estado pueda estar encaminado en un proceso de democratización, y estar otro país simultáneamente cayendo en manos de una dictadura militar, sin tener ninguna relación causal entre ambos supuestos.

1. Indicador Compuesto de Competitividad (IC)

El estudio de la competitividad electoral está en menor medida relacionado con la naturaleza y el diseño electoral, y más enfocado sobre la particular atención en el nivel de competencia –distancia entre la victoria de uno y otro competidor– resultante de las principales fuerzas políticas contenida en ella misma. Es un concepto que tiene que ver con la distribución de la fuerza electoral entre los partidos en función de los resultados electorales, y cuya razón no estiba a si las elecciones están disputadas o no, sino a cuán reñidas son (Méndez, 2004).

Siempre que un Estado se comprometa al cumplimiento de las categorías democráticas fundamentales para ser considerado como tal, adquiere cierta relevancia el estudio del fenómeno electoral en un esfuerzo por mantener la estabilidad del sistema, y sobre todo, por garantizar elecciones competitivas que mantengan al margen la volatilidad y la participación política.

A este respecto, distintos autores han creado sistemas de medición de la competitividad electoral qué, por la magnitud del fenómeno, en su mayoría no han podido arropar sus dimensiones (Ramírez, 2017), sin embargo, es la autora mexicana Irma Méndez quien se acerca a la meta con su método integral de medición de la competitividad electoral, denominado Indicador Compuesto de Competitividad. Es menester resaltar que estos métodos son universales aplicables a cualquier sistema electoral.

Ahora bien, el Indicador Compuesto de Competitividad (en adelante IC) es una herramienta que mide la competitividad electoral y sirve para analizar la variación de la competitividad de los sistemas electorales (Méndez, 2003), tomando en cuenta factores del espectro electoral como el Margen de Victorias, el Índice de Fuerza de la Oposición y la Diferencia entre el Número de Victorias por Partidos para el estudio del fenómeno de competitividad electoral.

A partir de su análisis se puede indagar respecto a circunstancias específicas que conducen a que un sistema pueda ser catalogado como competitivo o no competitivo. Por ello, a fin de regular bajo el amparo de la legalidad y los valores fundamentales los juegos políticos, resulta esencial acudir al IC para precisar los niveles de competitividad política, y por añadidura, de legitimidad.

Tal como presume Facundo Cruz (2016: 12), en cuanto a las virtudes de esta herramienta, sostiene que: "El nivel de competitividad sistémica afecta el cálculo estratégico de los actores partidarios", por tanto, la viabilidad del IC se encuentra en su característica de predictibilidad que permite anticiparse a las posibles dinámicas de todo sistema, como por ejemplo: un alzamiento militar, dictadura, multipartidismo, etc., al mismo tiempo que sugiere si un partido político participará nuevamente en otro proceso electoral, si habrá una disminución en la participación política o si hay cambios en las preferencias electorales de los votantes, factores que más adelante profundizaremos.

Siguiendo el orden planteado, destacamos que a los fines de esta investigación, nos dedicaremos a la labor comparativa especialmente desde el indicador Margen de Victorias por ser el pionero en el estudio de la competitividad electoral y el de mayor alcance. De igual manera, desarrollaremos los otros dos componentes con un breve análisis al final sobres el IC aplicado en los sistemas electorales de los casos de estudio.

Un primer encuentro por medir la competitividad electoral es el primer indicador propuesto por Méndez (2003): el Margen de Victorias; considerado como uno de los referentes más utilizados para medir la competitividad electoral (Ramírez, 2017), y que comprende las elecciones tanto de primer, como de segundo orden (Cruz, 2016). Tan fácil y básico de utilizar como pensar en medir lo cerrada de unas elecciones tomando en cuenta la distancia porcentual de votos entre los dos primeros competidores, pero buscando siempre que el margen sea considerablemente reducido, ya que, de lo contrario, las elecciones no serían competitivas (Méndez, 2003). Por su parte, Sánchez (2006) citado por Ramírez (2017) señala que existe una alta competitividad cuando la organización de los partidos es de tal nivel que hay cierta incertidumbre sobre los resultados y éstos al final guardan poco margen de victoria.

Algo vital del planteamiento de Sánchez es la mención de la particularidad de este indicador: la incertidumbre del resultado por la brecha en la carrera por la victoria. Así, cuando un proceso electoral goza de una amplia diferencia de votos del primer partido respecto al segundo competidor, es fácil inferir que ganará el primero y el sistema se categoriza como no competitivo, porque ciertamente no existe una competencia, dado que existen condiciones de orden social o político que impide que todos los partidos gocen de las mismas ventajas y se cae en la primacía de uno sobre otro.

Su valor sustantivo en las democracias es que contempla la posibilidad de alternancia en el poder y la renovación de partidos –la competitividad *per se*– (Cruz, 2016), no obstante, también condiciona las líneas de acción de aquellos partidos menos beneficiados –el carácter de predictibilidad que señalamos anteriormente–, ante el supuesto de que la interacción de

estos últimos con el partido que en dos o más elecciones consecutivas haya salido ventajoso por un amplio margen de victoria, represente un potencial polarizador y amenaza para la democracia de cualquier país.

El segundo indicador del IC es Fuerza de la Oposición, la cual surge como una alternativa de medición frente al Margen de Victorias, y que a palabras de su fundadora, percibe el sistema de partidos en su conjunto, es decir, considera todos los partidos nominales sin importar su tamaño y revela si el esfuerzo común de los partidos de oposición hace alguna diferencia cuando se enfrentan (Méndez, 2004).

Este índice demuestra si estamos ante la presencia de un sistema hegemónico, de partido único o de uno democrático, pues, por su naturaleza holística del sistema de partidos, pero también calculadora del peso institucional de los mismos, hace posible la alternabilidad de las fuerzas políticas que determinan en gran medida la configuración del sistema electoral. Existe cierta correspondencia de la hipótesis planteada en la opinión de politólogo Brandon Ramírez (2017) en su obra: "Estudio sobre la competitividad electoral: un acercamiento a distintos enfoques":

> [...] Así mismo, que las oposiciones en los distintos tipos de elección logren alternancias, manifiestan la factibilidad de cambiar al partido en el gobierno, no sólo como discurso sino como algo posible institucional y electoralmente, de ahí la importancia de considerar la competitividad como un rasgo sistémico y medido longitudinalmente, y no en casos o elecciones específicas (Ramírez, 2017: 12).

En el texto citado se distinguen dos elementos significativos. Primero, la alternancia de los partidos como una posibilidad de materialización dentro proceso electoral; segundo, la competitividad sistémica que planteaba Cruz (2016). Ambas vienen a comportar ramas de un mismo árbol que contempla la competitividad electoral como la sustancia del sistema electoral, *a priori* del proceso electoral, aún más cuando el examen del fenómeno desde el método de este indicador agrupa a todos los actores junto con el mundo de posibilidades de sus interacciones.

El último indicador de la propuesta de Irma consiste en medir la frecuencia de las elecciones electorales ganadas entre los partidos del sistema político de un país (Méndez, 2003), se trata de la Diferencia entre el Número de Victorias por Partidos. El indicador ofrece un índice de concentración y distribución de victorias de los partidos político de un sistema electoral, de cual se puede aludir a las garantías electorales que ofrece el sistema, o si este se desarrolla en un régimen político autoritario o similar, por cuanto se consideran las veces en que un mismo partido político ha resultado ganador en los comicios electorales de un país.

En suma, muchas pueden ser las variables a considerarse para analizar la competitividad del sistema electoral de un país determinado. Cuando los sistemas electorales no son competitivos muchas veces el trasfondo es

la cara de un partido hegemónico, o un sistema electoral parcializado con una ideología política que beneficia a las elites gobernantes. El componente ideológico es inherente a la variabilidad del sistema electoral, junto con otros factores que repercuten igual y directamente en ella, y que implica el análisis comparado del fenómeno de la competitividad electoral bajo la lupa del IC.

2. Factores que incidieron en el cambio de sistema electoral

Según la proposición de que la comparación partirá del análisis del Margen de Victorias, el siguiente análisis se realizará bajo el esquema de tres circunstancias detonantes de variabilidad, delimitadas por el hito de algunos eventos electorales, políticos y sociales más característicos de Venezuela, México y Chile para explicar las razones de fondo que conllevaron a que sus sistemas electorales pasasen de ser competitivos a no competitivos, empero, de mantener una tendencia estable en el tiempo; a diferencia del caso de Chile que explicaremos en la siguiente parte.

2.1. Condiciones del sistema electoral

El tema relativo a la apertura de libertades y garantías que ofrece el órgano electoral de Venezuela, México y Chile, resulta esencial como punta de partida de comparación, pues engloba la competencia electoral real y la serie de las reformas que introdujeron cambios sustantivos en el sistema electoral de cada país respectivamente, siendo estas condiciones lo primario en el marco de la variabilidad de los sistemas electorales.

En el primer caso, desde sus inicios como república, su vida política ha estado signada por el clientelismo político, el caudillismo y bajos niveles de institucionalización, siendo esta ultima el arma más letal para el sistema electoral, nos referimos a Venezuela (Alcántara *et al.,* 2014). Bajo el régimen militar del General Juan Vicente Gómez a principios del siglo XX que duró casi tres décadas, se suprimió no tan solo el sistema político, sino el electoral entorno a un sistema hegemónico, pero, a partir de allí se avanzó hacia la consolidación del sistema electoral venezolano a uno competitivo tras la firma del Pacto de Puntofijo en 1958 que vino a representar un acuerdo de alternabilidad entre dos partidos políticos: Acción Democrática y COPEI, y apuntaba hacia la creación de una democracia representativa, con un sistema de partidos políticos estable (Arráiz Lucca, 2007).

Los efectos del Pacto fueron característica de la vida política del país por más de tres décadas, en donde la democracia venezolana funcionó con éxito, destacándose la competitividad de su sistema electoral entre México y Chile, quienes atravesaron un contexto de gobiernos dictatoriales. No obstante, a partir de 1989 el país se sumergió en una severa crisis que revierte lo que

se había logrado en esos años de democracia, destacándose dos intentos de golpes de Estado, medidas económicas asfixiantes, crisis social, y, naturalmente, el quiebre de la era bipartidista, lo que a su vez desencadenó abstención y disminución de la participación política (Kornblith, 1997).

En Centroamérica, mientras el país caribeño iniciaba su proceso de democratización en el marco del Pacto de Puntofijo, en México sucedía todo lo contrario. Desde 1929 estaban bajo el yugo del Partido Revolucionario Institucional (en adelante PRI), quien fue quitando, paulatinamente, la participación de los ciudadanos en la toma de decisión a través de los comicios electorales, ya que estas eran organizadas únicamente para servir a los propósitos de la elite política (Méndez, 2003), esto significó un golpe bajo para la institucionalidad del sistema mexicano porque la participación política estaba siendo transgredida por el desamparo del órgano electoral –como consecuencia de la dictadura– que no daba garantías ni ofrecía niveles de competitividad para que otros partidos tuvieran la posibilidad de llegar al gobierno.

Es la reforma electoral de 1977 quien supuso el paso hacia el pluralismo ideológico y la competitividad electoral, sin embargo, no fue hasta la elección federal de 1988 que se fracturó el sistema de partido hegemónico y se inauguró la era de la competitividad electoral en México que hasta hoy en día impera (Méndez, 2003), todo esto como resultado del quiebre de la institucionalidad y el descontento social que exigía otra opción de gobierno además del PRI que mantenía su hegemonía desde hace setenta años (Monsiváis, 2012).

Los autores Díaz y Vivero (2015) aseveran que las reformas electorales de México incentivaron el aumento de la competitividad, al nivelar el campo de juego electoral, ciertamente comportó un elemento vital, que valiéndose del quiebre interno del PRI permitió que los partidos de oposición se fortalecieran y pudieran hacer frente en unas elecciones a su mejor adversario pero ahora bajo la igualdad de condiciones, por la creación en 1990 de una autoridad electoral autónoma e independiente del gobierno, es cuando se crea el Instituto Federal Electoral (Méndez, 2003).

Como se puede revelar de lo planteado hasta ahora, mientras un país estaba encontrándose con el auge de la democracia enmarcada en un sistema competitivo bipartidista, el otro atravesaba una profunda crisis del sistema electoral, encabezado por un sistema hegemónico caracterizado por una constante manipulación de la competencia partidista que impedía el surgimiento de otras fuerzas políticas.

