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FOREWORD

On behalf of the Editorial Board, I am delighted to announce the publication of the inaugural issue of the Journal of International Legal Communication (JILC). The journal is a natural outgrowth of interdisciplinary research on law, language and communication in many areas: effectiveness of law, obtaining information about law, translation of legal acts, harmonization and globalization of law, communication between lawyers-practitioners undertaken in various contexts, their contacts with lay people, the impact of new information technologies and media on the performance of legal professions, as well as innovative pedagogy.

The launching of JILC provides the international community with a new source of original information generated by research in the interdisciplinary field of legal communication. Being an interdisciplinary area, legal communication implies the need for joint efforts of representatives of legal, social and human sciences, especially in an international, European, comparative and empirical context. JILC is an international scientific peer-reviewed publication that presents the methodological and empirical research of scientists from different countries and reflects a variety of scientific schools and topics concerning an interdisciplinary approach to legal communication.

JILC is an academic journal which aims at the dissemination of studies from a range of areas contributing to legal communication, including law, linguistics, foreign languages and literature, education, sociology, psychology, political studies, business management, administrative services and economics. In addition, it intends to include case studies, as well as new concepts and practices reflecting research on legal communication. JILC seeks to blend both theory and practice and thus contributes to the advancement of the field.
The first issue of JILC contains twenty two interesting scientific papers dealing with seven topical themes.

The first is the conceptualization of legal institutions. Iryna M. Sopilko gives definitions of information security and related terms, such as cybersecurity, national security, and others, indicates the goals, objects, subjects of the concepts under consideration. She also provides characteristics of external and internal threats to the information security. Oleksii Yu. Piddubnyi and Yevhenii V. Kokoshko examine the program of the European Union on the policy of decarbonization of the European Green Deal. They study legal regulation of wind energy on the example of the Republic of Ukraine, the Republic of Poland, the United States of America, the Republic of Colombia, and the Federal Republic of Brazil. Ganna I. Bagirova analyses self-employment and its impact on the development of the state as one of the topical issues in the debate on employment policy. Olena A. Uliutina, Olena V. Artemenko and Yuliia V. Vyshnevskaya examine the problem of domestic violence against women in marriage and family relations, and also identify ways for the legal regulation of this issue. They give valuable conclusions on how to minimize the spread of such a negative phenomenon among the population. P. Sobański analyzes the concept of “landisation”, understood as the process of transformation of Poland into a federal state.

The second is the rule of law. Gennadii O. Dubov and Bohdan O. Bondarenko study the grounds and procedure for termination of a judge’s powers of the Constitutional Court of Ukraine. They describe the key problems in the practice and suggest recommendations to solve them. Inna O. Pozigun refers to the rule of law implementation into the administrative process in Ukraine. She analyses statistics of the European Court of Human Rights, the study of the rule of law index in the world, and the decisions of national courts as to the rule of law principle implementation. On the examples of individual decisions, Yevheniia S. Kaliuzhna elucidates the European Court of Human Rights practice as a source of law for member states to the Convention for the Protection of Human Rights and Fundamental Freedoms. Serhii M. Perepolkin, Danylo S. Perepolkin and Milena V. Averianova examine the approaches to the division of human rights into three generations and the adoption of the category of «fourth generation of human rights» into the scientific turnover. They claim that nowadays a radically new generation of human rights is emerging.

The third is the public administration. Oleksandr O. Gerasymenko provides a thorough analysis of liability for administrative offence that is not possible without clear understanding of its preconditions. He sees the problem of preconditions for administrative responsibility to be directly related to administrative delictization of offenses, effectiveness of the fight against delict, prominent state policy in the field of law enforcement and law order. Olena I. Lisova, Maxim O. Shevyakov and Olena O. Orlova highlight the need to change the spatial organization of local governments. They claim that not clear enough mechanisms have been implemented to form effective local self-government and territorial organization of
government to ensure the provision of high quality and affordable public services. Olena Makeieva, Liudmyla Shapenko and Kateryna Vodolaskova study E-government as a way, a form, the concept, system and mechanism of cooperation between the state (public administration) and public sectors.

The fourth is the structuring. Serhii M. Perepolkin and Polina V. Trostianska offer a theoretical justification for understanding the purpose (goals), tasks and functions of the World Customs Organization. They describe its objectives and functions taking into account the results of the generalization of doctrinal approaches. Kateryna Yu. Vodolaskova refers to the signing of the European Common Aviation Area (CAA) Agreement between Ukraine and the European Union. She gives a comprehensive study of the legal basis and background of ECAA, analyzing the neighborhood policies. Oleksii Y. Piddubnyi and Viktoriia P. Oleksiuk analyze the peculiarities of the creation and functioning of a united territorial community in Ukraine and foreign countries.

The fifth is the management. Larysa V. Chaika and Viktoriia V. Chaika discuss the problems of conflicts to be initiated and settled in the field of tax legal relations. They pay special attention to the tax dispute characterization as one of the tax conflict development stages. Anna V. Shevchenko and Olena S. Borysenko analyse marketing strategy as one of the main long-term plans of the enterprise marketing activity, aimed at choosing of target consumer segments. They define the main factors influencing the organisation of marketing activities of enterprises and factors influencing the behaviour of their end users.

The sixth is the communication. Alla H. Pyshna devotes her paper to the research of the introduction of the practice of settling administrative disputes through the mediation procedure in Ukraine. She presents possibilities for legalization of the status of a mediator. Oksana M. Lahoda describes the process of communication between the designer, the product manufacturer, and the consumer. She gives the information on how process is organized, which ensures the transformation of the designer’s creative ideas into conceptual texts and then into real objects that can become productive means of socio-cultural communication.

The seventh is the education. Linda Juraković, Marina Vekić and Monika Marković present comprehensive analysis of learning and programming skills of student in High School, course of computer technician, and give proposals for their improvement. Veronika B. Butorina deals with the structure and conditions of national innovation system of Ukraine, trends and conditions of generation of knowledge. Anastasia I. Berendieieva explores the current situation of police training in England, focusing on the Initial Police Learning and Development Program (IPLDP). She analyses opinions of researchers on the advantages of university education over training in police academies.

Volume 1 closes the JILC Young Writer’s Corner with two articles. Eliza Kmiecicka points to mistakes in specialist translations and their possible consequences in the legal
communication. She suggests what should be perceived as essential regarding legal translator’s knowledge and competence. Kathrin Sotrel, Izabela Grzywacz, Aleksandra Hasiak, Aleksandra Pec analyse the potential influence of language education on legal communication. They discuss various features of language used in legal discourse and attempt to offer solutions which linguists may introduce to improve the transparency of legal communication.

The Editorial Board of JILC welcomes you most warmly to this inaugural issue, and is looking forward to many years of stimulating and productive debate and collaboration with you, our contributors and subscribers.

Joanna Osiejewicz
Editor-in-Chief
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INFORMATION SECURITY AS AN OBJECT OF REGULATION IN THE LAW OF UKRAINE

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ABSTRACT. The study gives definitions of information security and related terms, such as cybersecurity, national security, and others, indicates the goals, objects, subjects of the concepts under consideration. The author also considers the features of the foundation and development of the information society in Ukraine, the components of its state information policy for ensuring information security, and identifies the key operations of activity of state bodies in the information sphere. The approaches of scientists who studied certain aspects of national and information security were analyzed, based on their work valuable conclusions were drawn and the conceptual basis of the article was formed. Independently, the definition and characteristics of external and internal threats to the information security of the country are given, methods for solving the problems arising in this connection are introduced, ways of ensuring the information security of the state are indicated.

Information security in this study is considered as the central element of the national security of Ukraine, as well as a problematic issue in the field of information protection and ensuring the high-quality functioning of the information space. The author made an in-depth analysis of the existing regulatory and legal instruments for ensuring information security, pointed out their shortcomings, and gave recommendations for their further advancement. Also, recommendations are given to improve the current situation with the regulation of information security in the country, the directions of the state information policy are suggested and ways to ensure the continuity of the functioning of the information security system of Ukraine are indicated.

Keywords: information security, InfoSec, information society, information, cybersecurity, cyberspace.

INTRODUCTION

Today, Ukrainians can observe the rapid growth of digitalization: we own property in the form of digital assets, exchange digital data, order, and provide digital services. Back in 2007, the Law of Ukraine On the Basic Principles for the Development of an Information-Oriented
Society in Ukraine for 2007–2015 as one of the main priorities of our state of Ukraine indicated the desire to make our society truly informational, open to everyone, oriented for human interests. With this act, our authorities wanted to create a society in which information and knowledge would be available to everyone, and everyone could create and use, exchange such intangible assets, which would contribute to the social development of the Ukrainian people and improve the quality of their life (“On the Basic Principles for the Development of an Information-Oriented Society in Ukraine for 2007–2015: Law of Ukraine of January 9, 2007 № 537-V,” 2007).

Indeed, today it is information that is not just a highly valuable resource, but also a way of influencing individuals, groups, and even governments of countries. Therefore, the virtual space is not considered completely safe; terrorist and other criminally punishable acts are often committed in it.

Taking into account the current state of affairs in the world regarding the protection of the cyber information space, Ukraine strives by all available means to improve the level of information security as the basis for the security of the state as a whole.

It is information security that will protect the information society in particular and the state of Ukraine as a whole. And this is what allows our society to achieve its goals in the field under discussion. That is why this paper will be devoted to the problem of information security, its essence, potential risks, correlation with cybersecurity and probable ways of solving the emerging problems and threats in this field.

For Ukraine, the topic of information security as the basis of state security and its legal regulation is relatively new and still little developed. There are not so many comprehensive studies on this issue, but there are considerations of certain categories and issues of information security. T.S. Perun (2019) analyzed the administrative and legal mechanism for ensuring information security in Ukraine and provided his scientific approach to determining its essence. According to it, in the context of the development of the information society and aggression in the eastern part of Ukraine, information security is a special state of security of information resources, information technologies, and databases as well as technical means that are required for processing and collecting, storing and communicating information. In this context, such information is used to implement the rights, freedoms, interests of the individual, society, and the state as subjects of information activities in the information space. A. Yu. Nashinets-Naumova (2017) in her monograph highlighted the issues of legal regulation of information security. O. O. Zoletar (2018) considered the theoretical and practical foundations of the functioning of human information security. Ensuring this type of security as a function of a modern state is considered in the monograph by O. O. Tikhomirov (2018). The practical problems of introducing new information security standards in the context of the development of the national cybersecurity system were studied and highlighted by S.L. Gnatyuk (2018).

The features of the formation and development of the information society in Ukraine are disclosed in more detail. D.V. Dubov, M.A. Ozhevan, S.L. Gnatyuk (2010) revealed the modern understanding and concept of the information society, developed recommendations and forecasts for the subsequent implementation of information technologies in Ukraine and the world. L.V. Lopa and V.A. Kozirye (2017) made a detailed analysis of the characteristics
of the information society, discussed its negative and positive aspects, investigated the existing programs for the formation of such a society both in Ukraine and in the world. T.V. Pisarenko, T.K. Kvasha and others (2015) studied the experience of Ukraine in building an information structure to ensure the innovative development of our society and provided proposals for creating a system of information and analytical support for state innovation policy in Ukrainian country. O. A. Zayarny (2018) described in detail the administrative and tort aspects of the legal support for the development of the information sphere of the State.


Therefore, we can safely say that the state information policy is an important element of the country's foreign and domestic policy, covering all spheres of the life of Ukrainian society. It is precisely the provision of a sufficient level of information security in the state that is the main prerequisite for ensuring a solid and reliable basis for the functioning of national security in the country. With this research, the author wants not only to explain the significance and role of information security for modern Ukraine but also to develop recommendations for maintaining it at the proper level, to give a special analysis of the legal resources for regulating this issue. This is especially important in connection with the rapid development of the information sphere, which is accompanied by the emergence of radically new threats to the interests of every Ukrainian citizen, Ukrainian society, the Ukrainian state, and its national security.

OBJECT AND SUBJECT MATTER OF THE STUDY

The object of the study is social relations regulated by administrative, civil, and criminal law, arising in connection with ensuring information security and implementation of the rights of subjects of information activities. The subject matter of the study is information security as the basis of Ukraine's national security.

PURPOSE OF THE STUDY

The purpose of the study is to determine the legal nature of information security as the basis of Ukraine's national security, to identify deficiencies in the approaches of its legal regulation, and to formulate suggestions aimed at improving legislation to protect and maintain information security as the basis of Ukraine's national security at a proper level.

Almost instantaneously we figure out the author's intentions, their agenda, and our relationship with him.
MATERIALS AND METHODS

The methodological basis of the study is represented by the universally recognized scientific objectivity criteria and several general scientific cognition methods that provide a comprehensive analysis of information security as the basis of Ukraine’s national security. The application of the systematic method helped to establish the link between information security and national security and cybersecurity, as well as other related phenomena; and helped to determine the place of information legal relations in the Ukrainian legal system. The author of the study also used such methods as formal-logical (it helped to analyze in detail and deepen the conceptual apparatus); historical (made it possible to periodize the sources of normative regulation of the legal relations in question); method of classification and grouping (to determine the object-subject composition in disputes regarding state information security).

A comparative legal method was also used, which made it possible to clarify the problematic issues of law enforcement in the information security field and to compare the procedure and conditions of implementation of the techniques and means to ensure the maintenance of information security at the proper level. The methods of analysis and synthesis, together with the synergistic method, provided the basis for a comprehensive study of the problematic aspects of the process of acquiring and exercising the rights to obtain and dispose of information resources by a person, society, and the state. The modeling method provided the development of suggestions for improving legislation in the field of regulation of issues of ensuring the necessary level of information security in Ukraine.

The author analyzed in detail the regulatory legal acts of Ukraine as well as relevant international directives and acts on information security, national security and cybersecurity, studied the practice of applying legislative acts, reviewed the judicial investigative practice on this issue.

RESULTS AND DISCUSSION

The widespread development of information technology tools and technological progress has made it possible for us to easily receive, store, process, and transfer information in huge volumes and at a very fast speed, which previously seemed simply impossible. The modern stage of informatization of Ukrainian society and the state as a whole is associated, in particular, with the use of computer and telecommunication systems. Accordingly, today there is a significant increase in the need for the development and application of effective practices and solutions in the information field, especially in the field of information security (also known as InfoSec). For a better understanding of the essence of the issue and the search for solutions for it, we consider it necessary to first define the basic conceptual categories and constructions considered in this research.

As already mentioned, our Ukrainian society aims to become informational. However, it is important to understand what the information society is. There are many ways to define this term, including the following:
• it is a human-centered society, it is open to everyone, its main goal is to contribute to development. In it, each individual can create information and knowledge, have access to them, freely apply and exchange such data. Consequently, it will allow individuals, groups, and even entire peoples to fully realize their potential and progress, improving the quality of their lives (World Summit on the Information Society (Geneva 2003 – Tunisia 2005), 2006);

• it is a society in which everyone, anywhere, at any time, can obtain any information and knowledge both free of charge and for a fee through automated access and communication systems. At the same time, the indicated data are important for the life of people and the solution of certain problems (Zgurovsky, 2006);

• it is a society in which information technology is the basis for economic development, and which is socially transformed to help people and social groups to use ideas and knowledge, as well as which favors people to empower their potential (“MOFA: Okinawa Charter on Global Information Societ,” 2000);

• it is a society that was formed as a result of the new industrial revolution. This happens based on information and telecommunication technologies and based on information as an expression of human knowledge. It is the technological progress that contributes to the fact that the processing, collection, receipt, and exchange of data in any form were not limited due to time, distance, or size (“Europe and the Global Information Society. Recommendations to the European Council,” 2000).

The Ukrainian government, in the previously mentioned Information-Oriented Society Development Law (Verkhovna Rada of Ukraine, 2007), has identified the following main strategically important goals for the development of the information society in the country:

• ensuring computer and information literacy of the Ukrainian people through the development and institution of an appropriate education system;

• creation of information systems of the state, especially in the field of health care, science, and education, and the like;

• the fastest development and implementation of innovative competitive information and computer technologies, first of all, in the public administration system;

• development of the Ukrainian information infrastructure with the possibility of its subsequent integration with the global infrastructure;

• provision of state support to the “electronic” sector of the economy;

• protection of information rights of Ukrainians and minimization of the risk of “information inequality”;

• improvement of legislation on information relations;

• improving the situation of information security through the use of innovative technologies, and so on.

The formation of the information society is ensured with the help of the latest information and telecommunication technologies, which open up completely new opportunities for international information exchange for us. The very same formation of the information society forms the global information space, which is inextricably linked with cyberspace. Let’s study these concepts. According to V.N. Yasenev, the information space (also – the infosphere) is a sphere of human activity, which is directly related to the production of
information, its consumption, and modification, it includes, among other things, information resources, information itself, and its flows (Yasenev, 2017). And cyberspace, according to the Oxford Lexico Dictionary, is a conditional environment in which subjects communicate with the help of computer networks (Oxford University Press (OUP), 2020). Also, according to Denise M. Carter, cyberspace as a measure of social activity and the life of people is a new, globally accepted locale for conducting everyday social activities and the main concept in the study of cyberculture (Carter, 2020).

Having defined the concept and goals of the information society, cyberspace and the like, we will proceed to study directly information security and related national security and cybersecurity. The concept of information security can be viewed from several angles. Thus, according to V. S. Tsimbalyuk and A. V. Babinskaya, the InfoSec of our country is a state of protection of national interests in the information environment, which is determined by a complex of balanced interests of the individual, society, and the state itself (Tsymbalyuk & Babinska, 2014).

A.A. Nishchimenko has an almost identical definition, to which is added an indication of protecting the interests of the above subjects from internal and external threats. Also, to the state of security, scientists put forward a requirement for compliance with the principle of ensuring national security in the information sphere (Nishchimenko, 2016). L.A. Kochubei has a slightly different understanding of information security: this is a special state of protection of vital interests and with them the information security of information subjects, in which any informational influences on them do not cause destructive thoughts or actions, the result of which will be negative deviations in the development of these subjects (Kochubey, 2015).

Information law specialist I. V. Panova defines information security as one of the elements of considering information legal relations within the framework of information legislation from the point of view of protecting the essential interests of information subjects. At the same time, she focuses on countering the threats of the indicated interests and on the mechanisms for eliminating such threats through legal instruments (Panova, 2018).

Accordingly, the author of this study suggests understanding information security as a certain state of security of the information environment of the Ukrainian society, because of which such a society as an information subject (including individuals, groups, the state as a whole) can freely develop informationally and be sure that its information interests and rights will be protected from internal and external threats.

It can be emphasized once again, according to the studied scientific works, that the subjects of information security are directly Ukraine as a state (it carries out its functions in this area through the relevant bodies), each of us as a separately taken citizen, groups and associations, which are prescribed by law with special functions of ensuring information security. Furthermore, the author of this study believes that the object of Infosec should be considered the human psyche, his consciousness, as well as the consciousness of the masses, as well as information systems for various purposes. If we consider the issue of defining an object from a sociological point of view, then an individual, a collective, a society, a state, and the world community will be considered as such.
The purpose of InfoSec is considered to be the security information support of the activities of information subjects. In this regard, the following four levels of formation of the Ukrainian information security regime can be distinguished:

1. legislative (includes regulations such as laws, standards, and the like);
2. administrative (involves measures and means to protect InfoSec, determined by the management of the organization);
3. procedural (assumes security measures associated with specific people),
4. program-technological (assumes specific technical measures) (Mocherny, 2000).

The high-quality creation of a system for ensuring information security in Ukraine has a certain complexity and therefore requires the development of theoretical and methodological foundations and a legal mechanism for the implementation of innovative reforms. As the main regulatory direction, the author of this study chose the administrative-legal mechanism for ensuring information security, since it is it that especially strongly influences the effectiveness of the implementation of administrative and legal methods and tools in the area under consideration. And it is it which, as a result, provides a sufficient level of protection for the interests of a person, society, and the state as a whole. However, criminal law, civil law and not only are also used concerning information security relationships.

The main regulatory documents on the regulation of information security of Ukraine are the Constitution, the Decree of the President of Ukraine On the Decision of the National Security and Defense Council “On the Doctrine of Information Security of Ukraine”, the resolution of the Verkhovna Rada of Ukraine on the main directions of the foreign policy of our country and the following laws:

- “On the National Security of Ukraine” and “On the Concept of the National Informatization Program” – they are devoted to the specifics of ensuring national information security and related matters;
- “On the basic principles of ensuring the cybersecurity of Ukraine” represents the features and objectives of ensuring the protection of the rights of subjects in cyberspace;
- “On information” defines information, contains rules on its application, also together with the Law “On the Concept of the National Informatization Program” fixes the tasks and directions of Ukraine’s activities in the information environment determines the features of its development,
- “On state statistics”, “On information protection in automated systems”, “On scientific and technical information”, “On access to public information”, “On the national archival fund and archival institutions”, “On state secrets”, “On telecommunications”, “On Television and Radio Broadcasting”, “On Print Media” contain provisions on the procedure for the cooperation of authorities with the subjects of information and information-infrastructure relations, on the types of information, its use, on the procedures of state regulation in this area,

But, before proceeding to the analysis of the legal instruments for ensuring InfoSec, it is worth giving a definition to such a concept as national security. According to Article 1
(clause 9) of the Law on National Security, this will be considered protection from real and potential threats to state supremacy, territorial integrity, democratic constitutional order, as well as other national interests of the state. Also, the author of the study would like to note article 31 of the said Law, dedicated to the document of long-term planning – the Ukrainian cybersecurity strategy. This act defines the main goals of the national interests of the state in the field of cybersecurity, indicates the probable and already existing cyber threats to the vital interests of our society, nation, the state in cyberspace. The Strategy also indicates the main approaches and directions in the implementation of state policy regarding the safe existence of cyberspace, which should be used in the interests of the three subjects of information security. The considered norm also mentions increasing the effectiveness of the main subjects of ensuring cybersecurity among the goals of the Strategy (“On the national security of Ukraine: Law of June 21, 2018 № 2469-VIII,” 2018).

In connection with the above, it is worth defining cybersecurity. Following Article 1 (Clause 5) of the Law of Ukraine On the Basic Principles of Cybersecurity, this is recognized as the security of the vital interests of a person, society, and country when using cyberspace. And in the presence of such security, the sustainable advancement of the information society and the digital communication environment will be sufficiently ensured, and probable and real threats to the national security of the Ukrainian state in cyberspace will be detected, destroyed, or prevented promptly (“On the basic principles of cybersecurity in Ukraine: Law of Ukraine of October 5, 2017 № 2163-VIII,” 2017).

It is also important not to confuse the concepts of cybersecurity and information security, as many often perceive them as synonyms. As Yu. Gudz points out, cybersecurity is the security of IT systems, namely hardware and software. At the same time, information security is the security of information in information systems, for example, of a certain enterprise. Cybersecurity is an element of an organization’s information security. He also gives a vivid example of this. So, the issue of cybersecurity is how secure your laptop is. And already under the jurisdiction of InfoSec is whether you attach a piece of paper with a password to your profile on the social network on your laptop (Gudz, 2017). The author of this study wants to give her example in this regard: it is enough to imagine an umbrella. In this case, the umbrella’s dome is information security, and the things that this dome protects against “rain” (threats) are cybersecurity and other elements of the InfoSec, for example, cryptography.

The author of the work also wants to draw attention to Part 1 of Art. 17 of the Ukrainian Constitution, taking into account that InfoSEc is a vital element of national security. This norm directly prescribes that ensuring the economic and information security of our state is just as important a function for the authorities and all Ukrainians as ensuring sovereignty and territorial integrity (“Constitution of Ukraine: Law of 28.06.1996 № 254k / 96-BP,” 1996).

To understand what InfoSec is guarding and what it fears, it is important to know the main threats to it. Note that in this case, everything is considered a threat that can use a vulnerability to breach information security, as well as malicious changes, deletion, or corruption to information resources. Therefore, the threats can be divided according to the purpose of the method of influence:
• methods used by hackers to exploit vulnerabilities in the components of the victim’s system;
• the impact of threats on the victim’s assets.

Also, which is considered more reasonable by the author of the study, Infosec threats can be divided into external and internal, and each group of threats, according to M. Jouini, can be admitted in connection with human activity (malicious, nonmalicious), environmental vulnerability (nonmalicious) or technological vulnerability (nonmalicious) done accidentally or intentionally. These are such threats:
• destruction of data,
• theft and loss,
• denial of use or illegal use,
• damage,
• disclosure,
• elevation of privilege (Jouini, Rabai, & Aissa, 2014).

The previously named information subjects often face negative influence from these threats. Quite often, as V.M. Furashev points out, victims are confronted with a situation when in the state of location of the source of information, such information is completely legal and authorized, and in the state of the victim, it is unauthorized under local legislation. Accordingly, the use of modern information technologies affects the level of information security of information subjects (Furashev, 2012).

As mentioned earlier, the essential components of information security are the so-called CIA triad: availability (that is, the ability to receive the necessary or related service within a certain time), integrity (information must be reliably defended from illegal modification, disruption, must be relevant and consistent), confidentiality (information must be shielded from unauthorized access). In connection with the above, the author of the article considers it necessary to pay attention to the issue of violation of the integrity and availability of information, its confidentiality. Article 20 of the Law of Ukraine On Amendments to the Law of Ukraine On Information divides information according to the order of access into open and information with limited access. The essence of the latter is described in article 21 – it is confidential, secret, and proprietary information (“On Amendments of the Law of Ukraine ‘On information’: Law of Ukraine of 13.01.2011 № 2938-VI,” 2011). The same provision is contained in the Law of Ukraine “On Information”, except for the phrase “official information (“On information: Law of Ukraine of October 2, 1992 № 2657-XII,” 1992). If we turn to the definition given in Articles 7-9 of the Law of Ukraine On Access to Public Information, we can conclude that not only violation of confidentiality of information harms and negatively affects the individual and the Ukrainian society, but also a violation of the regime of access to information, which is established by national legislation (“On access to public information: Law of Ukraine of 13.01.2011 № 2939-VI,” 2011).

In conclusion, it can be argued that the organization of legal regulation of information security in Ukraine is carried out based on clearly defined principles that are the foundation for the functioning of the country’s information security system. Therefore, in the administrative and legal regulation of the specified security, it is important to take into account the following:
• information security regulation standards should be uniform and obligatory for all subjects, which will make it possible to predict the future effect of information activities;
• for violation of the rules, strict and inevitable punishment should be provided;
• ensuring information security should concern all actors in the information sphere and consumers of information services;
• it is necessary to form legal consciousness in participants in information activities, to teach them law-abiding behavior.

With this approach to legal norms and regulation of InfoSec issues, Ukraine will be able to achieve a balance of economic interests and would be respected as a country with an information society.

CONCLUSIONS

Analysis of the means and peculiarities of the legal regulation of information security as the basis for the functioning and stability of the national security of Ukraine gave the author of the study the opportunity to draw certain conclusions and make recommendations on the issues considered. First, during the research, the author’s definition of information security was provided: it is a certain state of security of the information environment of the Ukrainian society, because of which such a society as an information subject (including individuals, groups, the state as a whole) can freely develop informationally and be sure that its information interests and rights will be protected from internal and external threats. It follows from the above that the object of protection is the information itself, its creation, use, security and the subjects are those who perform these actions (people, society, the state represented by the responsible authorities). However, there is no information for information’s sake. All knowledge and data exist as long as they are needed. And it is the information subjects that determine this need.