A este respecto, el autor Alcántara *et al*., (2020: 16) añade que: "México y Venezuela han tenido sistemas bipartidistas bastante estables a lo largo del tiempo" y si bien es una realidad, se resalta el hecho de que mientras en uno de ellos (Venezuela) tuvo su éxito a mediados del siglo XX, parece

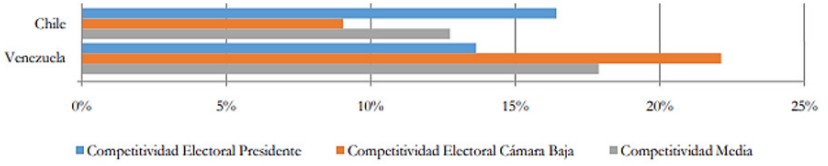
ser que a la par que lo abandonaba por completo a la entrada del siglo XXI para sustituirlo por uno no competitivo, México se apropió del sistema competitivo en medio de la dictadura –como un evento que coincide con la fractura de la democracia en Venezuela– para no dejarlo ir más nunca hasta convertirse hoy en día como uno de los sistemas electorales más estables de la región.

En el caso del país suramericano, los autores Valenzuela (1995) y Scully (1995), citados por Huneeus y Maldonado (2003) puntualizan la tendencia de Chile por su perseverante determinación en su desarrollo democrático a lo largo del siglo XX, que aunque presentó una recaída en los años 70´ por la dictadura militar de Pinochet, supo recuperarse e instauró un sistema multipartidista con vasta influencia en la sociedad chilena que sirve a una especie de retroalimentación sociedad-partido-gobierno que permite la estabilidad del sistema *grosso modo*.

Chile es el Estado con los valores más altos de confianza institucional en los mecanismos electorales (Alcántara et al. 2014) que se ha mantenido con una variabilidad del sistema electoral estable –a excepción de los tiempos de autoritarismo– durante los años en que México y Venezuela aun transitaban por distintos acontecimientos políticos, sociales y económicos que delineaban el proceso de constitución de sus sistemas electorales.

Un estudio recopilado de la obra de Facundo Cruz (2016) muestra un cuadro que enmarca el grao de competitividad electoral de Chile y de Venezuela en el periodo (1973-2015). El análisis del mismo del autor revela uno datos interesantes susceptibles de comparación, como, por ejemplo, el hecho de que Chile es competitivo en el juego por las bancas legislativas, mientras que Venezuela lo es para el cargo presidencial (2016: 189); dato curioso pues, comparado a la sólida estabilidad del sistema chileno, en Venezuela el afán personalista de los liderazgos políticos predispone a la sociedad a tener mayor incidencia del voto en las elecciones de primer orden.

Figura #1. Competitividad electoral para presidente y Cámara de Diputados Chile y Venezuela (1973-2015).



Fuente: elaboración de Facundo Cruz con Base de Datos de la Facultad de Ciencias Sociales de la Universidad de la República de Uruguay, Servicio Electoral de Chile, Kornblith y Levine (1995), Conaghan (1995), Cotler (1995), Oficina Nacional de Procesos Electorales de Perú, Inter-Parliamentary Union -IPU- Parline Database y Base de Datos Políticos de las Américas de Georgetown.

En los estudios de Mainwaring y Scully (1995), citado por Cruz (2016), los autores situaron en a Chile y Venezuela como casos de alta institucionalización partidaria en la década de los 70'. Por su lado, los autores Kornblith y Levine (1995) establecen que hacia finales de la década del 80' Venezuela se caracterizaba por tener uno de los sistemas de partidos más estables de toda América Latina, pero no fue sino hasta mediados de los 90' que en Venezuela hubo una alta competitividad presidencial y legislativa, que es comparable con los valores europeos, según Mainwaring y Torcal (2005).

En virtud de lo expuesto por estos últimos, a mediados de los 90' fue donde hicieron choque las razones de descontento político y social que originaron el clivaje que dio paso al quiebre del modelo bipartidista, que venía siendo el promotor de la democracia en la Republica, y se cayó –nuevamente- en la no competitividad del sistema electoral por el realce de liderazgo políticos que planteaban un nuevo esquema de gobierno que desembocó en el mismo carácter de sistema.

Por su lado, en México, en el marco de la apertura del sistema político a principios de los 90', y en relación con Reforma de 1996, se reestructuraron las normas del sistema electoral y se concretó la posibilidad de celebrar elecciones transparentes y competitivas (Nohlen et al. 2007), que más adelante evidenciaron sus efectos durante la elección presidencial de Vicente Fox en 2002 que daba por concluido el periodo de hegemonía del PRI.

En el contexto de este siglo, referente a las condiciones de los sistemas electorales de Venezuela, México y Chile, no existe mayor diferencia que las antes expuestas, o por lo menos que el tipo de sistema electoral implantado

desde la última década del siglo pasado. En Venezuela, según el autor Alcántara *et al*., (2014) en su obra: "Las Elecciones en América Latina" expone que la conformación del sistema político venezolano favorece al afán de victoria del oficialismo, que lleva en el poder 21 años, y que no permite la participación de otra fuerza política como la suya.

En el país centroamericano, se continúa con la competitividad electoral como un indicador fiable del sistema multipartidista mexicano (Reyes, 2015) y, por último, en Chile hasta hace poco se mantuvo su atributo de la constante competitiva, aunque, dinámicas sociales –con fuertes raíces ideológicas– acaecidas en el año 2019 pusieron en juego su puesto en el sistema electoral de América Latina.

Como se pudo observar, las reformas codifican el establecimiento de un determinado sistema electoral en un país, y estas influyen proporcionalmente a cómo la sociedad acepta las mismas, o bien, el sistema político por el cual se promulgan estas, y como los actores políticos participan en el proceso electoral generándose así la variabilidad del sistema electoral de competitivo a no competitivo, pese a que en cuanto a los casos de estudio, no presentaron mayores variabilidad entre sus sistemas, razones que pueden sr explicadas quizás por la cuestión de pertenecer a una misma región, o por el factor "social" que en ellos se desenvuelven, como por ejemplo, la historia política de cada país.

2.2. Condiciones socio-políticas

Las condiciones sociopolíticas como determinantes de la variabilidad del IC en los países casos de estudio, reúne los frutos productos de liderazgos, las crisis económica, política y social que se suscitaron durante el transcurso de principios del siglo pasado y el presente en Venezuela, México y Chile. También, una determinante en esta dimensión es lo relacionado con la percepción de gobernabilidad y la democracia, siendo estos últimos matices de la ordenación del sistema electoral.

En tal sentido, la premisa es que la situación política condiciona la variabilidad de cualquier sistema, sobre todo, si esta situación está signada por la guía de liderazgos personalistas, como el caso venezolano con el fenómeno Chávez, que, por encima de generar simpatía a los países contiguos de la región, su influencia tuvo un efecto reveso en el territorio venezolano en cuanto la configuración del sistema electoral: durante su gestión se tuvo graves repercusiones sobre la competencia política en el contexto electoral (Cruz, 2016), dado el carácter autoritario de su gestión que ocasionó una transformación de los valores democráticos en los venezolanos que se veían amenazados siempre que opinaran o se votara en contra del partido del gobierno.

Sin embargo, un punto importante a señalar sobre la figura de Chávez y su "legado" en el sistema electoral venezolano actual, pero ahora en manos de Nicolas Maduro, refleja la trascendencia del discurso de desestimación de la participación política inducido por la falta de competitividad y falta de transparencia del órgano electoral del país –sin desestimar los atropellos de la población durante la gestión del régimen-, en donde se sustituye la preeminencia de la legitimidad e institucionalidad del sistema electoral, sobre un sistema hegemónico que parecer ser el fin de la sucesión del fenómeno Chávez, lo mencionan Abdul *et al*., (2020: 7):

> Tras la desaparición física de Chávez y la controvertida elección de Nicolás Maduro el 14 de abril de 2013, el régimen ha venido mutando aceleradamente desde un autoritarismo competitivo a uno mucho más hegemónico, en el que la competitividad de los procesos de legitimación electoral ha pasado a segundo plano.

Si desde antes de la muerte de Chávez no había alternancia del poder en los partidos políticos, ni existía el ascenso de fuerzas políticas que compitiendo en elecciones con oficialismo obtuvieran un Margen de Victoria estrecho; condiciones *sine qua non* de todo proceso electoral competitivo (Sartori, 1976), no se puede hablar de un "pasado competitivo" de la presidencia de Hugo Chávez. No obstante, si es cierto que actualmente la competitividad electoral está muy lejos de ser una pretensión del gobierno de Nicolás Maduro por variar la constante del sistema electoral venezolano, intención manifiesta recientemente con la tentativa de intervenir en los partidos políticos de oposición para imponerles una nueva junta directiva con personajes pertenecientes al oficialismo (Agencia EFE, 2020).

Por otro lado, si nos referimos a México, la autora Méndez (2003: 9) distingue cuales fueron aquellos componentes que condujeron a que la oposición tuviera mayor relevancia en la palestra política del país de cara al gigante autoritarismo que reinaba desde 1929, como parte del fenómeno de los avances y las nuevas exigencias de los ciudadanos, al margen de un proceso de modernización, hacia el sistema electoral mexicano:

> Los drásticos cambios económicos y sociales de los años sesenta y setenta reestructuraron la arena política. El proceso de modernización –expresado en crecientes niveles de educación y urbanización– y una crisis cada vez mayor de los canales tradicionales de mediación y representación social, impactaron en los niveles de apoyo del partido en el poder y el papel de las elecciones. A principios de los años ochenta, la crisis económica y el creciente malestar social contribuyeron a la inestabilidad del sistema político. Las elecciones se convirtieron en fuente de conflicto y los partidos de oposición comenzaron a ocupar un papel más relevante en la arena política [...]

Esto da las razones de peso que tuvieron las coincidencias entre el creciente desarrollo democrático de Venezuela, con la crisis del sistema mexicano, explicado desde el sentido de que a este último la crisis de

representación y debilidad de los partidos, ocasionaron el conflicto social de los 80'. De igual manera, se cuestiona control el gubernamental del PRI como la principal limitante de la apertura de libertades del sistema electoral de México.

La situación en Chile en cuanto a la crisis se vio agravada con la llegada de Pinochet al gobierno, quien auspicio una política opresiva, asfixiante y militar que llevó a que el país se viera obligado –durante un periodo- a desdibujar la figura de su institucionalidad que tantos años había mantenido. Por encima de ello, y como una modelo de madurez ciudadana luego del conflicto, Chile por el momento es uno los países con mayor competitividad electoral (Cruz, 2016), y posee una fuerte integración institucional del sistema electoral.

En resumen, muchos sostienen que fue durante entre los años 1960-1970 que se presentaron los niveles más bajos de democracia en América Latina, por la llegada, entre otros fenómenos, de los regímenes militares. Dicho supuesto ocasiona una variación simultanea del IC en México y en Chile, pues los motivos son: el régimen autoritario del general Pinochet a partir de 1973 (Nohlen *et al.*, 2007), y la no tan relacionadas al régimen militar, pero si a autoritarismo, la hegemonía del PRI en México. Incluir a Venezuela en esa preposición sería contraproducente pues en ese periodo el sistema electoral gozaba de plena competitividad, producto del Pacto de Puntofijo.

2.3. Comportamiento político

Esta dimensión del análisis de la variabilidad del IC en los países casos de estudio abarca todo lo referente al elector en la toma de decisión entorno a la elección de sus representantes, supeditado a la percepción que este tiene de sus líderes e instituciones, y que, por otro lado, su participación tiene incidencia en la competitividad electoral en la carrera por elegir entre las dos principales fuerzas políticas, en el sentido que plantea Lago (2005), de que ante la percepción de una mayor competitividad entre las fuerzas, se incrementa la participación electoral, y por consiguiente, se perfecciona el balance de la democracia.

En este sentido, Chile tiene uno de los mayores índices de confianza popular en las elecciones por la competitividad de las mismas, y como consecuencia de ello en la participación electoral, también, fue catalogado como el país con mayor calidad de sus democracias en 2010, aunque en el 2013 atravesara una desidentificación partidaria que produjo una baja participación en los comicios electorales de ese año (Alcántara *et al.*, 2014).

La participación electoral está íntimamente relacionada con la implicación política de los ciudadanos y esta, por distintas razones que no profundizaremos en el momento, se "hincha" en contextos muy politizados

(Del Castillo, 1994), cualidad de la mayoría de los sistemas políticos de América Latina: la constante agitación política, y cuyo detonante radica, esencialmente, a la figura del líder.