Secondly, the author concludes that harm is caused due to imperfect regulation of information relations, as well as due to the use of low-quality information, and the like is the evidence of the decline in information security in the country. Accordingly, the following problems of ensuring information security in our country are still seen as unsolved:
• there is an imperfection of both the information policy in general and the information security policy itself;
• there is a considerable number of gaps in the regulatory framework that deals with these issues, it requires improvement and harmonization with the current international standards;
• the activity of officials, various formations, and groups in the information sphere is insufficiently regulated and sometimes does not comply with the requirements of the legislation;
• the information infrastructure of Ukraine should be reformed to better ensure the rights and freedoms of information subjects.

According to the results of the study, several additional questions arose: how to ensure an appropriate level of information security in the country, how to effectively assure the integrity of information in all spheres of the life of the Ukrainian society, what means can
be used to prevent deliberate falsification of data, and some others. The answer to these questions lies in the choice of ways to solve the problems of ensuring information security of Ukraine at the proper level. It consists of a combination of constituent and regulatory and administrative-organizational acts with the means that allow countering threats and challenges in the field of information security.

Hence, the state information policy should reflect the pressing issues that have developed in the international sphere and directly in the field of information security. It is necessary to recognize and implement the provision of the regulatory and legal protection of the rights and interests of all subjects of information relations, namely individuals, social groups, society, and the state in general.

The following should become the basis for the directions of the state information policy:
- ensuring the subjective right to reliable, comprehensive, and timely information;
- assuring the development and use of the information environment in the interests of people;
- guaranteeing the subjective right to freedom of speech and information activity;
- provision of state support to entities for the development of information technologies;
- ensuring an appropriate level of information culture of the individual, which, regardless of the presence of information threats, will allow him to realize his vital interests in the information society;
- providing information and national-cultural identification of our country in the global information space;
- limiting government interference in the internal organization of information processes, except for cases stipulated by law.

Harmonious provision of information security of the state, individual, and society is a complex process that involves efforts and special activities of the authorities in cooperation with leading organizations in the field of information and cybersecurity, individual stakeholders and directly practicing lawyers and representatives of the Academia field.

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LEGAL REGULATION OF WIND ENERGY

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Abstract. The development of alternative energy sources in general and wind energy (including marine) in particular has become increasingly active in recent years. More and more countries around the world are seeking to incorporate the use of renewable energy into their daily lives to meet their international commitments and tasks. Among such tasks are global world policy to reduce greenhouse gas emissions, decarbonize the economy, production, and industry. The best and easiest way to achieve this goal has been the large-scale implementation of legal regulation of non-traditional energy sources at both the international and national levels. Such implementation has greatly facilitated and made it possible to achieve the ambitious climate goals that were named in Paris in 2015 and subsequently reflected in the Paris Agreement on Climate Change.

The article examines the main program of the European Union on the policy of decarbonization of the European Green Deal, its goals, and aspirations. Attention is paid to a derived regulation for a more detailed understanding of this policy, namely European Climate Law. The legal regulation of wind energy is studied on the example of the Republic of Ukraine, the Republic of Poland, the United States of America, the Republic of Colombia, and the Federal Republic of Brazil. The legal regulation of wind energy in each of the studied countries is unique. At one time, this was influenced by global crises and national ideas, plans and strategies.

Keywords: Green Deal, wind, wind energy, renewable resources, decarbonization.
INTRODUCTION

In today's world, the demand for energy consumption is growing. It is necessary to meet own needs of people, for the development of technology, the implementation of scientific and technological progress, the smooth operation of industry. As of today, more than half of the energy is produced from traditional energy sources, which have been used since the 19th century. Their use has many disadvantages. The biggest of which is the extremely large negative impact on the environment in the form of emissions and discharges that pollute both air and soil, groundwater, and water bodies, as well as limited, exhaustible, and non-renewable natural resources. Significant air pollution, in turn, accelerates the rate of global warming and, consequently, climate change on the planet. In order to reduce the rate of manifestation of this phenomenon, the direction of reducing CO2 emissions in countries around the world is actively developing. More and more government programs and strategies are being introduced to decarbonize the economy and production capacity, replacing the share of traditional energy sources in the market of its production with alternative sources that significantly reduce the negative and harmful impact on the environment. Given that the world community is increasingly beginning to implement a policy of using green energy through decarbonization to preserve and restore climate and the environment, it is necessary to pay attention to the legal regulation of wind energy, as one of the most popular and leading renewable energy sources. the world.

The European Union is actively developing and implementing the Green Deal program, which aims to transform the EU into a just and prosperous society, improve the quality of life of present and future generations and modernize greenhouse gas emissions by 2050 through a competitive economy regardless of natural resources. The European Green Course reaffirms Europe’s desire to become the first climate-neutral continent by 2050 (European Climate Law, 2018). Further decarbonization of the energy system is crucial to achieving the climate goals of 2030 and 2050. Energy production and use in all sectors of the economy account for more than 75% of EU greenhouse gas emissions. Priority must be given to energy efficiency. It is necessary to develop the energy sector, based mainly on renewable sources, which is complemented by the rapid phasing out of coal and decarbonizing gas. At the same time, the EU's energy supply must be secure and accessible to consumers and businesses.

The transition to clean energy must attract consumers and benefit them. Renewable energy sources have an important role to play. It will be important to increase wind production both on land and at sea, based on regional cooperation between Member States. Intelligent integration of renewable energy, energy efficiency and other sustainable solutions in different sectors will help achieve decarbonization at the lowest possible cost. At the same time, it is necessary to promote the decarbonization of the gas sector, including by strengthening support for the development of decarbonized gases, through the long-term design of a competitive market for decarbonized gas and solving the problem of methane emissions associated with energy.

The transition to climate neutrality also requires a sound infrastructure. Expanding cross-border and regional cooperation will help realize the benefits of the transition to clean energy at affordable prices. The European Commission has adopted a review of the regulatory framework for energy infrastructure, including the TEN-E Regulation (Regulation
(EU) No 347/2013), to ensure that the objective of climate neutrality is consistent. This structure should facilitate the deployment of innovative technologies and infrastructure, such as smart grids, hydrogen grids or carbon capture, storage and use, and energy storage, which will also facilitate the integration of sectors (COM, 2019).

Thus, the purpose of the study of this article is to determine the legal regulation of alternative energy and wind energy as a separate part in different countries, taking into account global trends. The task of the article is to analyze the legal acts of the legislation of the studied states.

**MATERIALS AND RESULTS**

Wind energy is also widely used and developed in countries such as Poland and Ukraine. As of today, Ukraine, as a country that is actively involved in the global process of development and effective introduction of alternative energy sources into the economy and annually increases the pace of activity in this area, has created proper legislation on these issues through the adoption of relevant regulations.

The history of legislative regulation of the introduction and use of renewable energy began on July 1, 1994 with the adoption of the Law of Ukraine “On Energy Conservation”. Despite the fact that it is difficult to call this law complex and perfect in terms of legal techniques in the context of regulating this issue, however, it was he who first established the legal definitions of alternative energy, non-traditional energy sources; identified the main areas of regulation of persons (both individuals and legal entities) engaged in the construction and / or reconstruction of non-traditional (alternative) energy facilities; provided for the right of economic entities engaged in the production of energy-saving equipment, machinery, measuring instruments, materials, etc. for additional benefits, in particular for taxation (Law of Ukraine “On energy saving”, 2020).

A qualitatively new step in the legislative development of alternative energy sources was taken in 2003, when the Verkhovna Rada of Ukraine adopted and adopted a fundamental, pivotal legislative act in this area – the Law of Ukraine “On Alternative Energy Sources”. This act of legislation lays the economic, legal, environmental, and organizational foundations, which determine the basics of activities related to the involvement of alternative energy sources in production or other economic activities. This source was the first to establish the definitions and components of the concept of alternative energy; a list of renewable energy sources is provided; the institutional bases of ensuring the use of alternative energy sources, the competence of the authorized bodies in this field, the principles of financing and incentives, etc. are determined (Law of Ukraine “On Alternative Energy Sources”, 2020).

Law of Ukraine “On Alternative Energy Sources”, which in Art. 1 defines them as renewable energy sources, which include solar, wind, geothermal, hydrothermal, aerothermal, wave and tidal energy, hydropower, biomass energy, gas from organic waste, gas from sewage treatment plants, biogas, and secondary energy resources, which include blast furnace and coke oven gases, methane gas, degassing of coal deposits, conversion of waste energy potential of technological processes. Moreover, the energy that can be produced from these sources includes electrical, mechanical, and thermal energy.
As renewable energy is one of the fundamental, most European-oriented vectors of Ukraine’s economic development in general, Article 3 of this law defines the basic principles of state policy in this area. These include:

1. Increasing the production and consumption of energy produced from alternative sources, in order to economically spend traditional fuel and energy resources and reduce Ukraine’s dependence on their imports by restructuring the production and rational consumption of energy by increasing the share of energy produced from alternative sources;

2. Observance of ecological safety by reducing the negative impact on the environment during the creation and operation of alternative energy facilities, as well as during the transmission, transportation, supply, storage and consumption of energy produced from alternative sources;

3. Maintaining safety for human health at alternative energy facilities at all stages of production, as well as during the transmission, transportation, supply, storage and consumption of energy produced from alternative sources;

4. Scientific and technical support for the development of alternative energy, popularization and implementation of scientific and technical achievements in this field, training of relevant specialists in higher and secondary educational institutions;

5. Observance of the legislation by all subjects of the relations connected with production, storage, transportation, supply, transfer and consumption of the energy made from alternative sources;

6. Adherence to the conditions of rational consumption and energy savings produced from alternative sources;

7. Attracting domestic and foreign investments and supporting entrepreneurship in the field of alternative energy sources, including through the development and implementation of national and local programs for the development of alternative energy (Law of Ukraine “On Alternative Energy Sources”, 2020).

The Law also deals with standardization in the field of renewable energy, in particular, by establishing the appropriate level of compliance with environmental, sanitary and hygienic requirements, the use of equipment of appropriate quality and so on.

The central point of the Law is Article 9-1, which is reflected in the Law of Ukraine “On Electricity”, which regulates the issue of economic incentives for the use of alternative energy sources, in particular, the “green” tariff. According to the provisions of this article, the “green” tariff is set for electricity generated at electricity facilities from alternative energy sources (except for blast furnace and coke oven gases, and with the use of hydropower – produced only by micro, mini and small hydropower plants) (Law of Ukraine “On energy saving”, 2020).

A “green” tariff is set for each business entity that produces electricity from alternative energy sources, for each type of alternative energy and for each power facility or for each stage of construction of a power plant (start-up complex).

The “green” tariff for electricity generated by generating installations of private households is set unique for each type of alternative energy source. Moreover, for each type of alternative
energy source (wind, solar energy, biomass energy, etc.) is set its own rate and its own coefficient (Law of Ukraine “About the electricity market”, 2021).

Returning to the characteristics of national law, it should be noted that it has a fairly high legal technique, as it provides for measures of accident and environmental protection during the operation of alternative energy sources, the basic principles of their operation and principles of international cooperation in this field (Law of Ukraine “On Alternative Energy Sources”, 2020). However, despite the legislative regulation of this issue, for the full development of such an important area as alternative energy, it is also necessary to define at the secondary level the main strategic goals and directions of its development and further improvement. These tasks were implemented in the Energy Strategy of Ukraine until 2035. As noted, Ukraine’s energy strategy entitled “Security, Energy Efficiency, Competitiveness” is a basic document of state energy policy, which defines the goals of the energy sector in accordance with the needs of economic and social development until 2035 and formulates the tasks of executive authorities in the field of energy sector management. The name in the Strategy is defined as its slogan and generalization of the ultimate goals: “Security, energy efficiency, competitiveness”.

However, the lack of separate normative legal acts that would regulate certain types of alternative energy sources, as is the case in some foreign countries, remains a significant shortcoming.

Consider such legal regulation on the example of Poland as a member of the European Union. On the territory of the Republic of Poland there are both European Regulations, Directives, which establish the external model of behavior and policy of the state, and the norms of national legislation in the field of legal regulation of wind energy and renewable energy sources in general, as well as government documents. The main legal act is the Energy Law, which contains blanket rules and regulations on the application and use of alternative energy sources, including wind energy (Energy Law, 1997). In particular, the Law on Stimulation of Electricity Production at Offshore Wind Power Plants states:

1. conditions for providing support for electricity generated by offshore wind farms;
2. rules and conditions of preparation and implementation of investments in the construction of offshore wind farms;
3. rules for disposal of a set of devices for evacuation of energy and offshore wind farms;
4. requirements for the construction, operation and decommissioning of offshore wind farms (Ustawa, 2020).

Despite the significant and detailed legal regulation of wind energy in the country, there are shortcomings that delay the development of this area. As a result, the efficiency of this type of alternative energy is reduced. Thus, according to Rabe M., Streimikiene D., Bilan Yu. their research and introduction of an original, optimizing multi-criteria model of wind energy development in the region states that after the adoption of the Law of 20 May 2016 on investments in wind power plants (Ustawa, 2016), the cost of kWh of electricity will increase by 160% by 2030 (Rabe M, Streimikiene D, Bilan Y, 2020). Such disappointing forecasts may indicate an inefficient state energy policy and the use of a renewable energy model, which contradicts the pan-European strategy to reduce greenhouse gases and decarbonize production and the economy (European Green Deal).
In addition, Poland, like most countries in the world that have their own marine waters, is interested in the possibility of locating offshore wind farms within its economic zone, taking into account its potential (Anna Sobotka, Marcin Rowicki, Krzysztof Badyda, Piotr Sobotka, 2021).

Similar situations exist in other maritime areas and in other countries (R.C. Spijkerboer, C.Zuidema, T. Busscher, J., 2020). Such a state is, for example, the United States of America. There is a significant revival of the development of offshore wind energy by attracting investment and developing wind farm projects (X. Costoya, M. deCastro, D. Carvalho, M. Gómez-Gesteira, 2020). In the United States, jurisdiction over the relationship between energy and electricity is divided into two different levels of government: federal and state. At the national level, the Federal Energy Regulatory Commission has authority over all interstate and wholesale electricity trade. States have jurisdiction over intra-state relationships but have limited authority over facilities that provide services through government lines or participate in interstate wholesale electricity markets (I. Chernyakovskiy, T. Tian, J. McLaren, M. Miller, 2016). In general, the legal regulation of alternative energy and wind energy in the United States originates from the Public Utilities Regulatory Policy Act (PURPA) of 1978 (which is still in force today, with amendments) (PURPA, 2002). The adoption of this law was due to the need to overcome the crisis caused by the oil embargo. The law was intended to allow small non-municipal energy producers, including renewable energy developers, to enter the market. But the most effective legal regulation is reflected in Orders 888 and 889 of the Federal Energy Regulatory Commission. The provisions of Order 888 on open access have significantly lowered the threshold for renewable energy producers to enter the market. Remotely located renewable energy generators, such as wind farms, could now use transmission networks to transport electricity to the most favorable markets instead of selling it to the nearest utility. On the other hand, open access to the energy transmission tariff has meant increased competition with a large number of buyers and sellers pushing for electricity tariffs by setting prices for renewable energy production outside many markets. However, the downside was that Order 888 allowed electricity suppliers to impose fines on producers that deviated by 1.5% from the planned electricity output. Given the unstable nature of renewable energy sources, especially wind energy, the volatility threshold of 1.5% did not allow wind energy to avoid fines. Because fines often exceeded the cost of commercial wind energy, wind project developers typically had to sell an unstable product to a company that could combine it with heat generation and resell it to the wholesale market.

Analyzing foreign legislation on the legal regulation of wind energy, we can conclude that there are countries that, despite all the necessary natural conditions, are not able to use the full potential of its geographical location. Each case may be individual, but something in common still exists. During a study of national legislation on the existence of legal regulation and administrative mechanisms for the introduction and use of offshore wind energy, which is considered an unconventional source of energy in Colombia, Juan Gabriel Rueda-Bayona, Andres Guzman, etc., concluded that in regulations, by-laws and state programs do not have a clear legal context for regulating the sustainable and safe use of offshore wind energy. In addition, the analysis of scientific research on this topic indicated the need to expand knowledge about wind energy (including marine) (Juan Gabriel Rueda-Bayona, Andres
Therefore, despite the significant potential of the country, due to the lack of legally regulated methods and mechanisms – the use of efficient offshore wind energy is simply impossible.

A similar problem is inherent in another country in South America, namely Brazil. According to Max Mauro Loser dos Reis, Bruno Mitsuo Mazetto and others, marine wind energy remains an undisclosed topic in the country. In their view, despite the significant potential, gaps in national legislation are still being highlighted. The result is a lack of legal regulation in this area and the possibility of introducing and using offshore wind energy in Brazilian waters. Although its potential is 450 times greater than onshore wind farms. Realizing the significant prospects for the national economy from the introduction of this type of alternative energy sources, Brazilian scientists have conducted and continue to conduct research to deepen knowledge and expand the scientific database, which will be useful for the implementation of international instruments or experience of other countries (Max Mauro Lozer dos Reis, Bruno Mitsuo Mazetto, 2021).

CONCLUSION

Thus, the global policy that the last two decades has increasingly focused on the decarbonization of the world economy, industry, and electricity production with its desire to reduce greenhouse gas emissions, CO2 emissions, etc. has created various programs and agreements on climate protection, restoration and implementation ensuring sustainable development to preserve the natural environment for future generations.

Also, this article conducted a study of the legal regulation of alternative energy sources and wind energy in the Republic of Ukraine, the Republic of Poland, the United States, the Republic of Colombia, the Federative Republic of Brazil. The analysis of normative legal acts of the studied national legislations made it possible to assess the extent and levels of compliance and fulfillment of international obligations of states. Namely, commitments regarding the transition from traditional means of energy production, which are major polluters of the environment to alternative energy sources, the use of which will have a positive impact on the condition and quality of air and climate conditions on the planet.

According to the legislation of Ukraine, alternative energy is of great importance for economic development. The existence of a comprehensive legal regulation of non-traditional energy in the country indicates that it is on track to implement long-term goals in accordance with its energy strategies and international obligations. However, the lack of a resource mechanism in the legislation to regulate alternative energy industries reduces the effectiveness of its application in practice.

Analyzing the legal regulation of wind energy in the Republic of Poland, we can conclude that a member state of the European Union has managed to develop all the necessary aspects of alternative energy. However, some legislation slows down and enables inefficient wind energy management, which can further negatively affect the implementation of international obligations.

Wind energy in the United States is developed, but not abandoned features. The two-level division causes the division of legal regulation of wind energy depending on the jurisdiction
into one that is national and one that is only at the state level. The scope of rights of electricity producers from alternative energy sources, including wind energy, depends on this.

Analyzing the availability and status of legal regulation of offshore wind energy in some South American countries, it becomes clear that despite the significant natural and geographical potential of states, safe and efficient use of such energy becomes impossible due to lack of a clear legal mechanism. In the Republic of Colombia and the Federative Republic of Brazil, there are no clearly defined national legislation that could regulate the safe and efficient use of wind energy.

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LEGISLATION OF THE SOCIAL AND LEGAL STATUS OF SELF-EMPLOYED PERSONS IN UKRAINE

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Abstract. Nowadays in countries with developed industry, there is a marked shift from formal to informal employment. In this context, the impact of self-employment on the development of the state should be one of the topical issues in the debate on employment policy.

Due to the development of the platform economy, self-employment is developing as the main or additional source of income. The development of Ukraine as a socially oriented state governed by the rule of law is determined by the level of development of all state spheres, including self-employment of the population of state institutions, including the institution of personal income taxation.

As of today, in countries with developed industry, there is a marked shift from formal to informal employment. In this context, the impact of self-employment on the development of the state should be one of the topical issues in the debate on employment policy. Due to the development of the platform economy, self-employment is developing as the main or additional source of income. The development of Ukraine as a socially oriented state governed by the rule of law is determined by the level of development of all state spheres, including self-employment of the population of state institutions, including the institution of personal income taxation.

It was emphasized that the above-mentioned provisions of international legal acts became the basis for consolidation of the principles of labor freedom and the prohibition of forced labor in the Constitution of Ukraine. In turn, these constitutional principles are the normative and legal basis for the consolidation of the principle of freedom of labor agreement within the framework of labor law.

It has been established that the establishment in the national legislation of the principle of freedom of the labor contract should enable an employed person and an employer who exercises the right to recruit staff to determine the working conditions that are most appropriate for them. The terms of the employment contract should not be burdensome for their parties and disturb.
In such situations, the legislator prefers social rather than economic rights, since social law is more closely connected with the natural right of a person to life and freedom and security.

**Keywords:** self-employed person; status of self-employed persons; a person pursuing an independent professional activity; a person who is self-employed.

**INTRODUCTION**

The main purpose this article is research and analysis of theoretical and practical problems, development of legislation on the social and legal status of self-employed persons in Ukraine. In modern conditions, the level of scientific development of theoretical and practical problems of self-employment is at an early stage. It should be noted that in the conditions of market transformations, self-employment for a certain part of the population is a way to survive in difficult life situations.

Self-employment as a type of economic behavior can be described, on the one hand, as a strategy to ensure living conditions in a changing life situation and solve the problem of unemployment, and on the other – as the first step in the implementation of entrepreneurial behavior.

The transition of self-employment to entrepreneurial activity is a social indicator of maturity of the subject of individual labor activity.

Self-employment is a manifestation of further self-organization of individuals and is characterized as a strategy to solve the problem of unemployment and ensure proper living conditions. Determined by autonomy and freedom of action, self-employment ideally allows a person to receive income, adequate quantity and quality of labor and investment.

At the legislative level, the term “self-employed person” has the following definition.

A self-employed person is a taxpayer who is an individual entrepreneur or carries out an independent professional activity, provided that such a person is not an employee within such entrepreneurial or independent professional activity.

Self-employment differs from traditional employment with regular remuneration by its inherent autonomy and individual orientation, which contributes to the gradual formation of a fundamentally new stratum of the economically active population, which has abandoned paternalistic expectations. This is the social value of self-employment.

The most common type of self-employment is entrepreneurial activity, which includes a system of actions and deeds related to starting your own business, business activity, risk. The market environment expands the freedom to choose the scope of labor, the possibility of applying labor, which, combined with the responsibility of economic entities for the results of production, promotes the development of effective forms of self-employment, including small business.

Interest in self-employment is due to the following circumstances:

- lower production, which resulted in rising unemployment and narrowing employment opportunities;
• low level of wages at state, private joint-stock and collective enterprises, frustration of the population in the use of labor at enterprises of various forms of ownership;
• the establishment of market consciousness among the majority of citizens;
• the need to change the principles of social policy of the state, focus on intensifying the behavior of all working groups, overcoming the passive expectation of state assistance.

Acquiring the status of self-employed persons is a rather problematic issue in the legal regulation of self-employed workers, as there are still gaps in the legislation in this regard. The lack of the status of a self-employed person, the procedure for its acquisition, loss, etc. has the consequence that the person must either acquire the legal status of a natural person – entrepreneur, or engage in independent professional activity.

It should be noted that a person has the right to conduct independent professional activity only in the case of state registration of such activity, in accordance with the requirements of current legislation of Ukraine.

Due to the long period of economic development and the process of improving the current legislation, the category of “self-employed person” has not received its proper development and legal consolidation. Currently, there is no holistic view of the concept, and there is a lack of an integrated approach to defining its classification features, there are insufficient theoretical and legal developments on the formation of the legal status of a self-employed person as a subject of social security law.

Self-employment is a complex socio-economic phenomenon. On the one hand, this is evidence of the lack of other ways and opportunities for formal employment. Self-employment in some way stimulates the further development of the informal sector of the economy. On the other hand, the bearers of social and labor potential independently provide themselves with socially useful types of work, contribute to the creation of a competitive environment, create a natural social support for the social order and form a new social class of entrepreneurs.

According to Azmuk, self-employed people have significant incentives for self-expression and self-affirmation, which allows them to receive income much higher than the average salary in the industry (Azmuk, 2012).

The very definition of “self-employment” is still debatable. Sobol notes that self-employment is a relatively new phenomenon in the domestic economy, which began to develop in the transition period to market conditions. In the scientific literature and statistical practice of different countries, the terms “self-employment” and “a person pursuing an independent professional activity” are used to denote employment without legal registration of employment contracts.

According to the definition of the International Classification of Employment Status (ICSE-93), self-employment means working in one’s own enterprise, when the remuneration directly depends on the income received from the production of products and services (Sobol, 2008).

The opinion of Barsuchenko, who argues that self-employment, is a specific form of economic activity. The essence of which is that the citizen himself finds a source of income that will ensure his proper existence as a result of his economic activity (Barsuchenko, 2013).
However, there is currently no single approach to understanding this phenomenon, despite the large number of scientific papers on the legal status of the self-employed person.

Rabinovych defines the legal status of a person as a set of his subjective legal rights and legal obligations (Rabinovych, 2007).

Skakun, in addition to the rights, freedoms and responsibilities of the person, the structure of the legal status of the person includes responsibility, according to which the individual as a subject of law coordinates its behavior in society (Skakun, 2001).

Self-employment as a social phenomenon is recognized as a powerful means of economic development and easing of social tensions. This approach is implemented in Article 8 of the Law of Ukraine “On the Principles of Domestic and Foreign Policy”, according to which the main principles of domestic policy in the social sphere are overcoming poverty and reducing social stratification, in particular by promoting self-employment.

In the current Labor Code of Ukraine, there is virtually no legal regulation of the activities of self-employed persons as participants in labor relations.

There is currently an inexhaustible list of self-employed persons in Ukraine. These include lawyers, private notaries, scholars, writers, artists, painters, private teachers, doctors, arbitrators, auditors, accountants and others.

A self-employed person as an employer, who uses the hired labor of individuals on the basis of concluded employment agreements (contracts), bears obligations to pay them wages, as well as accrual, withholding and payment of personal income tax to the budget, accruals to the payroll, other responsibilities provided by law.

In addition, a self-employed person who accrues and pays income for the performance of work and / or provision of services in accordance with a civil law contract is equated to the employer if it is established that the relationship under such a contract is in fact an employment contract. Such reformatting of relations from civil to labor is supported by theorists of labor law, pointing out that “the science of labor law has long formed the idea that labor relations arising from civil contracts or services should be governed by labor law.

Moreover, that fact should be considered as a differentiation of relations that are the subject of labor law.

A self-employed person who performs work on behalf of another person and is a party to a civil contract is not considered to be subject to labor regulations. Only in some cases can a self-employed person be equated with an employee with the corresponding taxation of income received by him as a salary. That is, if the relationship under the relevant civil contract is established by the employment relationship and the parties to the contract can be equated to an employee or robot.