En ese orden de ideas, la obra de Facundo Cruz (2016: 202), titulada: "Volatilidad y Competitividad Electoral En América Latina. Un Estudio Exploratorio De Seis Sistemas Partidarios", destaca el ámbito de ascenso de algunos liderazgos en América Latina:

> [...] deberíamos detectar en qué medida los liderazgos políticos de oficialismos fuertes y con disponibilidad de recursos públicos pueden generar una diferencia importante en la competencia por cargos públicos. Alberto Fujimori en Perú, Hugo Chávez (¿Nicolás Maduro?) en Venezuela y Rafael Correa en Ecuador pueden tener más en común de lo que se piensa corrientemente. Los tres líderes 1) surgieron en contextos de volatilidad electoral, 2) construyeron estructuras políticas personalistas y fuertemente centralizadas en su figura, y 3) delinearon el clivaje en torno al cual se estructuró la competencia política (eje oficialismo oposición).

Con auxilio del planteamiento del autor Cruz (2016) bajo el cual el quehacer de un candidato o un líder puede tener consecuencias nocivas en el desarrollo democrático, la calidad institucional y el potencial efecto polarizador en un sistema político, la personalidad del político influye directamente como catalizador de la implicación política, bien por la identificación partidista o la simpatía con el candidato, o por ser un líder autoritario; este último comporta la diferencia del liderazgo político de oficialismo que planteaba el texto citado.

En el caso venezolano, precedente al auge del chavismo, Venezuela ha recorrido el camino inverso con fuertes cambios en las preferencias partidarias de los ciudadanos (Cruz, 2016). Se pasó de tener buenos índices de participación electoral como parte de la identificación partidaria en los tiempos de la democracia con el bipartidismo, a ser un electorado indiferente que reconoce que el sistema no ofrece la competitividad electoral pues, ya como se tiene experiencia dentro de este sistema, el régimen actual no contempla la posibilidad de alternancia de poder con otro partido político del país.

Los líderes no se preocuparon por considerar el valor de la participación política del venezolano como aspecto importante de la cultura política democrática (Molina, 2000), pero lamentablemente, la variabilidad del IC de Venezuela persigue insistentemente en un mismo sistema de competitividad electoral, inherente a la historia política del país.

Por el lado de México, es desde inicios del siglo XXI que el país comienza a experimentar la utilidad de la Reforma Electoral de 1977 que significó el preámbulo de la competitividad de su sistema electoral, en donde se demostró la consolidación del partido de oposición Partido Acción Nacional

(PAN) que llevó a Vicente Fox a derrotar al partido hegemónico en el 2000, desde dos aspectos primarios del comportamiento político: el interés en la política –despojadas ahora del autoritarismo–, y la percepción de la idea de representación política de los dirigentes políticos (Méndez, 2003).

Así, la variabilidad del IC del sistema electoral mexicano ha tenido una tendencia estable de competitivo y corte multipartidista, dado que se incrementó la participación electoral por la implicación política del ciudadano que hora se siente representado por los partidos políticos.

Conclusiones

El Indicador Compuesto de Competitividad (IC) supone un método medular para el estudio de los sistemas electorales, sobre todo porque a través del estudio comparado de su primer variable, el Margen de Victorias, se pudo analizar la implicación que esta tuvo en la conformación de un sistema electoral determinado que se transformara en uno competitivo a no competitivo en Venezuela, México y Chile, como resultado de la intervención de diferentes elementos: las condiciones del sistema electoral, traducidas como el nivel de competencia política que adquiere el sistema por el acogimiento de reformas tendientes a modificar los mecanismos electorales; las condiciones socio policías, como la aproximación del resultado que tiene la figura del líder y la coyuntura política y social del sistema en la percepción de democracia e institucionalidad de la población; y del comportamiento político, como la eventualidad del sistema de incentivar el voto desde el reconocimiento de valores promovidos por el mismo sistema.

Del análisis comparado de esos elementos, con las aproximaciones de cálculo del IC, se pudo evidenciar la relación directa que tiene la adopción de un sistema electoral determinado con la competitividad electoral, puesto que el tipo de sistema electoral que pueda tener un país consagra los cimientos necesarios para que él mismo sea quien demarque las dinámicas de competencia de su entorno, buscando siempre el mayor beneficio del sistema, que sería el apego por uno de carácter competitivo que esté lo más afiliado posible a las nociones de la democracia.

Como vimos en el caso de Venezuela, la concurrencia de un tipo de sistema electoral de índole hegemónica supuso los niveles más bajos de la competitividad del Estado caribeño, bien ahora, esta no es una virtud exclusiva de este país, en vista de que existe la misma concordancia en los otros dos casos de estudio, que arrojaron una variabilidad del IC de competitivo a no competitivo, en donde los bajos niveles de competitividad electoral estuvieron asociados a la disminución por la competitividad de sus procesos electorales, aun cuando estos no compartieran semejanzas

ni los mismos fenómenos políticos y sociales durante el mismo periodo de estudio de sus sistemas.

En conclusión, la orientación del estudio suscribe del interés por conocer más acerca de lo relativo a las iniciativas políticas dirigidas a estimular la competitividad electoral en América Latina, qué, por razones de delimitación, en el presente estudio no pudo se amalgamar las dimensiones más trascendentales de la variabilidad de la competitividad de los sistemas electorales: el comportamiento político. Por ende, vale la pena revisar las teorías sobre la volatilidad electoral y la abstención, respectivamente. En última instancia, si la misión y el instrumento de la política es el hombre en sociedad, por qué no indagar en las razones que sustentan el entendimiento y reconocimiento de las instituciones que lo gobierna, y que guarda cierta relación con el análisis de la competitividad electoral.

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 879-900
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Posición del Papa Francisco sobre la invasión rusa a Ucrania

DOI: https://doi.org/10.46398/cuestpol.4176.52

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Resumen

En el presente artículo se identifican los fundamentos de la visión o posición del Papa Francisco acerca de la invasión de la Federación rusa a Ucrania y, al mismo tiempo, se establece su correspondencia con los principios doctrinales de la Iglesia Católica. La metodología responde al enfoque de investigación cualitativa, en este sentido, se utilizaron y combinaron herramientas teóricas y analíticas, tales como: la hermenéutica y las técnicas de investigación documental. Se procedió a un análisis exhaustivo de todas las intervenciones públicas del Papa durante un período de un año contado a partir del 24 de febrero de 2022, y se ha comparado su posición con la posición doctrinaria de la iglesia católica. Se ha llegado a la conclusión de que el discurso del Papa ha sido equívoco en algunas de sus formulaciones, pero doctrinalmente apegado a los dictados de la Iglesia.

Palabras clave: Invasión a Ucrania; Papa Francisco; Rusia, Vladimir Putin; guerra en el siglo XXI.

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Primera versión recibida el 12/12/22 Aceptada el 20/02/23

Position of pope Francis on the Russian invasion of Ukraine

Abstract

This article identifies the foundations of Pope Francis' vision or position on the invasion of the Russian Federation into Ukraine and, at the same time, establishes its correspondence with the doctrinal principles of the Catholic Church. The methodology responds to the qualitative research approach, in this sense, theoretical and analytical tools were used and combined, such as: hermeneutics and documentary research techniques. We proceeded to an exhaustive analysis of all the Pope's public interventions during a period of one year from February 24, 2022, and compared his position with the doctrinal position of the Catholic Church. It is concluded that the Pope's speech has been equivocal in some of its formulations, but doctrinally attached to the dictates of the Church.

Keywords: Invasion of Ukraine; Pope Francis; Russia, Vladimir Putin; war in the 21st century.

Introducción

El 24 de febrero de 2022, Rusia invade nuevamente a Ucrania (en 2014, se produjo la primera invasión a este país, en esa ocasión Rusia se anexionó Crimea). Probablemente estemos en presencia de la configuración de un bloque de poder euroasiático dirigido desde Rusia y enfrentado, principalmente, a los intereses de los EE UU y de Europa occidental. Esta nueva incursión armada tal vez sea un paso más en esa dirección, en este sentido; Timothy Snyder, profesor de historia en la Universidad de Yale, ha argumentado que la invasión rusa en Ucrania es una continuación de las políticas expansionistas del presidente Vladimir Putin y una amenaza para la democracia en Europa (Snyder, 2022).

Vladimir Putin, presidente de la Federación de Rusia, ha esgrimido diferentes argumentos en el intento de legitimar su postura bélica, principalmente los siguientes cuatro: a) la búsqueda de la contención de la OTAN, b) la protección de las minorías étnicas rusas y de habla rusa, 3) la desnazificación de Ucrania, y 4) restablecer la estabilidad de la región y proteger a Rusia de la inestabilidad y la amenaza de grupos extremistas en la región (Hodge, 2023). En el discurso que dio el día 21 de febrero de 2023, un año después de la incursión en Ucrania, ante el parlamento ruso, Putin (Hodge, 2023) repitió cada uno de estos argumentos en defensa de esa acción. Diversos autores han demostrado inconsistencias, contradicciones y el carácter engañoso de los mismos (Snyder, 2022; Mires, 2022).

Además de estos argumentos, de acuerdo a Rando (2022), se han movilizado dos consideraciones de tipo conceptual (Rando las denomina "constructos"), que se utilizan como justificación no solo de la política del actual gobernante (Newspress, 2022), ante Ucrania sino de cualquier política expansionistas rusa. Se trata, primero, de "el mundo ruso" que se expresa como un mandato a las autoridades rusas de protección de las minorías rusas en lo que se considera áreas de influencia rusa, allí se encontrarían tanto Crimea como el Dombás, territorios considerados rusos, no nacionales ucranianos. Segundo, el constructo "fraternidad eslava", que permite la expansión rusa amparada en la idea de "la asistencia a otros pueblos eslavos, o a aquellos directamente considerados rusos, con base en una supuesta hermandad intemporal en la que Rusia se denomina a sí misma como hermano mayor" (Rando, 2022: 2).

La reforma constitucional de 2020 introdujo un nuevo artículo que ofrece un piso de cierta legalidad a estos dos constructos. En efecto, el artículo 69, establece, además de otras consideraciones, que Rusia prestará "apoyo a los compatriotas que viven en el extranjero en el ejercicio de sus derechos, garantizando la protección de sus intereses y preservando la identidad cultural de toda Rusia" (Fernández, 2020: 4).

Ante este hecho, el Papa Francisco se ha convertido en uno de los líderes mundiales más activos en contra de la guerra rusa contra Ucrania. Antes de asumir tal protagonismo, ya había recibido fuertes críticas debido a sus ideas expresadas en diferentes momentos y por diversos medios. Comunista, socialista, partidario del progresismo, izquierdista, contrario a la tradición católica, habían sido, entre otros, los calificativos que había recibido. A partir de su oposición a la guerra en Ucrania se le ha llegado a acusar de prorruso.

En el presente artículo se identifican los fundamentos de la visión o posición del Papa Francisco acerca de la invasión de la Federación rusa a Ucrania y se establece, además, su correspondencia con los principios doctrinales de la Iglesia Católica.

1. Metodología

Desde la perspectiva metodológica, el artículo se desarrolló bajo el enfoque de investigación cualitativa, se utilizaron y combinaron herramientas teóricas y analíticas, de la hermenéutica y de las técnicas de investigación documental. El corpus sujeto a interpretación estuvo compuesto por las intervenciones públicas del Papa Francisco desde el día 23 de febrero de 2022, un día antes de la invasión rusa, hasta el día 24 de febrero de 2023, fecha en la que se cumplió un año de tal suceso. Durante el transcurso de ese año, el Papa dedicó incontables intervenciones públicas

para dar sentido a los acontecimientos, para denunciar y repudiar la guerra, y para exigir que cesara.

Con anterioridad al suceso que enmarca las intervenciones públicas del Papa, este había desarrollado un conjunto de ideas acerca de la guerra que igualmente fueron objeto de análisis. Se incluyeron en el estudio otros textos que resultan importantes para la comprensión de un suceso como la guerra que ha sido tratado por la Iglesia católica durante siglos.

2. Resultados

Dada la supuesta inevitabilidad de la guerra o simplemente de su existencia a lo largo del tiempo, diversos pensadores e instituciones como la propia iglesia católica, se han preguntado cuándo es legítimo emprender una guerra y cómo debe ser el comportamiento de los combatientes una vez comenzada la misma. Sobre eso se ha establecido una normativa internacional que se ha basado en los conceptos de ius ad *bellum*, el derecho a emprender una guerra, y el ius in bello, el derecho en la guerra; conceptos propios de la doctrina medieval de la guerra justa, *bellum iustum*.

Son, fundamentalmente, los escritos de teólogos pertenecientes a la iglesia católica a los que se debe la doctrina de la guerra justa como un sistema coherente de carácter normativo; se trata de Agustín de Hipona (354-430), Santo Tomás de Aquino (1225-1274) y del fraile dominico, Francisco de Vitoria (1483-1546).