In order to legislate the support and development of self-employment, scientists have developed a list of necessary procedures, namely:

- to develop and adopt a law “On individual labor activity”, which would regulate the activities of public authorities and local governments in relation to the development of self-employment;
- to protect the rights of self-employed persons, it is necessary to promote the creation of an appropriate “trade union” at the state level, in order to protect their interests, as well as to promote their social development in accordance with accepted national standards;
• consider the issue of state social insurance of the self-employed population;
• Special attention and legislative regulation today requires employment in a personal subsidiary family farm, employment in the care of the disabled and the elderly.
To improve the legal framework for the development of self-employment it is necessary:
• introduction of self-employment in the legal circle of the state: the development of the legal concept of self-employment, a clear definition of categories of people belonging to this segment of the labor market;
• legislative regulation of issues of self-employment, registration, accounting, social insurance, pensions, simplified taxation and other protection;
• supplementing labor legislation with regulations in accordance with the conditions of a market economy and stimulating economic activity of the population;
• development of legal terms for homework and individual, family contracts, in accordance with the recommendations of the Ministry of Labor Protection

MATERIALS AND METHODS

Many prominent domestic scientists have paid attention to the question of the characteristics of self-employed persons.
In this article are used such methods as documentary analysis and synthesis, comparative analysis, objective truth, cognitive-analytical, etc.
Quite common in science is the approach according to which the self-employed persons are those persons who independently organize their work for their own account, own the means of production, are responsible for the production products and independently sell it. This view is shared, in particular, Roffe, Zbyshko, Inshin, Nikiforova, Libanova and others.
The definition proposed by the authors provides determination of the appropriate category through the characteristics of the main features self-employed activities.
This approach is more justified than the concepts discussed above, however, in our opinion, it needs specification.
Freedom of work comes from the natural state of a person born free and must remain free throughout his life. There is no doubt that labor freedom should be considered as one of the most important and most valuable legal principles that permeates not only the legislation of individual countries but is a fundamental legal principle recognized by all countries of the world and international communities. The study of the principles of legal regulation and scientific material on labor freedom convinces that the principle of freedom of labor is directly or indirectly manifested in all norms of labor law. In other words, the principle of freedom of labor is inextricably linked with the principle of freedom of contract. Since labor law was separated from the time of civil law, freedom of contract, first of all, is the principle of civil law, although the very idea of freedom is the basis for all law and legal doctrines
The current state of youth employment in Ukraine and youth self-employment as one of ways of overcoming unemployment among this category of population is analyzed. The regulatory framework, which determines the place of youth self-employment in public youth policy and in the employment system of country population and regulates various aspects of public support of this direction, is characterized.
The mechanism of public support of youth self-employment in Ukraine shall be worked out within the implementation of public youth policy, the system of population employment, general economic policy – regarding the regulation of business activity, innovation policy – in the context of support of high-tech projects and start-ups.

The position on the necessity of forming a policy of development of self-employed of the population, which is significant in financial and legal aspects is argued. It has been proved that the development of self-employed will increase revenues to the budgets of different levels. It is substantiated that a self-employed persons’ work is more effective than a work of employee, because of a great own motivation in getting the best results of own activity.

It is proposed to introduce differentiated approach for defining the legal status of individual and collective subjects, which are related although different by their nature.

A person’s legal status is based on natural human rights, while the legal status of collective entities is not similar and determined by the personality of this status: legal entities (governmental and non-governmental bodies, enterprises, organizations, and institutions), state and its structure units, people, social communities etc.

The range of rights from one party has an influence on other party. For example, a value-added tax is different for operations between usual taxpayers and between those who have special tax regime with a flat tax. The status of fiscal resident in taxation or opportunity to determine status of tax agent, etc. has a great influence.

The obligation of accounting of private notaries is the same as reporting obligations, because summary accounting imply the creation and introducing a tax declaration. They provide the declaration accordingly results for reporting year in terms for income tax payers (to 1st May in the first year following the reporting year).

However, person who is responsible for assessment, obtaining and payment (recalculation) of this tax is a taxpayer – physical person, but not notary.

Accordingly, the taxpayer is liable for tax evasion. The notary does not have the obligation to audit the accuracy of the value of property.

RESULTS AND DISCUSSION

It was found that self-employment is a complex socio-economic phenomenon, which is evidence of the lack of other ways and opportunities for formal employment.

It was found that the interpretation of the concept of “self-employment” still remains controversial among scholars.

In the doctrine, there are different approaches to understanding the category of self-employed persons. For example, Kupalova believes that the category of self-employed persons are non-employed, namely: employers (employee’s owners) engaged in individual (independent) employment, free working family members.

It is clear that the key feature of the self-employed person is the realization of the right to work without entering into a relationship of “power and subordination “with the employer, i.e. without concluding an employment contract.

However, in our opinion, this approach does not fully reveal the essence of the studied category and needs clarification.
Kilnytska, who believes that self-employed persons are non-employed persons, i.e. people who have their own business, proposed a similar definition.

The above definition is general character and it does not contain any characteristic, distinctive features, etc., which are inherent in self-employment as a separate type of employment.

In such circumstances, such a definition, in our opinion, more reflects the domestic understanding of the relevant category of workers, but for the purposes of scientific theoretical research, it is not acceptable.

In addition, such a sign as independent sale of self-employed persons of its products, too, can not be defined as general. For example, a person may engage in particular type activities, but also to provide services (goods or works) to another entity, which deals with their implementation to end users.

Therefore, this approach has enough positive features, although it is present and significant inaccuracies that need to be corrected.

Scientific novelty of the obtained results. The work is one of the first in Ukrainian legal literature research of the legal status of the self-employed persons as payers of taxes and fees. Scientific novelty is reflected in the following provisions:

first:
• a specific form of legal representation in representing the interests of legal entities, when in relations with regulatory authorities their legal representatives are managers, deputies, accountants and other persons authorized to represent the organization in accordance with its constituent documents, and the source of authority of the representative are statutory documents, which enshrines the ability to represent the interests of a legal entity, which reflects the close relationship between tax and economic regulation, when in fact the economic and legal mechanisms are used in determining the tax status of the taxpayer;
• the duality of the tax and legal status of private notaries as participants in tax relations is determined, when, on the one hand, they are self-employed and have to fulfill their own tax liability, and on the other hand – contribute to the proper implementation of tax liability by other individuals. Real estate transactions (only in the latter case they can be classified as tax-contributing persons);
• it is proposed to improve the normative consolidation of the procedure for deprivation of the status of certain categories of self-employed persons by differentiating the grounds for such deprivation on the basis of tort, which determines the existence of fundamentally different procedures and differentiation of consequences.

improved:
• description of the legal status of the notary in the tax relations, which has a twofold nature: based on the content of specific tax relations in which the notary acts as a participant, he may play the role of a taxpayer or a subject of information exchange (a person who facilitates the payment of taxes and fees);
• the grounds for tax liability of certain categories of taxpayers, when the legal fact that determines the tax liability may not be the presence of the object of taxation, and obtaining a special tax status: single tax payers 1 and 2 groups must pay it in a fixed
amount and receive income as one of the types of object of taxation in this case does not matter for the tax liability, which is important for detailing the legal status of self-employed persons, because their circle includes individuals persons – entrepreneurs;

- a mechanism of compulsory insurance of notaries, which will promote the development of this category of self-employed persons and in the long run will lead to an increase in tax revenues to the state from their activities.

CONCLUSIONS

Thus, the main shortcomings in the legal regulation of self-employed persons are the obsolescence of legislation on employment. It should be concluded that the essence of self-employment as a type of economic behavior is that a person finds a source of income, provides adequate to his needs level and living conditions as a result of economic activity, which is regulated by social and economic norms.

There is no clear legal definition of the concept of “self-employed persons”, its identity with the concept of “self-employed persons”, the lack of an exhaustive legislative list of entities that belong to this category. In this regard, it is quite urgent to define a unified approach to the legislative consolidation of the concept of self-employed persons, a clear definition of the circle of these persons, the regulation of relevant legislation.

Summarizing the above, it should be noted that self-employment is a phenomenon that has not been thoroughly studied, not fully studied, not created a clear core on which to build the structure of this concept. Self-employment is a constant dynamic process that depends on the economic situation in the country, and therefore this concept needs constant reform in approaches to understanding its essence.

It is established that a special tax regime for the self-employed persons determines not only the specificity of the consolidation of their rights and responsibilities and forms their implementation, but also determines the grounds for calculating the amount of tax payment.

To the main elements of the tax mechanism along with the payer, include object of taxation, based on the definition of which, you can find out the base taxation, and already on this basis to determine the amount of tax payment.

Taxable income of persons in the conduct of a certain type of independent professional activity is the total net income that is determined as the difference between income and documented expenses, necessary for carrying out a certain type of such activity. Taxation other categories of individuals do not include costs.

The duality of the consequences of the introduction in our state has also been determined compulsory insurance of certain categories of self-employed persons.

On the other hand, such requirements reduce the tax base accordingly reduce budget revenues. On the other hand, by a certain centralization and public legalization of such activities are strengthened guarantees for consumers of notary services.

It is expedient to divide self-employed persons on the basis of accounting (registration) into two groups. The first includes people who must register as self-employed, the second group – persons who conduct independent professional activities and are not registered separately by self-employed persons.
To the last, belong to persons involved in scientific, literary, artistic, artistic, educational or teaching activities.

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DOMESTIC VIOLENCE AGAINST WOMEN IN MARRIAGE AND FAMILY RELATIONS: WAYS OF REGULATION AND LEGAL SETTLEMENT IN UKRAINE

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Abstract. The article examines the problem of domestic violence against women in marriage and family relations, and also identifies ways for the legal regulation of this issue. It turns out that at present, violence against women is one of the main social mechanisms through which women are forced to occupy a subordinate position in comparison with men. Violence directed at women reflects the structure of subordination and power, the depth of the differences between the sexes. «Violence against women» according to UN documents means any act of violence committed on the basis of gender, which causes or may cause physical, sexual, psychological harm or suffering to a woman, as well as threats to commit such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.

It is concluded that in order to minimize the spread of such a negative phenomenon among the population, it is worth: to ensure the conduct of educational trainings and seminars for specialists of services for women and family affairs, social work, medical and pedagogical workers, volunteers to identify and prevent this type of crime; to strengthen public participation in the development of mechanisms and information on crimes related to domestic violence against women; improve the improvement of the collection of
information of actors implementing measures to prevent and counter domestic violence and gender-based violence and establish better communication and cooperation between different bodies; ensure that the public is adequately informed about preventive measures and the ability to respond to crimes of domestic violence against women.

**Keywords:** violence, domestic violence, woman, family, marriage and family relations, criminal responsibility, gender equality.

**INTRODUCTION**

In recent years, the public of Ukraine is increasingly concerned about the problem of domestic violence as one of the most painful social phenomena. The state has launched a broad social information campaign to raise awareness of the existing problem, is constantly working with government agencies, local authorities with NGOs to prevent and combat domestic violence, but a wide variety of forms and methods of abuse of women in families observed both in Ukraine and in different regions of the world.

Currently, violence against women is one of the main social mechanisms by which women are forced to occupy a subordinate position compared to men. Violence against women reflects the structure of subordination and power, the full depth of differences between the sexes. «Violence against women» according to UN documents means any act of violence committed on the basis of sex, which causes or may cause physical, sexual, psychological harm or suffering to a woman, as well as the threat of such acts, coercion or arbitrary imprisonment, whether in public or private life.

In the current conditions of Ukraine, violence against women in the family does not lose its relevance and requires further research and development of measures to combat this phenomenon.

**MATERIALS AND METHODS**

The article focuses on the legislative regulation of the protection of women from domestic violence. An important place in any study is occupied by its methods by which the goal of the study is achieved. Among the main methods that were used in the study we would like to highlight: comparative law, formal law and the method of alternatives. In the scientific legal literature, many scientific publications are devoted to this issue, which explore some aspects of violence against women, among the main ones are the works of such scientists and scientists: O. Bandurka, A. Blaga, V. Vitvytska, O. Dzhuzha, L. Zavadska, L. Kormich, L. Kryzhna, N. Lavrynenko, I. Lavrychnuk, K. Levchenko, L. Leontieva, L. Levitsky, O. Matvienko, T. Melnyk, T. Minka and others.
RESULTS

According to official data, more than a thousand women die in Ukraine every year as a result of domestic violence. According to UNDP, approximately 1.8 million women in Ukraine suffer from physical domestic violence. Domestic violence is becoming a terrible norm today. The vast majority of women currently serving sentences for the murder of their husbands, sexual partners or relatives are women who have suffered systematic and prolonged violence.

Due to these figures, it is important to ensure the legal protection and protection of women from domestic violence.

In accordance with Art. 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state. In addition, the provisions of the Constitution of Ukraine establish guarantees for the protection of the family. According to Article 32, no one may be interfered with in his personal and family life, except as provided by the Constitution of Ukraine, and according to Part 3 of Article 27 of the Constitution of Ukraine, everyone has the right to protection other people from illegal encroachments (Constitution of Ukraine, 1996).

The first international legal instrument to define the concept of „violence against women“ is the UN Declaration on the Elimination of Violence against Women (1993), in which the term „violence against women“ is understood as any act of violence committed on the basis of gender, which causes or may cause physical, sexual or psychological harm or suffering to women, as well as the threat of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life (Declaration on the Elimination of Violence against Women, 1993). The Declaration also states that violence against women covers cases of physical, sexual and psychological violence that occur in the family.

The UN Model Legislation is the basis of the Law of Ukraine „On Prevention of Domestic Violence“, which was adopted by the Verkhovna Rada of Ukraine on 15.11.2001 (repealed on 07.01.2018), in which the State for the first time recognized the problem of domestic violence on legislative level. Where it was stated that “domestic violence is any intentional act of physical, sexual, psychological or economic orientation of one family member towards another family member, if these actions violate the constitutional rights and freedoms of the family member as a person and a citizen and cause him moral harm, harm to his physical or mental health” (On the prevention of domestic violence, 2001).

Trying to solve the problem of domestic violence, in December 2017 the Verkhovna Rada of Ukraine adopted the Law «On Prevention and Counteraction to Domestic Violence» (On Prevention and Counteraction to Domestic Violence, 2017), which proposes a new approach (using European standards) to combat this negative phenomenon in society.

Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Resolution of the Cabinet of Ministers of Ukraine dated 5.09.2007 № 1087” On Advisory Bodies on Family, Gender Equality, Demographic Development, Prevention of Domestic Violence and Combating Trafficking in Human Being», term „Domestic violence“ has been replaced by
“domestic violence”. defining acts (acts or omissions) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between a former or current spouse, or between other persons living together (lived) one family, but are not (were not) in a family relationship or in a marriage with each other, regardless of whether the person who committed (lived) lives in the same place as the victim, as well as threats committing such acts (On Prevention and Counteraction to Domestic Violence, 2017).

As F. Melikov defines, the key word of the term „domestic violence” is the word „domestic”, which refers to the house, ie its etymological essence means „housing and people living in it”, it can be both family members and and other persons, the relationship that has developed in the house, which means that the territorial feature of this concept is decisive (Melikov, 2017).

T. Minka notes that for the qualification of Art. 126-1 of the Criminal Code of Ukraine (criminal liability for domestic violence is envisaged) it does not matter whether the offender lives at the time of the act in the same place as the victim. Very often domestic violence can occur after the breakup of family or other relationships, so the cohabitation of the victim and the offender is not required (Minka, 2019).

That is why the implementation of the concept of „domestic violence” as a separate type of criminal offense in the array of the criminal law of Ukraine provokes a lot of scientific discussions.

Malinovska T.M., notes that first of all, it concerns the duplication of the same concept of «domestic violence» in somewhat different interpretations in the provisions of the Law of Ukraine «On Prevention and Counteraction to Domestic Violence» and, in particular, in the Criminal Code of Ukraine. This approach of the legislator, on the one hand, seems justified, because it aims to emphasize the features of domestic violence as a criminal offense. Although, on the other hand, the existence of two different legal definitions of the same concept seems to be such that,

- first, it contradicts the rules of legislative technique;
- secondly, to some extent complicates the practice of applying the relevant provisions of the Criminal Code of Ukraine;
- thirdly, it does not contribute to the clarity of statistical accounting for the purpose of quantification of criminal offenses related to domestic violence, which, ultimately, does not contribute to adequate planning of measures in this direction of counteraction (Malinovskaya, 2020).

Therefore, we can conclude that although to date and certain mechanisms of normative-legal regulation of counteraction to domestic violence against women are provided, however the mechanism of its application in practice needs to be refined.

At the same time, in order to form the main ways to minimize the spread of domestic violence against women, it is necessary to pay attention to the factors that provoke it.

Researchers in the study of this problem examine in detail the factors that cause domestic violence in general and violence against women in particular (Dzhuzha, Opryshko, Kulik, 2005), and distinguish the following:
• legal (attitude to violence as an internal family problem, not as a negative social phenomenon, to family members – as property due to lack of legal awareness);
• psychological (stereotypes of behavior);
• pedagogical (lack of culture of behavior – legal, moral, civil, aesthetic, economic, labor);
• social (tensions, conflicts, violence in society, promotion of violence in the media as a model of behavior);
• socio-pedagogical (lack of conscious parenthood, family values in society, a positive model of family life on the basis of gender equality, family education based on the rights of the child);
• economic (material deprivation, lack of decent living conditions, along with lack of conditions for employment, earning money, economic dependence, unemployment);
• physiological and medical (hormonal disorders, metabolism, speed of reactions, taking stimulant drugs, diseases of the nervous system, etc.);
• political (adherence to gender stereotypes, insufficient priority of family problems and gender equality, attention to motherhood and childhood, and not to the family as a whole, lack of attention to parenthood, men);
• socio-medical (lack of reproductive culture in the population, responsible parenting, family doctors, alcoholism, drug addiction, aggression, etc.). (Zaporozhtsev, Labun, Zabroda, 2012).

Such factors provoke special vigilance on the part of legislative and executive authorities to develop certain mechanisms to combat such a negative phenomenon. In this regard, the following measures were envisaged, which can be related to the problem of detecting crimes related to domestic violence:

• The first of them is to form a list of indicators for the central executive authorities to take into account cases of domestic violence and gender-based violence. An indicator of its implementation is starting from 2019 – the formation of a list of indicators for accounting by central executive bodies of cases of domestic violence and gender-based violence and the constant transfer of information about them to the Ministry of Social Policy of Ukraine;
• The second measure is to improve the mechanisms for identifying, documenting, responding to, investigating cases of domestic and gender-based violence against women and girls, and bringing perpetrators to justice. The indicator is the implementation in 2019 of the Ministry of Internal Affairs, the Ministry of Social Policy, the Ministry of Justice, the National Police and the Prosecutor General’s Office (with consent) to improve mechanisms for identifying, documenting, responding, investigating cases of domestic violence and gender-based violence against women and girls. (Ierusalimov I.O., Ierusalimov V.I., 2019).

Thus, the resolution of the Cabinet of Ministers of March 20, 2019 № 234, approved the procedure for the formation, maintenance and access to the Unified State Register of cases of domestic violence and gender-based violence. The Register shall contain information (separately for each case) on: the case of violence, the victim and the measures taken to provide him with assistance, starting from the time and date of receipt of the application, notification of violence, personal data and information on free legal aid to the victim person;
data on the offender, personal contact information, and the application of the prescribed measures, the court-approved probation program for the offender (according to the authorized bodies for probation), etc. (Resolution of the Cabinet of Ministers of Ukraine, 2019).

At the same time, due to the considerable work of law enforcement, legislative and executive authorities, the issue of mass spread of domestic violence against women is not decreasing, which is confirmed by annual statistics.

Introducing measures of legal liability (criminal in particular), first of all, it is necessary to address the issue of preventive measures and outreach to the population of Ukraine on the negative consequences of the spread of domestic violence, including against children.

CONCLUSION

Thus, based on the study, it is possible to say that the Ukrainian legislation has strengths and weaknesses in terms of practical experience in detecting offenses related to domestic violence.

In order to minimize the spread of such a negative phenomenon among the population should:

- to provide training and seminars for specialists in services for women and family, social work, medical and pedagogical workers, volunteers to detect and prevent this type of crime;
- strengthen public participation in the development of mechanisms and information on crimes related to domestic violence against women;
- to improve the organization of information collection of entities implementing measures to prevent and combat domestic and gender-based violence and to establish better communication and cooperation between different bodies;
- ensure that the public is properly informed about preventive measures and opportunities to respond to crimes related to domestic violence against women.

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THE CONCEPT OF “LANDISATION” OF POLAND. SELECTED ASPECTS

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Abstract. The article analyzes the issues related to the possibility of leading to the landisation of Poland. The landisation should be understood as the process of transformation of Poland into a federal state. The Republic of Poland is a unitary state. The territorial system of the Republic of Poland ensures the decentralization of public authority, which should not be seen as a possibility of introducing a federal system. The provisions on local self-government existing in Poland are fully compliant with the European Charter of Local Self-Government.

Keywords: decentralization, the European Charter of Local Self-Government, federalisation, landisation, the Constitution of the Republic of Poland

1. INTRODUCTORY REMARKS

The basis for considering the so-called landisation is the content of the 21 Self-Governmental Theses of June 4, 2019. This topic is current and very significant, because a part of Polish society is afraid of possibility of landisation of Polish state (Lewandowski, 2019; Rachoń, 2019). In this context, landisation should be perceived as a process of gradual transformation of Poland into a federal state, such as Germany.

On June 4, 2019, during the celebration of Freedom and Solidarity in Gdańsk, over 300 city presidents, mayors, starosts and marshals discussed the future of Polish towns and villages. The result of the findings was a declaration containing 21 Theses. The Theses were presented as postulates of the Self-Governing Republic of Poland on August 31, 2019 during the debate “The Future of Self-Government” at the European Solidarity Center in Gdańsk. The self-governing Republic of Poland has declared that it will prepare draft bills to enable a debate in Polish Parliament. The declaration of June 4, 2019 was an appeal for the decentralization of the state and the starting point for introducing solutions that strengthen local self-government (Sobański, 2020).

The carried out analysis of the postulates of the Self-Governing Republic of Poland is based mainly on the Constitution of the Republic of Poland and the European Charter of Local Self-Government. The Preamble to Theses contains the demand to “ensure the possibility of
development (...) of cities and communes in accordance with the Constitution of the Republic of Poland and the European Charter of Local Self-Government”. The deliberations relate mainly to the following Theses: 1, 3, 5, 17.

The paper is the English (changed and completed) version of the paper “Wybrane aspekty prawne tzw. landyzacji Polski” (https://www.researchgate.net/publication/338753486_Wybrane_aspekty_prawne_tzw_landyzacji_Polski). The paper was published under Creative Commons in January 2020.

2. THE ISSUE OF UNITARITY AND DECENTRALIZATION IN THE LIGHT OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

According to the Article 3 of the Constitution, the Republic of Poland shall be a unitary State. The principle of unitarity indicates the homogeneous nature of Poland. This applies the territorial structure, the legal system and the socio-political structure. The unitarity of Poland expressly excludes a transformation into the federal system of the state (Kościelniak, 2012). Pursuant to the Article 15 Section 1 of the Constitution, the territorial system of the Republic of Poland shall ensure the decentralization of public power. However, the principle of state unitarity marks the limit of the principle of decentralization. Thus, non-centralized state administration and centralized government administration are homogeneous while respecting the separateness of both sectors (Korczak, 2016; Kościelniak, 2012; Patyra, 2017).

According to Art. 16 Section 2 of the Constitution, local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility. The regulations contained in the Constitution provide for three basic principles relating to the functioning of local self-government. These are: the principle of subsidiarity, the principle of independence and the principle of the presumption of the competence of local self-government (Antkowiak, 2012). It should also be borne in mind that the goal of local government activities is responsibility for matters that directly applies to local communities and residents. According to the Article 4 Section 1 of the Constitution, supreme power in the Republic of Poland shall be vested in the Nation (Buzek, 2015). S. Patyra aptly notices that the best fulfillment of the idea of the sovereign power of the Nation within the meaning of the Article 4 Section 1 is the functioning of local communities (Patyra, 2018).

Not only state and government administration, but also local government administration is characterized by unitarity, of course with respect for its distinctiveness from the other two sectors (Korczak, 2016). The principle of unitarity shapes the systemic position of territorial self-government. The principle of unitarity also delimits the principle of decentralization, acting as a brake against the transformation of local self-government into territorial autonomy (Kościelniak, 2012).

While local self-government is an objective category and independent of the will of the legislator; its existence is shaped by respect for the common good. According to the Article 1 of the Constitution, Poland shall be the common good of all its citizens. The principle of the
common good has not yet been legally defined (Kieres, 2015). W. Łączkowski aptly notices that the common good is one of the basic principles of social life, which should serve the entire community and its individual members (Łączkowski, 2018). The common good is therefore a collective and individual value at the same time. The will of the legislator determines the tasks of individual categories of local government. Units of local self-government do not have the powers of the legislative authority, and the administrative acts they adopt, both general and individual, must be anchored in the Constitution and statutes. Thus, the scope of competences of territorial self-government actually depends on the Parliament (Kościelniak, 2012; Litwin, 2018).

According to the Article 15 Section 2 of the Constitution, the basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties. P. Radziewicz notes that under Art. 15 Section 2 of the Constitution, determining the meaning of the principle of decentralization falls within the competence of the legislator (Radziewicz, 2015). It concerns a given area of social life, which is the subject of statutory regulations, as well as the subject of adopting detailed normative solutions in this respect. In this context, it should be emphasized that the principle of decentralization is clearly limited by Art. 3 of the Constitution, the principle of state unitarity.

To sum up, the principle of the common good in agreement with the principle of the unitarity of the state should be treated as factors that prevent the landisation of Poland without a radical change to the Constitution.

The Preamble to Theses contains the demand to “ensure the possibility of development (…) of cities and communes in accordance with the Constitution of the Republic of Poland”. In Poland, there are a number of regulations relating to local government. The content of the Preamble seems to indicate that the regulations in force are not consistent with the Constitution. However, it should be remembered that in Poland exists the principle of presumption of constitutionality of statutes. This principle has not been regulated by law. There is an initial assumption that the laws passed are consistent with the provisions of the Constitution. The burden of proof rests on the entity who questions the compliance of the act with the Constitution. As long as the entity does not invoke convincing legal arguments to support its thesis, the Constitutional Tribunal recognizes the provisions of internal law under review as constitutional (Dąbrowski, 2017).

3. THE LEGAL NATURE OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

On October 15, 1985, the European Charter of Local Self-Government was drawn up in Strasbourg. According to the Article 15 Section 1 of the Charter, the Charter is open for signature by the member states of the Council of Europe. The Charter was accepted and ratified by a number of European countries, including Poland. In the Preamble to the Charter it was argued that “the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power”. It was considered that “this entails the existence of local authorities endowed with democratically constituted decision-making
bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment”.

In Polish legal system, there has been a constitutional basis for local self-government, referred to in Article 2 of the Charter. According to Article 4 Section 1 of the Charter, the basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. It should be emphasized that the will of the legislator determines the situation of self-government in the state. According to Article 4 Section 2 of the Charter, local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

The concept of local self-government was included in Article 3 of the Charter. Since the ratification of the Charter by Poland, there have been proposals to amend the existing provisions on local self-government. They are often justified by the necessity to adjust Polish legal system to the provisions of the Charter (Buczyński, Jaworski, Sosnowski, 2016; Mączyński, 2015). It is not, however, about whether or not these concepts are correct. The fundamental question arises as to how the Polish legislator is obliged by the regulations contained in the Charter to amend the existing provisions. When assessing the nature of the European Charter of Local Self-Government, it should be noted that, according to the jurisprudence of the Constitutional Tribunal, one cannot demand systemic changes in Poland consisting in the elimination of the principle of unitarity in favor of introducing a federal system. Pursuant to the Constitution, Polish local self-government meets the conditions for self-government adopted in the European Charter of Local Self-Government. Treating the principle of the unitarity of Poland as a threat to the existence of local government is also not justified (Kieres, 2015; Kościelniak, 2012). Moreover, as L. Kieres observes, the Constitutional Tribunal has repeatedly emphasized in the jurisprudence that the Preamble to the Charter refers to “wide degree autonomy” which is not identical to full autonomy (Kieres, 2015).