Luego de los aportes de otros autores como Hugo Grocio (1583-1645) y, especialmente, los surgidos de los acuerdos de la Paz de Wesfalia, tratados de Osnabrück y Münster, firmados en octubre de 1648, la guerra pasó progresivamente a ser considerada no siempre lícita para la resolución de las diferencias entre naciones. A partir del siglo XIX, se realizan esfuerzos para establecer acuerdos internacionales que regulen las acciones en los conflictos armados.

Entre estos acuerdos se encuentran los cuatro convenios de Ginebra (1864, 1906, 1929 y 1949) y los Protocolos de 1977 que procuran proteger a las víctimas de las guerras; la Convención de la Haya de 1954 para la protección de los bienes culturales; la Convención de 1972 sobre Armas Bacteriológicas; la Convención de 1980 sobre Ciertas Armas Convencionales; la Convención de 1993 sobre Armas Químicas; el Tratado de Ottawa de 1997 sobre las Minas Antipersonal; el Protocolo facultativo de la Convención sobre los Derechos del Niño relativo a la participación de niños en los conflictos armados (Comité Internacional de la Cruz Roja –CICR-). Todos referidos a

la actuación de los combatientes en la guerra (Cruz, 2001[7]; Beuchot, 2001; Ruiz, 2004; Arbeláez, 2012; CICR, 2004, 2010, 2016).

Estos tratados, convenciones y protocolos solo se refieren al cómo debe desarrollarse una guerra. En este sentido una guerra sería justa si los contendientes se ciñen a lo establecido en estos instrumentos del derecho internacional. Pero esto no resuelve el asunto de si un Estado tiene derecho o no a apelar a la violencia, cuándo es lícito recurrir al recurso de la guerra; esto puede ser considerado desde diferentes puntos de vista: de la razón, de la moral, del derecho; independientemente de la respuesta que se le dé, esto lleva a considerar la guerra como un recurso para el logro de la justicia (Ruiz, 2004; Cruz, 2001[8], Arbeláez, 2012).

En 1928, se firma el Pacto Briand – Kellog, también conocido como *Tratado de Renuncia a la Guerra*, en el que los países signatarios[9] condenaron la guerra como medio para la solución de las controversias internacionales. Se puede considerar que este tratado ejerció una influencia importante para la redacción y firma de la Carta de las Naciones Unidas en el año 1945; en esta se establece en el artículo 2.4 que los miembros de la organización se: "Abstendrán de recurrir a la amenaza o al uso de la fuerza contra la integridad territorial o la independencia política de cualquier Estado, o en cualquier otra forma incompatible con los Propósitos de las Naciones Unidas" (Carta de las Naciones Unidas, 1945: 4). Con la firma de la carta, la única posibilidad de considerar una guerra como justa es cuando esta es defensiva. Es por ello que las Naciones Unidas se ven en la necesidad de establecer una definición de qué debe ser considerado agresión. En 1974, esta institución, aprueba la Resolución 3314 en la que se define la agresión de la forma siguiente: "La agresión es el uso de la fuerza armada por un Estado contra la soberanía, la integridad territorial o la independencia política de otro Estado" (Naciones Unidas, 1974: Resolución 3314). Además, establece

7 Los principios del ius in bello serían los siguientes: "1. El principio de discriminación o inmunidad para los no combatientes. 2. El principio de proporcionalidad aplicado a los medios de la guerra: estos no deben excederse en los males y el sufrimiento provocados, de manera de revertir el beneficio que se persigue (Cruz, 2001:283).

8 Cruz, en la reseña que hace al libro de Teresa Santiago, Justificar la guerra, lista los principios que forman parte del *ius ad bellum de la siguiente forma:*

1. La guerra debe ser emprendida de acuerdo a una causa justa.
2. La decisión de emprender una guerra debe hacerse con una intención correcta.
3. La decisión de emprender una guerra debe ser tomada por la autoridad legítima.
4. Debe haber una declaración formal de guerra.
5. Debe haber una expectativa razonable de alcanzar el éxito o la victoria.
6. La decisión de emprender una guerra debe ser un último recurso al cual se arriba sólo cuando ha sido cancelada toda posibilidad de un acuerdo pacífico.
7. La decisión debe satisfacer el requisito de proporcionalidad. El bien a ser alcanzado con la empresa de guerra debe ser lo suficientemente importante como para equilibrar los males y daños que se produzcan a consecuencia de ello". (Cruz, 2001:282).

9 Los países firmantes del tratado fueron Alemania, los Estados Unidos, Francia, el Reino Unido, Reino de Italia, Japón, Bélgica, Polonia, Canadá, Australia, Nueva Zelanda, Unión Sudafricana, Estado Libre Irlandés, India y Checoslovaquia, luego se adhirieron 57 países más.

cuáles son los actos que se consideran agresión[10].

3. La iglesia y la guerra

Entre las conclusiones más significativas a las cuales ha arribado la iglesia católica, sobre todo a partir de la segunda mitad del siglo XX, se encuentra el abandono, aunque no explícito, de la tesis de la guerra justa. De acuerdo al catecismo (sustentado en las tesis acerca de la paz y la guerra contenidas en el capítulo V de la Constitución pastoral *Gaudium et spes* –Alegría y esperanza–, surgida del Concilio Vaticano II), la única guerra admitida es la guerra defensiva, basada en el derecho a la "legítima defensa" (Catecismo 2309).

No matarás, una de las máximas o mandamientos de la Iglesia católica, constituye el primer aspecto que fundamenta las tesis acerca de la guerra. Compaginar ese no matarás con la guerra, la cual se ubica en sus antípodas, es tarea compleja. Esta institución solo admite la posibilidad de matar cuando se trata de la "legítima defensa", pero con la limitación de que debe ser lícita, y es lícita cuando la violencia aplicada no es mayor a la necesaria (Catecismo 2263, 2264), de ser así, el que mata a su agresor no podría ser acusado de homicidio (Catecismo 2264). En cuanto a los Estados, estos están obligados a contener los "comportamientos lesivos de los derechos humanos y las normas fundamentales de la convivencia civil" (Catecismo 2266).

Acerca de la paz, el segundo aspecto fundamental en las tesis acerca de la guerra, el Catecismo plantea que "El respeto y el desarrollo de la vida humana exigen la paz" (Catecismo, 2304). Aunque la paz no se circunscribe a la inexistencia de la guerra, esta reclama de los ciudadanos y gobernantes "empeñarse en evitar las guerras", aspecto que no afecta el ejercicio del

10 El artículo 3 de la Resolución establece: "…los actos siguientes, independientemente de que haya o no declaración de guerra, se caracterizará como acto de agresión:
a) La invasión o el ataque por las fuerzas armadas de un Estado del territorio de otro Estado, ó toda ocupación militar, aun temporal, que resulte de dicha invasión o ataque, o toda anexión, mediante el uso de" la fuerza, del territorio de otro Estado o de parte de él;
b) El bombardeo, por las fuerzas armadas de un Estado, del territorio de otro Estado, o el empleo de cualesquiera armas por un Estado contra el territorio de otro Estado;
c) El Moqueo de los puertos o de las costas de un Estado por las fuerzas armadas de otro Estado;
d) El ataque por las fuerzas armadas de un Estado contra las fuerzas armadas terrestres, navales o aéreas de otro Estado, o contra su flota mercante o aérea;
g) La utilización de fuerzas armadas de un Estado, que se encuentran en el territorio de otro Estado con el acuerdo del Estado receptor, en violación de las condiciones establecidas en el acuerdo o toda prolongación de su presencia en dicho territorio después de terminado el acuerdo;
f) La acción de un Estado que permite que su territorio, que ha puesto a disposición de otro Estado, sea utilizado por ese otro Estado para perpetrar un acto de agresión contra un tercer Estado;
g) El envío por un Estado, o en su nombre, de bandas armadas, grupos irregulares o mercenarios que lleven a cabo sotos de fuerza armada contra otro Estado de tal gravedad que sean equiparables a los actos antes enumerados, o su sustancial participación en dichos actos" (Art. 3)

derecho a la legítima defensa de los gobiernos (Catecismo, 2308), sin embargo, el gobierno en el ejercicio de este derecho a la legítima defensa debe ceñirse rigurosamente a las siguientes condiciones:

> Que el daño causado por el agresor a la nación o a la comunidad de las naciones sea duradero, grave y cierto.
>
> Que todos los demás medios para poner fin a la agresión hayan resultado impracticables o ineficaces.

Que se reúnan las condiciones serias de éxito.

> Que el empleo de las armas no entrañe males y desórdenes más graves que el mal que se pretende eliminar. El poder de los medios modernos de destrucción obliga a una prudencia extrema en la apreciación de esta condición (Catecismo 2309).

La guerra sería justa solo sí se debe a la legítima defensa. Aunque el catecismo menciona la guerra justa (2309), en la Constitución pastoral *Gaudium et spes*, no se encuentra tal caracterización de guerra alguna. Por el contrario, plantea la necesidad de trabajar en función de que en el futuro sea "absolutamente prohibida cualquier guerra". Esto solo sería posible si se establece una autoridad pública universal con poder suficiente para "garantizar la seguridad, el cumplimiento de la justicia y el respeto de los derechos" (*Gaudium et spes,* 1965: 82).

En cuanto a lo que los combatientes pueden hacer en el curso de la guerra (ius in bello), la ley moral prescribe: 1. que se respete y trate con humanidad a los no combatientes, a los soldados heridos y a los prisioneros; 2. Tienen la obligación de desobedecer aquellas decisiones que ordenan genocidios; 3. Es un crimen contra Dios y contra el hombre las acciones bélicas que tienden a la destrucción de ciudades enteras o de amplias regiones con sus habitantes (Catecismo 2312-2314).

4. Francisco. Acerca de la guerra

El Papa Francisco, expresa unas tesis generales acerca de la paz y la guerra que son propias de la iglesia católica, por lo menos las tesis vigentes desde la segunda mitad del siglo XX, recogida fundamentalmente en *Gaudium et spes* y que está presente en él al momento de expresar su posición sobre los acontecimientos del momento de Ucrania. Estas tesis son las siguientes.

1. La paz constituye un eje central en el discurso de la Iglesia. Por supuesto, cuando se alude a la paz no solo se hace referencia a la ausencia de la guerra. Es un tema con diferentes aristas, que toca otros temas más allá de la guerra, temas a los que el Papa da mucha importancia, sobre todo al referido a la justicia social, al bienestar social o a un orden justo, temas estos espinosos debido a lo cercano

a las tesis marxistas que afirman la existencia de la explotación económica de los trabajadores en el capitalismo. En el 2020, el Papa Francisco escribió una carta encíclica que denominó *Fratelli tutti* (Francisco, 2020); en esta carta dedica un espacio importante a algunas consideraciones sobre la guerra; parte de una sentencia o supuesto de carácter principista: "Dios ha creado todos los seres humanos iguales en los derechos, en los deberes y en la dignidad, y los ha llamado a convivir como hermanos entre ellos" (Francisco, 2020: 5), obviamente, tanto la violencia en general como la guerra se ubican en un lugar contrario a este supuesto.

2. El mundo ha retrocedido, había hecho avances hacia diversas formas de integración, pero han ido apareciendo "conflictos que se consideraban superados, resurgen nacionalismos cerrados, exasperados, resentidos y agresivos" (Francisco, 2020:11). De allí que considere a toda guerra un anacronismo "a esta altura de la civilización" (Morales, 2022: s/p). Asimismo, piensa que el mundo se encuentra en la 3ra guerra mundial, guerra mundial a pedazos o por parte (InfoCatólica, 2022). Es por ello que el gasto en armamento sea uno de los más graves escándalos morales de la época presente (Vatican News, 2022).

3. La guerra es un sacrilegio. Esto va a estar presente en sus intervenciones públicas sobre la guerra, no solo la rusa contra Ucrania sino todas a las que en algún momento se refiere. Un ejemplo, lo podemos extraer de la introducción al ensayo escrito por el Papa, titulado *Contro la guerra. Il coraggio di costruire la pace*, él asegura allí que la guerra: "Es un cáncer que se alimenta de sí mismo, engulléndolo todo. Es más, la guerra es un sacrilegio, que causa estragos en lo más precioso de nuestra tierra, la vida humana, la inocencia de los más pequeños, la belleza de la creación". Y en la misma introducción, señala: "La primera y fundamental enseñanza de la Iglesia es que 'el quinto mandamiento condena la destrucción voluntaria de la vida humana'. Ya está sola frase alcanza para que todo cristiano repudie cualquier guerra". (Francisco, 2022: s/p)

4. No hay guerras justas: Las guerras son siempre injustas. La iglesia debe abandonar cualquier referencia a la denominada guerra justa, por cierto, ya prácticamente desaparecida de la iglesia católica, aunque en el catecismo se mantiene una referencia a la misma, se expresa en el mismo "Estos son los elementos tradicionales enumerados en la doctrina llamada de la guerra justa" (Catecismo 2309). Ejemplo de esta posición, que tomamos debido a la importancia de la persona a quien se lo expresó, lo constituyen las palabras que le expresó, pocos días después de la invasión, a Kirill, el actual cabeza de la Iglesia ortodoxa rusa quien ha mostrado en todo momento su apoyo a la invasión rusa; en esa conversación el Papa le expreso:

> ...hubo un tiempo en que nuestras iglesias todavía hablaban de una guerra santa o de una guerra justa. Hoy en día, ya no podemos hablar de esta manera. Se ha desarrollado una conciencia cristiana de la importancia de la paz» (Vatican News, 2022: s/p).

5. Toda guerra surge de una injusticia (ANSA Latina, 2022).
6. Un mundo pacífico es más justo que un mundo en guerra (Francisco, 2022). Se equivocan quienes piensan que las armas son un atajo seguro para la garantizar la paz. Son el diálogo, el respeto y la confianza los únicos caminos que llevarían a la humanidad a la garantía de una convivencia pacífica y fraterna.
7. Es necesario que el actual sistema multilateral encuentre formas más ágiles y eficaces de resolver los conflictos. En tiempos de guerra, es fundamental sostener que necesitamos más y mejor multilateralismo. Por lo tanto, es necesario repensar estas instituciones de forma que respondan a la nueva realidad existente y sean fruto del mayor consenso posible (Vatican News, 2022). Pero son los países miembros de estos organismos los que deben mostrar la voluntad política de hacerlos funcionar.

Los organismos internacionales deberían inspirarse en el concepto de «seguridad integral». Es decir, no limitarse ya a los cánones del armamento y la fuerza militar, sino "ser conscientes de que en un mundo que ha alcanzado un nivel de interconexión como el actual, es imposible tener, por ejemplo, una seguridad alimentaria efectiva sin una seguridad medioambiental, sanitaria, económica y social" (Vatican News, 25 de enero de 2023: s/p).

8. El papel de la Iglesia: la Iglesia tiene que jugar un papel importante en el propio país, buscando ese diálogo en la facción, en el diálogo interno, y ella quedarse detrás siempre. Cuando la Iglesia se pone como líder se equivocó. La Iglesia es servidora, está al servicio del diálogo y este del pueblo. "La Iglesia tiene que ayudar a que se sienten a la misma mesa". Los curas deben ser pastores del pueblo y no clérigos de Estado; no tomar partido en la política (Vatican News, 25 de enero de 2023: s/p).

5. ¿El Papa es prorruso?

El papa ha sido objeto de críticas desde los primeros días del papado. Estas se ubican en diferentes posiciones del espectro político. Para no entrar en una discusión teórica, se puede afirmar que, en términos generales, los críticos provienen de posiciones que van desde los que desean un cambio radical de la Iglesia hasta los que desean que no se produzca cambio alguno.

Desde el campo más conservador, se le critica lo que consideran una influencia marxista o del progresismo de izquierda. Lo primero que se cuestiona es su condena a la economía de mercado, la globalización financiera y el manejo de las tesis que expresaban comunistas y socialistas de los países subdesarrollados acerca de lo que denominaban transculturización; ideas estas expresadas por el Papa, sobre todo, en la Exhortación Apostólica *Evangelii Gaudium* (Francisco, 2013). Asimismo, se le critican las tesis manejadas acerca de un supuesto Imperialismo que victimiza a latinoamérica y el llamado que hace a los latinoamericanos para que se unan y se liberen de este (Télam digital, 2022).

Además, estos sectores critican la posición adoptada frente a la homosexualidad. Aunque el Papa aún sostiene que ser homosexual es un pecado, y que la iglesia no puede bendecir el matrimonio entre parejas del mismo sexo, lo enfrentan debido a la afirmación de que no hay que discriminarlos, que ser homosexual no es un delito y que aboga por la abolición de leyes existentes en algunos países que los criminalizan (Pacho, 2022;). Igualmente, cuestionan que el Papa haya asumido la tesis del cambio climático como resultado de actividades humanas (Lowen, 2021).

Por su parte, los sectores denominados progresistas critican lo moderado que ha sido en la incorporación de las mujeres en la iglesia. Ante esto, la respuesta del Papa ha sido que los cambios han de ser "suaves" debido a las "reticencias" existentes en la Iglesia (Verdú, 2021: s/p). Igualmente, hacen frente a su posición ante el aborto; el Papa ha repetido de manera reiterativa que el aborto es un homicidio y que la Iglesia no va a cambiar su posición (Vatican News, 2021). El rechazo y las fuertes palabras del Papa sobre la eutanasia y al suicidio asistido, también han sido enfrentados por estos sectores. El Papa ha dicho sobre la eutanasia es un "crimen contra la vida", y del suicidio asistido que es "un grave pecado" (Deutsche Welle, 2022: s/p).

Durante el lapso de tiempo que abarca este trabajo, la posición del Papa frente a la invasión rusa a Ucrania, ha sido criticada debido a que supuestamente es prorrusa. Veamos que de cierto tiene esta afirmación.

a. Todos los días

Lo primero que se observa al analizar la posición del Papa sobre la guerra, es su atención diaria a la misma. Prácticamente no ha habido intervención pública en la que no haya hecho referencia a la guerra (incluso antes de que se produjera la invasión rusa ya expresaba su posición ante tal posibilidad), ya fuese para condenarla, pedir orar por las víctimas, exigir el fin de la guerra, interceder por las personas que huyen de Ucrania, o por diversas actividades a las cuales nos referimos más adelante.

Para obtener una idea general acerca de la dedicación que ha puesto el Papa a esto, pueden revisarse las noticias diarias del Vatican News, el portal de información del Vaticano. Para el mes de agosto, el propio Vaticano estimaba que el Papa había tenido "más de 70 intervenciones públicas desde el 24 de febrero" en las que había tratado el tema de la guerra de Rusia contra Ucrania (Vatican News, 2022: s/p).

b. Reuniones y conversación

El Papa se ha reunido o conversado con diversas autoridades que, de una u otra forma, pudieran incidir sobre el curso de la guerra o poseen alguna relación con los hechos que se generan alrededor de la guerra.

Con el primero que se reunió fue con el embajador ruso en el Vaticano. En efecto, el día siguiente a la invasión, se fue solo a la embajada rusa para expresarle su preocupación sobre lo acontecido el día anterior, y ponerse a la disposición para la búsqueda de una solución pacífica. El mismo 25 de febrero, habló por teléfono con el arzobispo mayor de Kiev, de la Iglesia greco-católica ucraniana, Sviatoslav Shevchuk, le pidió información sobre la situación en Kiev y en Ucrania, y se puso a la disposición.

Ha conversado varias veces telefónicamente con el presidente de Ucrania, Volodímir Zelenski, para manifestarle su preocupación por los sucesos y expresar "su más profundo dolor por los trágicos acontecimientos". El 2 de marzo de 2022, el Papa Francisco envió un mensaje al presidente de Ucrania, Volodymyr Zelensky, en el que expresaba su solidaridad y su apoyo al pueblo ucraniano. Posteriormente, el Papa aclaró que ese día le había dicho: "Estoy cerca de usted y de su pueblo en estos días difíciles. Rezo por la paz en Ucrania y por una solución pacífica al conflicto que respete la integridad territorial y la soberanía de su país" (Vatican News, 25 de enero de 2023: s/p).

El día 16 de marzo, tuvo una videollamada con el Patriarca de Moscú, Kirill, el actual cabeza de la iglesia ortodoxa rusa, quien en ningún momento ha escondido sus coincidencias con Putin acerca de la invasión a Ucrania.

En el año que abarca la investigación, ha conversado también con las siguientes autoridades europeas acerca del tema de la guerra ruso ucraniana. Con el canciller Aleman, Olof Scholz, con el que coincide en que la solución a la guerra debe ser pacífica. Con el Presidente de Polonia, Andrzej Duda; con Viktor Orbán, primer ministro de Hungría; con el primer ministro de la República Checa, Petr Fiala; con Ursula von der Leyen, Presidenta de la Comisión Europea de la Unión Europea; con el presidente de Hungría, Katalin Novàk; Con Emmanuel Macron, presidente de Francia; con el primer ministro de Luxemburgo, Xavier Bettel; con el presidente de Albania, Bejram Begaj; con Zuzana Čaputová, presidenta de la República de Eslovaquia; con Giorgia Meloni, presidenta del Consejo de

Ministros de Italia. En cada uno de esas reuniones planteó su preocupación por el curso del conflicto, la necesidad de acabar con la guerra a través de una negociación, se puso a disposición para lo que pudiera colaborar en pro de la paz, abogó por los refugiados y expresó su opinión acerca de la guerra en general.

c. Decisiones que involucran a Ucrania y la guerra

Además de las conversaciones con los líderes políticos mencionados, el Papa ha tomado otras decisiones vinculadas con la invasión a Ucrania.

a. Ha intentado que Putin lo reciba: "le pedí al cardenal Parolin, tras veinte días de guerra, que hiciera llegar un mensaje a Putin de que estaba dispuesto a ir a Moscú. Por supuesto, era necesario que el líder del Kremlin concediera algunas ventanillas" (Corriere della Sera, 2022: s/p), no recibió respuesta.

b. Encargó al cardenal Michael Czerny, prefecto del Dicasterio para la Promoción del Desarrollo Humano Integral, y al cardenal Konrad Krajewski, limosnero del Papa para la atención directa de los asuntos del Vaticano en Ucrania. Es una forma de expresar la presencia del Vaticano en Ucrania y el aporte de ayuda y apoyo.

c. Le pidieron que hiciera algo para la liberación de más de 300 presos. Llamó al embajador ruso para ver si se podía hacer algo, para ver si se podía llevar a cabo un intercambio de prisioneros.

d. Han intentado armar desde el Vaticano, una "red de relaciones que favorezca el acercamiento entre las partes, para encontrar soluciones". Ha expresado en múltiples ocasiones la disposición del Vaticano "a hacer todo lo posible para mediar y poner fin al conflicto en Ucrania» (Ferrari, 2022: s/p).

e. El Vaticano ha enviado ayuda material a Ucrania y ha abogado por la acogida de los refugiados ante diversas autoridades.

d. Lo que le han criticado

Al Papa Francisco, se le ha acusado de tener una posición ambigua frente a la guerra y un dubitativo apoyo a Ucrania; esto es debido, principalmente, a que no responsabiliza de forma clara y directa a Rusia y a Putin. Afirmaciones realizadas a lo largo del tiempo, algunas insuficientemente explicadas y otras nada comprensibles, que se prestan a confusión, constituyen los fundamentos de las acusaciones al Papa. Pasamos a detallar algunas de las argumentaciones y posiciones del Papa que generan tal confusión y crítica.

Ante la reiterada petición de Ucrania de que viaje a Kiev, se ha negado a hacerlo.

El Papa, ha intentado establecer una relación de causa – efecto entre las acciones de la OTAN y la decisión rusa de invadir. Ha dicho que tal vez "los ladridos de la OTAN a la puerta de Rusia hayan llevado al jefe del Kremlin a reaccionar mal y a desencadenar el conflicto. Una ira que no sé decir si fue provocada -dice-, pero facilitada tal vez sí (Fontana, 2022: s/p).

Con respecto al abastecimiento de armas a Ucrania, expresó: "Yo digo, cuando hay que defenderse no queda otra que tener los elementos para defenderse. Otra cosa es cómo esa necesidad de defenderse se va alargando, alargando, y se transforma en una costumbre" (Fontana, 2022: s/p). Y ha puesto en duda si es correcto abastecer a Ucrania de armas, hecho que la dejaría indefensa ante las tropas y las armas rusas.

Puso de ejemplo de las consecuencias de la guerra, a Dugina, una periodista rusa que apoyaba la guerra contra Ucrania, que había trabajado con su padre, Alexander Dugin, el filósofo que exige que se recuperen los supuestos antiguos territorios rusos. Dijo, "esa pobre niña que salió volando por los aires a causa de una bomba debajo del asiento de su automóvil en Moscú. Los inocentes pagan la guerra. Los inocentes" (Religión Confidencial, 2022: s/p). Esto generó un rechazo que se expresó en la propia Ucrania. Dugina no murió en la guerra, fue asesinada en Rusia, aún no se conoce al asesino ni las razones por las cuales la mataron.