Digressively, in the jurisprudence of administrative courts there is a position that the European Charter of Local Self-Government is only a set of postulates. The postulates indicate the desired actions of the signatories for the purposes of the Preamble to the Charter. When analyzing the content of the regulations contained in the Charter, it is clear that they are formulated in a very general manner. It makes impossible to apply them directly (Sobański, 2020).

Therefore, the demand included in the Preamble to 21 Theses to ensure the possibility of the development of cities and communes in the manner referred to in the Theses cannot be effectively pursued on the basis of the European Charter of Local Self-Government. This also applies to any other proposed changes to the existing regulations that relate to both the shape and competences of local government in Poland.
4. CRITICAL REMARKS TO THE THESES OF THE SELF-GOVERNING REPUBLIC OF POLAND

Thesis No. 5\(^1\) of the Self-Governing Republic of Poland states as follows: “The obligation to consult on all bills with representatives of local government and the local community”. Argumentation of Thesis No. 5 provides information: “Bills, especially those relating to the own tasks of local government units, as defined in Article 166 of the Polish Constitution, should be subject to compulsory consultation with associations of local governments as representatives of local communities. The results of these consultations should be included in the regulatory impact assessment of each draft law on local communities. Failure to agree is the basis for applying to the competent court”.

The implementation of the proposal contained in Thesis No. 5 would paralyze, above all, the legislative process. It should be noted that the wording of “all bills” was included in the title of Thesis No. 5, while the argumentation to this Thesis contained the wording “Bills, especially those relating to the own tasks of local government units”. This argumentation does not reflect the content of the Thesis itself. It is difficult to judge whether this semantic procedure was intentional or accidental. However, one must bear in mind this internal contradiction.

Although the regulations in force in Poland are not inconsistent with the European Charter of Local Self-Government, it is worth adding that the Charter does not provide for an absolute obligation to consult “all bills” with the local government. According to Article 4 Section 6 of the Charter, local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority (Sobański, 2020).

Thesis No. 3\(^2\) of the Self-Governing Republic of Poland states as follows: “Transformation of the Senate of the Republic of Poland into a Self-Government Chamber”. The implementation of the proposal contained in No. 3 would reduce the Senate to the role of an organ of self-government. The powers of the Senate are strictly defined in the Constitution. According to the Article 95 Section 1 of the Constitution, legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate. The Constitution vests legislative power in the Sejm and the Senate, executive power in the President and the Council of Ministers, and judicial power – in courts and tribunals. Thus the Sejm shares its legislative function with the Senate; simultaneously, it is part of the governmental system in Poland. The legislative competence of both Chambers is not symmetrical. The Constitution provides the Sejm with

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\(^1\) Teza Nr 5
“Obowiązek konsultowania z przedstawicielami samorządu i społeczności lokalnej wszystkich projektów ustaw. Projekty ustaw, szczególnie dotyczące zadań własnych jednostek samorządu terytorialnego, określonych w art. 166 Konstytucji RP, powinny podlegać obowiązkowej konsultacji z zrzeszeniami samorządów jako przedstawicielami wspólnot lokalnych. Wyniki tych konsultacji winny być umieszczane w ocenie skutków regulacji każdego projektu ustawy dotyczącej wspólnot lokalnych. Brak uzgodnienia stanowi podstawę do wystąpienia do właściwego sądu”.

\(^2\) Teza Nr 3:
“Przekształcenie Senatu RP w Izbę Samorządową. Przedstawiciele samorządu terytorialnego, samorządów zawodowych oraz organizacji pozarządowych powinni uzyskać reprezentację na szczeblu najwyższych władz państwowych i uczestniczyć aktywnie w tworzeniu regulacji prawnych. Należy znieść monopol partii politycznych w procesie stanowienia prawa w Polsce”.
a dominant role in the legislative process. However, the role the Senate in the legislative process is constitutionally guaranteed. It is worth noting that the Senate has the right to legislative initiative and participates in the adoption of laws.

The implementation of the proposal contained in No. 3 is not possible without making significant changes to the Constitution. Moreover, there is a clear relationship between the content of Thesis No. 3 and Thesis No. 5. Assigning some powers of the legislative authority to the self-government would involve the adoption of systemic solutions characteristic of the federal state. There is nothing to prevent the current representatives of self-government from running for the Senate. Their competences and credibility will be assessed by citizens by voting (Sobański, 2020).

Thesis No. 17³ states as follows: “Liquidation of the office of the voivode. Leaving the power to the central supervision over the legality of operations of local self-government units”. The only one information found in Thesis No. 17 is: “Delegation of all tasks relating to local public affairs to the voivodeship self-government”. The content of Thesis No. 17 implies the need to remind about the role and competences of the voivode as an authority. It should be emphasized that the voivode is a representative of the Council of Ministers in a voivodship, in charge of joint government administration. The voivode acts as the head of central government institutions at regional level. He fulfils the role of the overseeing officer for the territorial self-governing bodies. He is a representative of the State Treasury, to the extent and on the principles set out in separate provisions. The powers of the voivode as a monocratic government administration body include all matters related to government administration, unless they have been reserved for other government administration bodies (Dobrowolski, 2018; Zawisza 2013). As a supervisory body over the activities of local government units, the voivode exercises control in terms of legality, with the proviso that the voivode controls the performance of government administration tasks by self-government bodies in terms of legality, efficiency and reliability. The voivode is appointed by the Prime Minister.

The Polish administrative system operates on three self-government tiers: voivodeship, poviat and gmina. The head of the self-government is a voivodeship marshal. The executive, headed by the marshal, drafts the budget and development strategies as well as manages the property of voivodeship. The marshal is elected by councillors from the provincial assembly.

As A. Kiełbasiński aptly notices, since the competences of voivodes go far beyond the supervision over local governments, the postulate of the Self-Governing Republic of Poland contained in Thesis No. 17 is largely political (Kiełbasiński, 2019). At the same time, the supervision based on the legality criterion means that the activity of local government is assessed in terms of compliance with legal acts. The institution of supervision over local government is one of the most important guarantees of the performance of public tasks by the local government within the framework and pursuant to the provisions of law. At the same time, the supervision determines the actual systemic position of the local self-government, and also determines the direction and scope of decentralization (Kościelniak, 2012). According to the regulations contained in Article 171 of the Constitution, the organs

³ Teza Nr 17:
“Likwidacja urzędu wojewody. Pozostawienie władzy centralnej nadzoru nad legalnością działania jednostek samorządu terytorialnego.
Przekazanie wszystkich zadań dotyczących spraw publicznych w regionie samorządowi województwa.”
authorized to exercise supervision over local government are not only the voivode, but also: the Sejm, the Prime Minister (Kowalczyk, 2017).

When analyzing Theses No. 17 should also be related to the content of Thesis No. 1⁴, which reads as follows: “Full right of a self-governing community to independently decide on all local matters”. Argumentation of Thesis No. 17 provides following information: “residents are the only supervisory authority for local self-governments”. Although Polish legal regulations do not contradict the European Charter of Local Self-Government, it is worth noting that Art. 8 of the Charter directly assumes the existence of administrative control over the activities of local communities.

5. FINAL REMARKS

The implementation of proposals contained in Theses No. 3 and No. 5 carries the risk of systemic changes in Poland that could eliminate the principle of unitarity in favor of a federal system.

Apart from the landisation understood as the creation of a federal state system, which would be clearly contrary to the content of Art. 3 of the Constitution, it should be emphasized that any concept of decentralization would have to be carried out in a manner that would respect the “common good” of all citizens. Therefore, Theses No. 1 and No. 17 are in contrary to decentralization understood in this way.

The existing provisions concerning local self-government are consistent with the Constitution. On the other hand, the Constitution fully meets the conditions for territorial self-government adopted in the European Charter of Local Self-Government.

Referring to the German system, it is worth adding that in Chapter II of the Potsdam Agreement of August 2, 1945, a requirement was introduced to decentralize Germany both in economic and political sense. It had an impact on the content of Constitution of the Federal Republic of Germany (Jedynakiewicz-Mróz, 2012). The Constitution adopted by the Parliament was approved on May 8, 1949 by Commanders-In-Chief of the Western occupation zones. The Constitution contains the political principles of the Federal Republic of Germany, which include, among others, federalism. The decentralization of Germany through the introduction of the federal system was primarily aimed at weakening the state (Sobański, 2019; Sobański, 2020). These circumstances should also be taken into account when assessing the concept of systemic unitarity of the state in comparison to the federal system.

REFERENCES


⁴ Teza Nr 1:
"Pełne prawo wspólnoty samorządowej do samodzielnego decydowania o całokształcie spraw lokalnych. Samorządy terytorialne powinny mieć pełną samodzielność: prawną, organizacyjną i majątkową w zakresie realizacji zadań własnych we współpracy i konsultacji z mieszkańcami. Jedynym organem nadzoru dla samorządów w kwestiach lokalnych są mieszkańcy, którzy powinni być jak najszerzej włączeni w proces współdecydowania o sprawach małych ojczyzn".


Łączkowski W. (2018), Trójpodział władz a dobro wspólne, LEX, Nr 339140/1.


Abstract. The article is devoted to the study of the grounds and procedure for termination of a judge’s powers of the Constitutional Court of Ukraine as a constituent of ensuring its independence. The article aims to establish the reasons for the insufficient level of ensuring the independence of the Constitutional Court of Ukraine in terms of failure to comply with the current legislation on termination of powers of judges of the Constitutional Court and suggest recommendations to overcome defined problems. A set of methods was used for the study, such as: 1) a formal legal analysis of the texts of regulatory legal acts; 2) the historical and historical-legal analysis actualized and compared problems related to the independence of judges of the Constitutional Court during the events of 2008, 2010, 2014, and 2020-2021; 3) the comparative-legal method was used to compare the legal regulation of constitutional review bodies in several post-Soviet states with the transitional nature of legal and public administration systems; 4) the formal and dogmatic method allowed us to conclude the content of legal regulation for termination of powers of a judge of the Constitutional Court and changes in such regulation underwent during the existence of constitutional jurisdiction in Ukraine; 5) the systematic method defined the forms of interaction between legal institutions, in particular, the institution of removal from office in criminal proceedings and the institution of independence of judges of the Constitutional Court. As a research result, we described the key problems in the practice of termination of powers of judges of the Constitutional Court of Ukraine and suggested recommendations to solve defined problems.
The value of this article, first of all, is due to the study of events in the Constitutional Court during 2008, 2010, 2014, and 2020-2021.

**Keywords:** independence, constitutional crisis, constitutional situation, constitutional jurisdiction, dismissal of a judge from office.

**INTRODUCTION**

The grounds and procedure for dismissal of judges of the constitutional courts from office are a separate component of constitutional and legal provision for the independence of the bodies of constitutional jurisdiction and the guarantee for the independence of judges of constitutional courts. As the procedure for appointment of judges to the constitutional courts, the procedure for termination of their powers is essential for ensuring the independence of the Constitutional Court. In fact, even perfect procedure for the appointment of judges to the constitutional courts, provided there is the possibility of arbitrary dismissal of judges from their office, cannot ensure the independence of the constitutional court.

The reason for this research was the events touching the Constitutional Court of Ukraine in 2020-2021 (Urgent Opinion of Venice Commission..., 2020). The removal of the Chairman of the Constitutional Court, the repeal of decrees on the appointment of two judges to the Constitutional Court, and other processes in Ukraine have raised the question of the insufficient level of ensuring the independence of judges of constitutional jurisdiction again. The above facts also generate a need for further thorough research in the grounds and procedure for termination of powers of judges of the Constitutional Court as a constituent of ensuring its independence.

In this context, we can mention both the reformation of the Constitutional Court due to serious social upheavals (Ukraine in 2014 and Armenia in 2015) and attempts to carry out such actions without revolutions (Ukraine in 2010). Following the events at Maidan Nezalezhnosti (Independence Square) from November 2013 to February 2014, the Verkhovna Rada dismissed 5 judges for breaking an oath (The Resolution of the Verkhovna Rada of Ukraine..., 2014). This case was extraordinary given the revolution that preceded it and the number of judges dismissed by a single resolution. However, under the Statement of the Assembly of Judges of the Constitutional Court of Ukraine on the grounds for termination of powers and dismissal from office of judges of the Constitutional Court of Ukraine for breaking an oath dated April 1, 2014 (The Statements of the Assembly of Judges, 2014), signs of oath-breaking by judges of the Constitutional Court of Ukraine were not established.

During post-revolutionary processes in Armenia, there were attempts to establish additional grounds for the dismissal from the office of judges of the Constitutional Court, which could be exercised to judges. These attempts aimed to amend the Constitution, organize a referendum on the issue, and, at the same time, adopt ordinary laws (European commission for democracy through law (Venice commission), 2019). Partially similar processes have been observed recently in Ukraine, in the form of Draft Law of Ukraine “On...
Restoring Public Confidence in Constitutional Proceedings” No. 4288 (2020) registered by the President of Ukraine.

Therefore, the purpose of this scientific research is: to study the current grounds and procedure for termination of powers of judges of the Constitutional Court of Ukraine; to establish the reasons for the insufficient level of ensuring the independence of the Constitutional Court of Ukraine in terms of failure to comply with the current legislation on termination of powers of judges of the Constitutional Court; to suggest recommendations to overcoming determined problems.