El embajador de Ucrania en el Vaticano escribió en twiter: «El discurso de hoy del Papa ha sido decepcionante y me ha hecho reflexionar sobre muchas cosas», y luego agrega «No es posible hablar en las mismas categorías de agresor y víctima, de violador y violado; ¿cómo es posible mencionar a una de las ideólogas del imperialismo ruso como víctima inocente?», y finalizó expresando que "fue asesinada por los propios rusos y ahora es una «mártir» de Rusia y un emblema de la propaganda" (Varisco, 2022: s/p).

e. Rectificaciones o aclaraciones

Ante cada una de las críticas o palabras equívocas, el Papa ha tenido que hacer aclaraciones en no pocos momentos. La crítica a la ambigüedad de su posición ante la guerra, lo ha llevado a tener que aclarar qué ha querido decir en diversos momentos.

Con respecto a su negación a ir a Kiev, ha sido categórico. Está convencido de que debe ir primero a tanto a Rusia como a Ucrania, pero primero a Rusia; sostiene la tesis de que esto podría abrir espacios para el diálogo.

Ha dicho que mencionar directamente a Putin no es necesario; que todos entienden que cuando habla de Ucrania, habla de un pueblo martirizado, y "Si hay un pueblo martirizado hay alguien que lo martiriza". "Ciertamente quien invade es el Estado ruso. Eso es muy claro. A veces trato de no

especificar para no ofender y más bien condenar en general, aunque se sabe bien a quién estoy condenando" (Jaramillo y Echeverry, 2005: s/p).

En esa búsqueda de despejar dudas, se ha referido a la conversación con Kirill el clérigo de la iglesia Ortodoxa Rusa, al que le habría dicho: "Hermano, no somos clérigos del Estado…Somos pastores del mismo santo pueblo de Dios…debemos buscar caminos de paz, hacer cesar el fuego de las armas. El Patriarca no puede transformarse en el monaguillo de Putin" (Fontana, 2022: s/p).

En algunas ocasiones ha tenido que ser bastante directo en contra de las acciones rusas, para aclarar dudas. En su defensa, ha expresado que ha calificado: "La invasión de Ucrania como una agresión inaceptable, repugnante, insensata, bárbara y sacrílega…" (Vatican News, 2022: s/p). O en el Ángelus del domingo 2 de octubre de 2022, que lo dedicó a la guerra, afirmó entre otras cosas: "¡Ciertas acciones no pueden ser justificadas nunca! ¡Nunca! Es angustiante que el mundo esté aprendiendo la geografía de Ucrania a través de nombres como Bucha, Irpín, Mariúpol, Izium, Zaporiyia y otras ciudades, que se han convertido en lugares de sufrimiento y terror indescriptibles" (Vatican News, 2022: s/p). Ciudades estas devastadas por la acción directa rusa.

Ha aclarado que su llamamiento a la búsqueda de la paz, se dirige ante todo al presidente de la Federación Rusa, rogándole "que detenga, también por amor a su pueblo, esta espiral de violencia y muerte" (Vatican News, 2022: s/p). Acerca de la paz, para que sea seria debe incluir, "la integridad territorial" (Vatican News, 2022). O sea, se deduce, el retiro de las tropas rusas, por lo menos, de la región del Dombás, lo que intenta desmentir el supuesto apoyo a la invasión rusa.

Cree que acerca de su solidaridad con Ucrania no debería haber dudas. Ha dicho en diversas oportunidades que ha conversado varias veces con el presidente ucraniano, que ha recibido delegaciones de Ucrania, y siempre han reconocido la solidaridad de él con el pueblo ucraniano. En alusión a la tesis de si se debe ayudar a Ucrania armándola, ha reconocido la legítima defensa ucraniana; "Yo digo, cuando hay que defenderse no queda otra que tener los elementos para defenderse" (Vatican News, 25 de enero de 2023: s/p)

Aunque no establece una comparación directa entre Stalin y Putin, en ocasión de cumplir un mes más de la invasión rusa y del aniversario del genocidio ucraniano por parte de las políticas de Stalin se producen las palabras que consideramos más fuertes contra la invasión rusa a Ucrania. Escribe el Papa en la carta que dirige a los ucranianos:

> Queridos hermanos y hermanas, en medio a este océano de maldad y de dolor —noventa años después del terrible genocidio de Holodomor—, estoy admirado de su gran celo. El pueblo ucraniano, a pesar de la inmensa tragedia que está

> sufriendo, no se ha desanimado nunca ni se ha abandonado a la autocompasión. El mundo ha reconocido un pueblo audaz y fuerte, un pueblo que sufre y ora, llora y lucha, resiste y espera. Un pueblo noble y mártir. Yo sigo estando con ustedes (Francisco, 2022: s/p).

En una aparición pública, igualmente expresó:

> El próximo sábado es el aniversario del terrible genocidio del Holodomor, el exterminio por el hambre en 1932 y 1933 causado artificiosamente por Stalin en Ucrania. Recemos por las víctimas de este genocidio y recemos por tantos ucranianos, niños, mujeres y ancianos, niños, que hoy sufren el martirio de la agresión.

f. El Vaticano en defensa del Papa

Otros miembros del gobierno del Vaticano y el gobierno como entidad institucional han salido al paso a las críticas contra algunas posiciones públicas del Papa.

En un encuentro con la prensa, el secretario para las Relaciones con los Estados, Paul Richard Gallagher, realiza las aclaratorias a las críticas al Papa que piensa que zanjan ese asunto: "Ucrania – afirma el prelado – tiene derecho a defenderse", pero es necesario evitar una carrera de rearme, también porque nos enfrentamos a una guerra peligrosa por su "dimensión nuclear".

La posición de la Santa Sede apoya cualquier intento de diálogo: hay que buscar soluciones, "quedando siempre a disposición de la comunidad internacional". El Vaticano tiene como objetivo crear "espacios de diálogo" que favorezcan una solución al conflicto.

Debido a la tensión existente en el seno de las iglesias ortodoxas, básicamente, debido a la posición de la Iglesia Ortodoxa Rusa de apoyo a la invasión, dice Gallagher: "Hay una innegable dimensión religiosa en este conflicto". "Para el Papa el diálogo ecuménico es una prioridad, aunque en este momento el encuentro con el Patriarca Kirill no parece oportuno porque no se dan las condiciones adecuadas. Pero el diálogo seguirá adelante"

Acerca de los espacios ocupados por Rusia y la posibilidad de que haya diálogo entre las partes, afirma tajante: "En nuestros contactos con los otros siempre hemos afirmado que la Santa Sede sigue comprometida totalmente con la integridad territorial de Ucrania. Y eso es todo" (Ceraso, 2022: s/p).

El Vaticano como institución, también sale en auxilio del Papa. Las palabras del Papa sobre la muerte de la hija de Duguin en Rusia causaron un revuelo, tal como ya lo hemos señalado: Afirma un comunicado del Vaticano sobre las palabras del Papa: "El Papa habla como un pastor que defiende cada vida humana, no como un político. Y esta es la lectura correcta que hay que dar también a sus numerosas intervenciones sobre la guerra en Ucrania" (Vatican News, 2022: s/p).

Se lee más adelante en el comunicado: "Las palabras del Santo Padre sobre esta dramática cuestión deben leerse como una voz alzada en defensa de la vida humana y de los valores a ella asociados, y no como una postura política" (Vatican News, 2022: s/p).

Con respecto a la guerra, el comunicado la cataloga como "de amplia dimensión en Ucrania, iniciada por la Federación Rusa". Y agrega, "las intervenciones del Santo Padre Francisco son claras e inequívocas al condenarla como moralmente injusta, inaceptable, bárbara, insensata, repugnante y sacrílega (Vatican News, 2022: s/p).

El secretario de Estado, el Cardenal Pietro Parolin, igualmente ha aclarado posiciones del Papa que generan duda. Por ejemplo, en mayo de 2022, calificó de legítima defensa, por lo tanto, una guerra justa, las acciones de Ucrania, entre otras, la de recibir armas del exterior. Dijo: "Existe el derecho a la defensa armada en caso de agresión", bajo ciertas condiciones. "Sobre todo (la condición) de la proporcionalidad y, entonces, que la respuesta no produzca mayores daños que los causados por la agresión" y, haciendo un uso del concepto de guerra justa, el cual la iglesia trata de no mencionar, finalizó diciendo "Esto es en el contexto de una 'guerra justa" (Pullella, 2022: s/p).

Discusión y Conclusiones

Debido a la creencia de que el Vaticano podía contribuir en la búsqueda de la instauración de negociaciones para lograr una paz concertada, el Papa emitió formulaciones poco claras que generaron confusión y crítica a su persona.

Tanto el tren gubernamental, sobre todo el secretario de Estado y el secretario para las relaciones de la Santa Sede, como el propio Papa han tenido que clarificar o enmendar algunas formulaciones equívocas del Papa.

No puede concluirse que el Papa haya tenido una posición prorrusa en lo que atañe a la invasión rusa a Ucrania. Si bien en algunas ocasiones sus planteamientos han sido equívocos o poco claros, una lectura mucho más integral, así como como clarificaciones posteriores son concluyentes para rechazar la tesis de la inclinación prorrusa del Papa.

La posición del Papa en materia de la guerra ruso-ucraniana es rigurosamente doctrinaria; sigue los dictados de la Iglesia que se encuentran plasmados en la Constitución pastoral *Gaudium et Spes* sobre la iglesia en el mundo actual del Concilio Vaticano II, en el catecismo y en variados escritos papales: 1. Lo primero que se ha de considerar es a la persona humana, 2. La búsqueda de la paz a partir, fundamentalmente, de la segunda mitad del siglo XX, envuelve toda conceptuación de la

Iglesia acerca de su cometido político y social. 3. Uno de los preceptos más importantes de la Iglesia Católica es el no matarás y la guerra se coloca en las antípodas del mismo de allí su rechazo como norma de principio. 4. La iglesia acepta la legítima defensa como recurso humano y de la sociedad, siempre bajo ciertas condiciones. 5. Tal como se ha venido implantando desde mediados del siglo pasado, la iglesia ha ido abandonando la tesis de la guerra justa, se deduce entonces: toda guerra es, por definición, injusta.

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ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.41 Nº 76
Enero
Marzo
2023

Cuestiones Políticas Vol. 41, Nº 76 (2023), 901-917
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Prevention and overcoming of counteraction to the investigation of crimes committed against participants in criminal proceedings

DOI: https://doi.org/10.46398/cuestpol.4176.53

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Abstract

The study is devoted to the scientific analysis of the prevention and overcoming of resistance to the investigation of crimes committed against participants in the criminal process. It was concluded that the systematic implementation of scientific recommendations, which are based on the provisions of criminology, criminal process and psychology, will help to increase the effectiveness of activities in the specified area. Arguments are presented in favor of granting operational units the right to immediately initiate and conduct visual surveillance of persons who were discovered in the process of secret investigative actions (search), with the aim of obtaining more information about their personal data and evidence of their involvement in committing or preparing a crime against participants in criminal proceedings. The focus is on the increased effectiveness of victimological prevention and individual prevention of crimes of the studied category. The appropriateness of the use of Ukraine, taking into account the national specifics of the world's best practices to overcome countermeasures and prevent crimes against

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Recibido el 09/11/22 Aceptado el 24/01/23

participants in criminal proceedings, in particular, the system of early prevention and security measures, is justified.

Keywords: participants in criminal proceedings; criminological research; prevention countermeasures; victimization; security measures.

Prevención y superación de contramedidas a la investigación de delitos cometidos contra participantes en procesos penales

Resumen

El estudio está dedicado al análisis científico de la prevención y superación de la resistencia a la investigación de los delitos cometidos contra los participantes en el proceso penal. Se concluyó que la aplicación sistemática de recomendaciones científicas, que se basan en las disposiciones de la criminología, el proceso penal y la psicología, ayudarán a aumentar la eficacia de las actividades en el área especificada. Se presentan argumentos a favor de otorgar a las unidades operativas el derecho a iniciar y realizar inmediatamente la vigilancia visual de las personas que fueron descubiertas en el proceso de acciones secretas de investigación (búsqueda), con el objetivo de obtener más información sobre sus datos personales y pruebas de su participación en cometer o preparar un delito contra los participantes en un proceso penal. La atención se centra en la mayor eficacia de la prevención victimológica y la prevención individual de los delitos de la categoría estudiada. La conveniencia del uso de Ucrania, teniendo en cuenta las especificidades nacionales de las mejores prácticas del mundo para superar las contramedidas y prevenir los delitos contra los participantes en los procesos penales, en particular, el sistema de prevención temprana y medidas de seguridad, está justificada.

Palabras clave: participantes en el proceso penal; investigación criminológica; contramedidas de prevención; victimización; medidas de seguridad.

Introduction

Participants in criminal proceedings are often physically and psychologically influenced in order to change their testimony or refuse to testify. Also, as practice shows, post-criminal action can also be carried

out with the aim of stopping assistance with justice, out of revenge, etc. Therefore, the intentions and behavior of the participants in the criminal process, created for the purpose of exposing a person in the commission of a criminal offense, are the cause of illegal influence on them.

At the same time, the accomplices of the crime themselves, who have the procedural status of suspects and accused persons, may also find themselves in the role of persons who are potentially at risk of post-criminal influence in case of their active behavior, which is contrary to the interests of other accomplices of the crime.

Cases are not excluded when authorized subjects of criminal proceedings - investigators, prosecutors, the court, as well as those involved in it – defense lawyers, legal representatives, witnesses – become the objects of criminal encroachment. It is traditionally believed that threats aimed at these objects, namely: life, health, property, exert the most effective psychological influence on a person, as a result of which he may refuse to assist justice.

The objects of threat can also be the reputation of a person, the possibility of career growth, life, health, property of his close relatives, relatives and close people. One of the means of effective counteraction to criminal activity, among others, is the timely response of law enforcement agencies to illegal actions against participants in criminal proceedings (Brusnitsyn, 2002: 40), as well as the prevention of such crimes.

The social danger of crimes against participants in the criminal process lies, in particular, in the fact that crimes of this category significantly undermine the authority of bodies that ensure not only law enforcement and the judiciary, but also the state in general, generating public distrust in the ability of state institutions to effectively resist crime. As a result, a negative assessment of the activities of law enforcement agencies and their condemnation is born in people's legal consciousness.

This leads to the development of a system of effective measures to prevent and overcome opposition to the investigation of crimes committed against participants in criminal proceedings, possibly as a result of the analysis and formulation of the main determinants of such criminal offenses. In our opinion, the concept of preventing and countering the investigation of crimes against participants in criminal proceedings, based on scientifically based theoretical provisions and conclusions, should determine the organizational and legal mechanisms for their detection and termination, offer a set of practical recommendations for the effective prevention of such illegal acts.

The main participants in the activity of prevention and overcoming of opposition to the investigation of crimes committed against participants in criminal proceedings are the authorized subjects of the criminal process,

state and municipal bodies, public associations and organizations, as well as citizens.

1. Methodology of the study

The methodological toolkit of research in the chosen direction contains a number of general scientific and special legal methods, in particular: dialectical, formal-legal, system-structural, methods of analogy, analysis, synthesis, classification, statistical, sociological, comparative-legal. The scientific interpretation of the categories «antidote» and «prevention» was carried out taking into account the basics of dialectics. The application of the systemic structural method made it possible to investigate the peculiarities of preventing and overcoming opposition to the investigation of crimes committed against participants in criminal proceedings.

The method of classification in combination with the use of the main cognitive philosophical categories: general and separate, structure and elements created the prerequisites for the formation of the author's approach to the development of levels and methods of prevention and counteraction of the specified crimes. The use of the formal legal method became the basis for the formation of practical recommendations aimed at increasing the effectiveness of the investigation of crimes and preventing negative effects on the participants of the criminal process.

The application of methods of structural-functional and system analysis made it possible to describe and explain the theoretical model of the system of combating crime against participants in criminal proceedings with defined external and internal, i.e. hierarchical and coordination, connections, to highlight and determine the main directions of countermeasures. The detection of the level of effectiveness of the investigation of crimes of this category, the preventive activity of the authorized entities became possible thanks to the application of statistical and sociological methods, as well as empirical data.

The search for ways to improve the prevention and countermeasures against the investigation of crimes committed against participants in criminal proceedings with the use of foreign experience was carried out using the comparative legal method, methods of analogy, analysis and synthesis.

2. Analysis of recent research

The issue of preventing and overcoming opposition to the investigation of crimes committed against participants in criminal proceedings has been

repeatedly considered by Ukrainian and foreign scientists. However, the achievements of scientists did not cover the solution of modern problems of prevention and overcoming opposition to the investigation of such crimes, because in recent years Ukraine has undergone many transformations, which indirectly affected the effectiveness of prevention and investigation of crimes committed against participants in criminal proceedings.

In particular, law enforcement bodies were reformed, their system was restructured, new bodies and subdivisions were created, new normativelegal acts were adopted, changes were made to existing ones, etc. The above testifies to the relevance of the chosen topic, the necessity and timeliness of research on issues of prevention and overcoming opposition to the investigation of crimes committed against participants in criminal proceedings.

3. Results and discussion

3.1. Counteraction to the investigation of crimes committed against participants in criminal proceedings and ways to overcome it

Modern criminal activity is characterized by active opposition both in the process of pre-trial investigation and in the administration of justice in general, it is characterized by scale, systematicity and professionalism, it is a system of techniques, methods and means of preventing the achievement of the tasks of criminal justice and, in the end, the fight against crime (Aleksandrenko, 2004: 14-15).

Resistance to the investigation in the doctrine is considered as a peculiar type of criminal activity aimed at preventing the establishment of the circumstances of the crime and the guilt of the persons who committed it. The choice of countermeasures will depend on the cause-and-effect, spatio-temporal connections between the method of committing and concealing the crime (Shehavtsov, 2003: 16).

In a generalized form, opposition to the investigation of crimes against participants in criminal proceedings can be characterized as a set of intentional illegal and other actions or inaction of the subjects of the crime, or other persons interested in it, aimed at preventing the establishment of the circumstances of a criminal offense by the subject of the investigation in his detection activities, disclosure and investigation of a crime event.

According to the level of complexity, countermeasures can be divided into simple and complex, which depends on the set of techniques used. Typical methods of combating single-act crimes include several methods. However,

organized criminal groups are characterized by complex countermeasures, which may contain up to 10 techniques, both one-time and long-term.

Since the essence of countermeasures is expressed in obstructing the investigation (for example, in the influence of criminals and other persons on witnesses and victims with the aim of the latter committing actions «beneficial» to criminals, etc.), this phenomenon can be present at all stages of pre-trial investigation and court proceedings. However, opposition to the investigation is not always sufficiently manifested.

The presence of pre-trial investigation bodies in the conditions of opposition to the investigation and tactical risk determines the need to make balanced, timely decisions, which must be made from the standpoint of evaluating the validity of the choice, as well as taking into account the possible risks and consequences of the decision. At the same time, the investigative body must skillfully and timely apply both tactical techniques and their combination, quickly and adequately respond to changes in the investigative situation.

This, in our opinion, will reduce the number of hasty, unfounded decisions, and, as a result, will reduce the occurrence of negative consequences, in particular, such as manifestations of opposition to the investigation.

Taking into account the typical characteristics of victims of criminal offenses, it is appropriate to note that these persons are the most vulnerable objects to their influence, in the formation and implementation of methods of countermeasures against the detection and investigation of crimes of the specified category.

In our opinion, when detecting countermeasures, it is necessary to strive to determine the main signs that characterize it, separating it from secondary ones. The difficulty of identifying the main signs of resistance is that it is usually carried out hidden from the outside observer. The subjects of opposition deliberately mask their activity, preventing its reflection in objective reality in any way.

Since signs of countermeasures can appear with varying degrees of certainty in different situations and under different conditions, it is necessary to determine favorable moments for detecting such signs. The investigator's knowledge of the typical methods of the considered types of resistance by its specific subjects will, first of all, have cognitive value and ultimately enrich the arsenal of possibilities for their neutralization.

Typical components of various forms of opposition to the investigation of criminal offenses against participants in criminal proceedings can be: various forms of mental and physical violence; bribe; blackmail; destruction of material evidence and other sources of evidentiary information; concealment of evidentiary information.

From a scientific point of view, it is worth paying attention to the typical behavior of suspects during investigative (search) actions with them. According to the results of the study of criminal proceedings, it was found that during the interrogation of suspects or other persons who try to provide false information, the following are typical: putting forward and defending a false alibi; giving false or partially true statements during interrogations; slandering other persons to confuse or delay the investigation; self-talk by a person who is not guilty or partially guilty, but forced to take all the blame due to bribery, threats or blackmail; psychological influence and attempts at covert intimidation and threats against another interrogate during the simultaneous interrogation of two or more already interrogated persons; simulation of diseases, mental disorders in order to avoid punishment; attempts by interested persons to steal or destroy physical evidence, materials of criminal proceedings.

Depending on certain situational circumstances, at certain stages of the pre-trial investigation, other forms of opposition to the investigation may be applied by interested parties. Actions by relatives or close friends of the suspect aimed at bribing or blackmailing a participant in criminal proceedings, an employee of a law enforcement agency, various threats directly to him or family members can be typical.

Analyzing the typical methods of counteracting the investigation of crimes against participants in criminal proceedings, it is appropriate to note that at the current stage of development, forensic tactics are able to effectively resist forms of countermeasures, which is an objective component of its overcoming. Its subjective component should be the professional awareness of the investigator, perfect compliance with the provisions of the law, ethical and psychological principles, prevention of corruption and abuse or other violations in official activities.

It is quite correct to think that the maximum analysis and specification of methods of its implementation is most important for the development of means of tactical overcoming of opposition to the investigation (Belkin and Averyanova, 1997: 130). And therefore, within the limits of a complex, unfavorable conflict investigation situation, it is advisable for the investigator to apply an effective functional method of criminology - diagnostic, to analyze the properties, condition, features, weaknesses and contradictions of opposing persons, and in the future to use optimal methods of overcoming opposition.

First of all, it is advisable to apply legal means of persuasion and warning about criminal liability for illegal acts against justice, provided for in Articles 384, 385, 386, 387 of the Criminal Code of Ukraine (in the future – CPC of Ukraine).

In addition to clarifying the legal consequences regarding the behavior of specific individuals, the following tactical methods of influencing them during interrogations can be no less effective: establishing effective psychological contact; clarification of the reasons and motives of false statements; use of positive qualities, emotional tension of the person; announcement of incriminating statements, expert opinions; use of the factor of suddenness (Ignatiev, 2004); repeated interrogation with a limited range of questions, their detailing and clarifications, establishment of contradictions and their deliberate nature (Aleksandrenko, 2004: 8).

If the interrogated person presents an alibi, it will be effective to conduct an interrogation together. Another investigator or operative will have the opportunity, under favorable conditions, to quickly leave for the purpose of questioning the persons referred to by the suspect, inspecting the area, objects and documents that may contain signs of references in accordance with the alibi or perform other actions possible under specific circumstances.

Also, within the scope of activities related to countering the investigation of crimes against participants in criminal proceedings, operatives in order to fulfill the tasks of criminal proceedings must be able, on legal grounds, by their own decision, to document such actions and take measures to establish them by conducting surveillance on them in publicly accessible places using photography, video recording and special technical means for surveillance.

To this end, the CPC of Ukraine should define the right of operational units to immediately start and conduct visual surveillance of unidentified (unknown) persons who were discovered in the process of secret investigative (search) actions, with the aim of further obtaining their personal data and (or) evidence of their involvement in committing or preparing a crime.

3.2. Prevention of crimes against participants in criminal proceedings

The criminological analysis of crime problems regarding the participants in criminal proceedings compared to the analysis of general criminal crime is somewhat more complicated due to the multifactorial structure of the determination of these crimes, and the assessment of the real level of such crimes is complicated by the high level of its latency.

According to some researchers, crimes against participants in criminal proceedings are characterized by: a relatively defined circle of persons capable of being the subjects of crimes; the conditioning of crimes by situational factors manifested in connection with involvement in criminal procedural activities; specific motivation of criminal behavior; purposeful selection of victims of assault; high level of latency; negative social

consequences that go beyond harming individual individuals and beyond specific criminal proceedings; the possibility of achieving high efficiency in social prevention.

In general, prevention should be understood as an activity that prevents the commission of criminal offenses, prevents their commission. To prevent means: «to prevent something from happening in advance, to turn it away» (New Explanatory Dictionary of the Ukrainian Language, 2001: 89). Prevention is the activity of the state (in the form of its bodies) and society, aimed at keeping crime at a minimum level by neutralizing its causes and conditions, as well as at preventing and stopping specific criminal offenses (Ivanov and Dzhuzha, 2006).

Crime prevention is a set of various types of activities and measures in the state, aimed at improving social relations with the aim of eliminating negative phenomena and processes that generate crime or contribute to it, as well as preventing the commission of crimes at various stages of criminal behavior.

General social crime prevention is the effective and legitimate functioning of all institutions of society and the state, which is not specifically aimed at combating crime, but indirectly affects the factors of its existence and reproduction, as a result of which the number of criminal offenses is minimized (Kutz, 2015; Lavrov, 2003: 103; Huzela *et al.*, 2022: 2947).

At first glance, it may seem that at this level of opposition, its subject and object coincide, but a more detailed analysis of the situation indicates only a terminological coincidence of the mentioned phenomena. In reality, not all of society, but only its legal institutions and socionomic individuals (law-abiding citizens) participates in combating crime at the specified level as a subject.

In the aspect of general social resistance to crimes committed against participants in criminal proceedings, let's pay attention to foreign experience. Until now, the international community has developed documents that, as a whole, determine the standards for national legislation in order to solve the most important issues of criminal proceedings. Separate acts are devoted to issues of legal security of the subjects of the criminal process and in this sense deserve close attention (Martynenko, 2005: 222).

Thus, the Universal Declaration of Human Rights of 1948, as well as the International Covenant on Civil and Political Rights oblige the member states of the United Nations to provide effective legal protection from the court to a person whose rights and freedoms have been violated, in particular, by means of a search new opportunities and means of judicial protection, taking into account national specifics.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by UN General Assembly Resolution 40/34 of 29 November 1985, states that victims of crime, and often their families, witnesses and others who assist them, are unfairly treated damages, personal injury or damage to their property.

Its provisions establish the fair treatment of victims of crimes, the development of justice mechanisms that would be more responsive to the needs and interests of victims, ensuring their safety, as well as the safety of families and witnesses of the prosecution, protection from intimidation and revenge, respect for rights and freedoms, minimizing inconvenience , related to participation in the process.

Documents adopted at the World Conference on Organized Transnational Crime in 1999 recognized the need for strategic measures to protect law enforcement officers, witnesses and victims. At the same time, they especially emphasized that witness protection measures play a main role in the fight against crime and should become an integral part of state policies in this area.

Recommendations Rec (2005) of the Committee of Ministers of the Council of Europe to member states on the protection of witnesses and persons who cooperate with the justice system propose to establish severe sanctions for the commission of crimes aimed at intimidation of witnesses.

At the same time, the term «witness» refers not only to a participant in criminal proceedings who is questioned as a witness, but also to any person who has information and whose testimony is taken into account by a judicial body during the prosecution. The term «intimidation» in the Recommendations is interpreted as any direct, indirect or potential threat to a witness, which may create an obstacle for him to fulfill his civil duty related to giving evidence (Recommendation REC, 2005: 9).

In turn, the legislators of the United States of America and the developed democratic countries of Europe realized the need to establish criminal law and other measures for the protection of witnesses and victims much earlier than the domestic legislator and, starting from the middle of the last century, purposefully improved the relevant legislative framework. Many such legislative provisions can be fully adapted to Ukrainian conditions.

So, general social resistance to crimes against participants in criminal proceedings is manifested through a system of measures of a political, ideological, economic, organizational nature, aimed at the development of the economy, raising the standard of living of citizens, which thereby solve the task of preventing crimes of this category.

Special criminological crime prevention is closely related to general social prevention of criminal offenses against participants in criminal

proceedings, however, unlike general social, it has a direct goal and is aimed at identifying and eliminating (blocking, neutralizing) determinants of crime, which is its characteristic feature and the main feature. In contrast to general social special criminological prevention of crimes, it is a system of criminological and organizational and legal measures directly aimed at combating crime, which are mainly carried out by specially authorized bodies.

A characteristic feature of such a warning is the creation and implementation of multifaceted programs to prevent its manifestations at the national, regional, and local levels and the implementation of other measures specifically aimed at this. Along with this, special criminological prevention includes both the prevention of intended and those that are being prepared, as well as the termination of initiated criminal offenses. In addition, as noted by K. Ruban, the main difference between special criminological prevention measures and general social ones is that their action has a tactical rather than a strategic direction (Ruban, 2012).

Thus, the purpose of special criminological measures to prevent crimes against participants in criminal proceedings is to solve limited tasks, that is, to overcome the specific reasons and conditions for their commission.

Each of the participants in criminal proceedings is in one way or another subject to (may be subject to) criminal influences. On the one hand, this is due to their personal qualities (gender, age, physical development, psychological characteristics, etc.).

On the other hand, the involvement of these persons in the sphere of the criminal process significantly increases the degree of their victimhood, since the possession of specific rights and obligations separates the participants in the criminal proceedings from the circle of ordinary citizens.

An integral component of special criminological measures to prevent crimes against participants in criminal proceedings is general social prevention of victimization of subjects involved in criminal proceedings, which, in our opinion, includes two aspects: 1) analysis and scientific justification of the reasons for victimization of participants criminal proceedings, as well as conditions that contribute to their commission; 2) development on the basis of the conducted analysis of methods and means aimed at eliminating and ensuring the neutralization of factors contributing to victim behavior.

Victimological prevention of criminal offenses against participants in criminal proceedings at the special criminological level is ensured by actions within the following directions: identification of the causes and conditions that act as grounds for committing such criminal offenses, if they are related to the person and behavior of the victims, and elimination of these causes and conditions or their neutralization; monitoring of

persons who, due to their personal characteristics or behavior, may become victims of such crimes, and carrying out work with them aimed at activating their protective reactions, helping to ensure their personal and property safety; prevention and termination of specific criminal offenses with the involvement of the potential victim's defense capabilities, and the use of the so-called «from the victim» tactics in the organization of preventive work.

In particular, in Ukraine there is a special normative legal act that regulates the mentioned issue, the Law of Ukraine «On ensuring the safety of persons participating in criminal proceedings», which the legislator includes as security measures: personal protection; protection of housing and property through fire and security alarm equipment; change of apartment phone numbers and state license plates of vehicles; issuance of special means of individual protection and notification of danger; use of technical means of monitoring and listening to telephone and other conversations.

Visual observation in case of danger to life and health of persons taken under protection; visual surveillance in the event of a threat of violence or other illegal acts against persons taken under protection; replacement of documents and change of appearance; change of place of work or study; relocation to another place of residence; placement in a pre-school educational institution or an institution of the social protection bodies of the population; ensuring the confidentiality of personal information; closed court proceedings (On Ensuring the Safety of Persons Participating in Criminal Proceedings: Law Of Ukraine, 1993).

In addition, in Part 2 of Art. 7 of the Law indicates the possibility of applying other security measures, taking into account the nature and degree of danger to life, health, housing and property of persons taken under protection, that is, the list of such measures is open.

In this regard, D. Rivman and V. Ustinov emphasized the dependence of crime prevention on a number of circumstances, for example, the formal possibility of isolating the actors of a conflict situation, the availability of state bodies: «Forces and means for the timely termination of criminal developments» (Rivman and Ustinov, 1998: 185). One of the effective options may be the development of legal grounds for police action to distance (isolation) the victim and the guilty person, control and response by the police on the further behavior of the guilty person.

This experience of preventing secondary victimization has been implemented in a number of foreign countries. For example, in the Federal Republic of Germany, in the field of combating violence in the domestic sphere, the sources of police law of various federal states provide for the possibility of applying such measures of police influence as: removal from the apartment (house) of the person from whom the danger comes; banning

access to the apartment (house) and banning contact with such a person (Zemlyakov and Zemlyakova, 2011).

Taking into account the above, we consider it possible to pay attention to the following areas of prevention of secondary victimization of victims as participants in criminal proceedings: studying the determinants of committing crimes related to secondary victimization; elucidation of the mechanism of victimization in connection with unqualified actions of investigative bodies; identification of persons who, under certain conditions, may become victims of crimes; implementation of specific and well-grounded actions of investigative bodies to ensure the safety of such persons and minimize the risk of becoming victims of crimes; formation of professional and ethical standards of behavior of investigative bodies and responsibility for the results of their powers.

In contrast to special criminology, scientists consider individual crime prevention as a type of crime prevention against a specific person. Considering the main characteristics of the person who committed (may commit) a crime against the participants in the criminal proceedings, the corrective influence should be aimed at: the behavior and lifestyle of the person; personal characteristics of a person, which have criminological significance, as they characterize the deformation of his behavior; criminologically significant psychophysiological characteristics of a person (to the extent of his propensity for correction, change, treatment); the environment as a set of conditions for the unfavorable formation of the personality and its life activities in everyday life (primarily in the family), during study, work and leisure, in microsocial groups, including deviant ones; long-term adverse living conditions that are criminogenic in nature.

Individual warning is provided by such basic methods as persuasion and enforcement. The method of persuasion includes: interpretation, which is expressed in the explanation to the person to whom the preventive measure is applied about the content of the violations and mistakes committed by him; condemnation of illegal behavior; exerting an influence on the consciousness of the person to be prevented in order to form in him the desire to avoid actions that may provoke the commission of a criminal offense.

In turn, the method of law enforcement makes it possible to apply measures of disciplinary or public influence to the prevented person, and in some cases – to initiate the issue of bringing such a person to other types of responsibility provided by law.

The essence of the prevention of criminal offenses against participants in criminal proceedings at the individual level is to combat criminal offenses by the efforts of criminal justice bodies exclusively within the framework of procedural proceedings based on the fact of committing a

specific offense. At the same time, the criminal justice authorities can apply preventive measures against potential criminal manifestations and before the commission of a criminal offense, for example, conducting preventive conversations with persons prone to offenses, etc. By implementing it, these bodies realize their general «law enforcement» potential.

At the individual level of criminal offenses in relation to participants in criminal proceedings, victimological prevention should also be organized in the following areas: timely identification of persons who are deeply depressed, irritable, dissatisfied with themselves and the environment, strong emotional outbursts, desire for self-discovery; search and neutralization of factors creating conflict situations. These situations are distinguished by the degree of their development and the time of realization of negative moments in them (potential situations, conditionally real situations, real situations), by scale (macro- and micro-situations).

In conclusion, we note that each of the specified levels of crime prevention against participants in criminal proceedings is characterized by the presence of a relatively autonomous, but identical mechanism for its implementation, and the structure of prevention at all three levels constitutes the content of combating crime in general.

Conclusions

Systematic application of the scientific recommendations proposed in the article, which are based on the provisions of criminology, criminology, criminal process and psychology, will contribute to effective prevention and overcoming of opposition to the investigation of crimes committed against participants in criminal proceedings. Of great importance in this process will be the conduct by the subject of a pre-trial investigation of preventive measures of an individual and general nature, as well as methods tested in criminological and forensic science.

The theoretical model of combating crimes against participants in criminal proceedings is a model of a system of specific measures of the most significant measures built on the basis of a set of generalized scientific knowledge with the aim of identifying, stopping, and preventing illegal influence on participants in criminal proceedings, recommended for use in the practical activity of primarily authorized subjects criminal process (investigator, investigator, prosecutor, judge).

The Criminal Procedure Law should define the right of operative units to immediately start and conduct visual surveillance of unidentified (unknown) persons who were discovered in the process of secret investigative (search) actions, with the aim of further obtaining their personal data and (or)

evidence of their involvement in the crime or preparation of a crime against participants in criminal proceedings.

The complex of proposals aimed at improving the system of prevention of crimes against participants in criminal proceedings contains three levels: general social, special and individual. The most significant and effective in the prevention of crimes of the researched category is an individual warning, which can have a «point» focus on potential criminals, as well as on objective circumstances favorable to crimes. An important area of countermeasures against participants in criminal proceedings is victimological prevention.

Studying the modern practice of combating crimes against participants in criminal proceedings shows that it is mainly reactive in nature and aimed at stopping the threats that have already been manifested against witnesses and victims. The system of early prevention of such crimes in Ukraine is insufficiently effective. In view of this, it is worth taking advantage of the positive experience of neighboring countries in Europe and the USA, which can be used in Ukraine, taking into account its national specifics.

Prevention of crimes against participants in criminal proceedings can be effective only in the case of comprehensive application of general social, special and individual measures, carried out by specialized and non-specialized state and non-state entities, provided that their activities are coordinated, focused primarily on ensuring the safety of citizens involved in the investigation procedure, early detection of threats to their safety and timely neutralization of relevant threats.

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DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 Nº 76

Esta revista fue editada en formato digital y publicada en marzo de 2023, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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Cuestiones Políticas Vol. 41, Nº 76 (2023), 918-921
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Cuestiones Políticas Vol. 41, Nº 76 (2023), 922-923
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

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CUESTIONES POLÍTICAS

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