To prevent an arbitrary termination of powers of judges of the Constitutional Court, there must be the proper procedure for termination of powers. Clear and unambiguous constitutional and legislative regulation along with an appropriate level of legal and political culture and a high authority of the Constitutional Court in society (in other words, the existing constitutional democracy) will prevent politicians from exercising control over the constitutional jurisdiction and, consequently, reduce the probability of overthrowing the constitutional system in the country.

MATERIALS AND METHODS

The empirical basis of the study was a wide range of factual information that characterizes the evolution of institutional independence of the judiciary in Ukraine from the time of its establishment to the present time.

The study is based on the analysis of various regulatory legal acts (the provisions of the Constitution of Ukraine, laws, bylaws) that regulate the body of constitutional jurisdiction, their application, and amendment. We also considered law enforcement acts, including decisions of law enforcement authorities and acts adopted to implement such decisions. In addition, we considered normative material and the practice of legislative execution (in particular, criminal procedure) in aspects of its impact on the institutional independence of judges of the Constitutional Court.

The study is not limited to a formal legal analysis of the texts of regulatory legal acts, having unequal legal force, and the practice in their application. In the course of the research, factual data on the current legal regulation of the institution of independence of a judge of the Constitutional Court and its changes are introduced into a broad political and social context and investigated accordingly to the socio-political situation, occurred in relevant periods. This approach was possible due to the information we retrieved from official statements of public administration bodies, law enforcement authorities, reports of judges of the Constitutional Court of Ukraine, recognized experts, reports of authoritative mass media.

The formal and dogmatic method allowed us to conclude the content of legal regulation for termination of powers of a judge of the Constitutional Court and changes in such regulation underwent during the existence of constitutional jurisdiction in Ukraine. Having applied this method, we also highlighted the features of legal writing that have been used and may be used to improve the quality of legislation in the field of public relations.

By the historical and historical-legal analysis, we actualized and compared problems related to the independence of judges of the Constitutional Court during the events of
2008, 2010, 2014, and 2020-2021. While conducting these analyzes, we took into account the broad socio-political context, interaction, and mutual impact of different branches of government in Ukraine when it comes to ensuring the independence of judges of the Constitutional Court.

We used the comparative-legal method to compare the legal regulation of constitutional review bodies in several post-Soviet states with the transitional nature of legal and public administration systems. This method provided for the causes and main ways of the crisis, which centered on the independence issue of judges of constitutional jurisdiction.

Following the modeling method, we predicted the impact of probable changes in the legal regulation of the independence of judges concerning the grounds for dismissal of a judge of the Constitutional Court.

The systematic method defined the forms of interaction between legal institutions, in particular, the institution of removal from office in criminal proceedings and the institution of independence of judges of the Constitutional Court.

RESULTS AND DISCUSSION

Regarding the procedure for termination of powers of judges of the Constitutional Court of Ukraine

The constitutional reform of 2016 significantly changed the procedure for termination of powers of judges of the Constitutional Court of Ukraine. Thus, under Article 149-1 of the Constitution of Ukraine, the grounds for termination of powers of judges were divided into immediate termination, fixed by the resolution of the President of the Court, and dismissal of judges. Prior to the relevant amendments to the Constitution of Ukraine, there was no such delimitation that resulted in the completely unnecessary discretion of an authorized person. The immediate termination of the powers of a judge of the Constitutional Court occurred only in the event of his or her death. In other words, the decision of the relevant authorized body was needed even in the event of the expiration of the term, for which a judge has been appointed; attaining the age of sixty-five; the entry into legal force of a verdict of guilty against a judge; the termination of citizenship of a judge. And the legal fact of dismissal of a judge of the Constitutional Court was not the event that should immediately terminate the powers of a judge, but specifically the decision of the authorized body to dismiss him. Taking into account transformational societies and unstable democracies, such discretion is too risky. There may occur situations in which the Parliament cannot receive a sufficient number of votes of people’s deputies, and a judge continues to hold a position that may satisfy some political forces. Apart from the political consequences, there is another extremely negative one – the undermining of the legitimacy of the decisions adopted by the Court. Therefore, the division of grounds for immediate termination of powers and grounds for dismissal at the constitutional level is a completely logical and correct step. In particular, this stands with the recommendations of the Venice Commission (European commission for democracy through law (Venice commission), 2005).

Thus, the subjects for appointment of judges to the Constitutional Court (the Verkhovna Rada, the President, and the Congress of Judges of Ukraine) were deprived of the right to
dismiss judges of the CCU and, accordingly, this right was granted to the Constitutional Court itself. The decision to dismiss a judge of the Constitutional Court shall be made by the Court by at least two-thirds of its constitutional judges. This significantly increased the guarantees for the independence of judges of the Constitutional Court as, previously, the authorized body could dismiss a judge for breach of the oath (that was too evaluative category to be the grounds for dismissal of a judge of the Constitutional Court).

Another important aspect of the above constitutional amendments was the distinction between the grounds for dismissal of judges of courts of general jurisdiction and judges of the Constitutional Court. According to the fifth part of Article 126 of the Constitution of Ukraine, as amended by September 30, 2016, a judge was dismissed by the body that elected or appointed him or her, in the event of:

1. the expiration of the term, for which he or she has been elected or appointed;
2. attaining by a judge the age of sixty-five;
3. inability to exercise his or her powers for health reasons;
4. violation by a judge of incompatibility requirements;
5. a breach of oath by a judge;
6. the entry into legal force of a verdict of guilty against him or her;
7. the termination of his or her citizenship;
8. declaring a judge as missing, or pronouncing him or her dead;
9. submission by a judge of a resignation or voluntary dismissal from the office.

The Venice Commission assumes that the grounds for the dismissal of judges of the Constitutional Court must be clear. For example, paragraph 21 of the Opinion on the Draft Law on amendments to the Constitution, strengthening the independence of judges (2013) states that the proposed “Article 126 concerning the dismissal of judges of the Constitutional Court, in particular the grounds for dismissal, is not very clear and causes some doubts. It is unclear whether the grounds for the dismissal of judges may also be applied to judges of the Constitutional Court or only to judges of courts of general jurisdiction. The dismissal of the Constitutional Court judges from their office should be regulated in a separate section of this court” (European commission for democracy through law (Venice commission), 2013).

As a result of the 2016 constitutional reform, such grounds for dismissal as “breach of an oath” were excluded. The Venice Commission has repeatedly pointed out that breach of an oath is very vague to be a standard for dismissing judges (European commission for democracy through law (Venice commission), 2009). In particular, this is relevant to the Judgment the European Court of Human Rights delivered in the Oleksandr Volkov v. Ukraine case (2013).

Thus, it was common for judges of the Constitutional Court to be dismissed for breaching an oath without any justification for how they breached an oath. A vivid example represents the case of V. Ivashchenko, the Judge of the Constitutional Court. Thus, by the Decree of the President of Ukraine of May 10, 2007, No. 390/2007, the judge was dismissed on the grounds of his oath-breaching. However, on June 14, 2007, the President signed Decree No. 527/2007, which revoked the previous act. On the same day, by Decree of the President of Ukraine No. 529/2007, V. Ivashchenko was dismissed on the grounds of his resignation. The culmination of these decrees was the Decree of the President of Ukraine of November
1, 2007, No. 1040/2007, which supplemented the previous grounds for dismissal with the words “due to inability to exercise his powers for health reasons.” Thus, Ivashchenko was dismissed on three different grounds during 2007, which indicates only the political motives (Kyrychenko, 2017). The almost identical situation we can observe with the resignation of Pshenychnyi, the Constitutional Court judge (Decree of the President of Ukraine, 2007a; Decree of the President of Ukraine, 2007b; Decree of the President of Ukraine, 2007c).

Similar cases have happened before. For example, on May 1, 2007, S. Stanik, a retired judge of the Constitutional Court of Ukraine, was dismissed from her office by Presidential Decree No. 70370/2007 (Decree of the President of Ukraine, 2007d) on the grounds of his oath-breaching. March 25, 2008, by the Resolution of the Board of Judges of the Judicial Chamber for Administrative Cases of the Supreme Court of Ukraine (2008), Decree No. 370/2007 was finally declared illegal and repealed. The President signed Decree No. 294/2008 (2008a), which reinstated her in office, although this form of the acquisition was not provided for by law or the Constitution. The very next day, the President issued Decree No. 297/2008 (2008b), which repealed the Decree on the reinstatement of Judge Stanik to her office.

On January 27, 2021, by the Decision of the High Administrative Court of Ukraine No. K-31177/09, Decree No. 297/2008 was finally declared illegal and canceled (2010). Only on April 29, 2010 (after being reinstated as a judge of the CCU by Decree No. 585/2010 (Decree of the President of Ukraine, 2010a), she was dismissed from her office by Presidential Decree No. 587/2010 (Decree of the President of Ukraine, 2010b) due to submission of resignation.

We should note that the Constitutional Court has made several decisions (Resolution No. 18/2008, 2008; Resolution No. 31/2007, 2007), by which it refused to consider such presidential decrees (on the grounds of the inconsistency of submissions and nonrelation of these decrees assessment for legality to the powers of the CCU). Unfortunately, the above positions of the Constitutional Court indicate its inability to defend itself.

On March 27, 2021, the President of Ukraine issued Decree No. 124/2021, “On Some Issues of Ensuring the National Security of Ukraine,” canceling previous Decrees on the appointment of Tupytskyi and Kasminin as judges of the Constitutional Court. On April 5, 2021, the Supreme Court, composed of a judge of the Administrative Cassation Court, opened proceedings on the above Decree (Decision of the Supreme Court..., 2021) to declare it illegal and revoke it. Similar to the case with the retired judge of the Constitutional Court Stanik, the subject for the appointment dismisses, in fact, the judges of the Constitutional Court in a manner not provided by law. As the authors of the constitutional petition, which claimed this Decree as unconstitutional, rightly pointed out, decrees of the President on the appointment of CCU judges are acts of individual action and, thus, exhaust their effect by their execution, i.e., after taking by judges an oath and office (Constitutional petition of 49 people’s deputies..., 2020). Also, Oleksandr Marusiak expediently notes, it absurd action to cancel the act on appointment of the person to an office because it creates legal uncertainty as only a dismissal is a legitimate antipode to appointment (Marusiak, 2021). We should emphasize that this practice has not been found exclusively in Ukraine because similar events took place in Moldova on April 24, 2021 (Velkina, 2021).

Subjects for appointment must renounce the practice of termination of powers of the CC judges, which is questionable according to the law and the Constitution. Such actions put
direct pressure on judges of the Constitutional Court and, consequently, negatively affect its independence.

**Suspension of a judge of the Constitutional Court**

On December 29, 2020, by Decree No. 607/2020, the President removed Oleksandr Tupytskyi from the office of the judge of the Constitutional Court of Ukraine for two months (Decree of the President of Ukraine, 2020a). The grounds of this Decree are practically absent, except for the reference to Article 154.3 of the Criminal Procedure Code (hereinafter – CPC). The Article states that the matter of suspension from office of the persons appointed by the President of Ukraine shall be decided by the President of Ukraine on the grounds of the public prosecutor's motion under the procedure set forth by law.

Such an act of the President is clear know-how in the Constitutional Law of Ukraine, and therefore should be studied in detail.

**Regarding the legality of Decree No. 607/2020**

This provision of the CPC appeared in December 2016 and was never applied until December 2020. In this aspect, this Decree should be studied, first of all, for compliance with the criterion of legality.

Pursuant to Article 154.1 of the CPC, suspension from office may be applied to a person who is suspected of or charged with committing a crime. Thus, first of all, the key issue is the status of O.M. Tupytskyi in criminal proceedings under Art. 384.2, Art. 386.2 of the Criminal Code of Ukraine (perjury, artificial creation of evidence for the defense, witness tampering for refusal to testify), which is investigated by the National Bureau of Investigation. As the State Bureau of Investigation stated, O. Tupytskyi was served with the notice of charges (The suspected judge of the Constitutional Court of Ukraine..., 2021). We should note that Tupytskyi did not come to serve the suspicion due to “family circumstances,” which was later sent to him by mail (Tupytskyi did not come..., 2020). However, the potential suspect holds the opposite opinion. The only at-trial procedure can investigate the objective truth. However, concerning the topic of this research, we note that Decree No. 607/2020 was clearly illegal as, on December 29, O. Tupytskyi did not acquire the status of a suspect in the criminal proceedings.

The second issue is the procedure for implementing this Decree.

According to the above position of the State Bureau of Investigation, “investigators of the State Bureau of Investigation, in strict compliance with the requirements of the current legislation of Ukraine, are taking comprehensive measures to ensure the implementation of the Decree.” However, the nature of such measures remains in question, as neither the Decree nor the applicable legislation has a list of measures to be taken to enforce such a type of criminal proceedings as suspension from the office of a judge of the Constitutional Court.

At the moment, there is an actual question of whether O.M. Tupytskyi has admission to the building of the Constitutional Court or not. According to the position of the Administration of State Guard of Ukraine, which guards the premises of the Constitutional Court and reports to the President of Ukraine, in connection with the appeal of the State Bureau of Investigation to the Administration of State Guard of Ukraine, O.M. Tupytskyi was not allowed to enter the premises of the Constitutional Court of Ukraine. In this case, there are
a number of questions, which are difficult to answer unambiguously due to an insufficient legal framework. For example, does the suspension of a CCU judge from the office include the need to prevent him from entering the CCU premises? Should there be a clear distinction between “workplace” and “work seat” in this case? How do these measures correlate with the internal acts of the Constitutional Court, regulating the procedure for admission to the building of the Constitutional Court? Can wages be paid? Will the absence at the work seat be considered absenteeism, which entails the corresponding negative consequences? Unfortunately, these questions do not have straight answers.

The motivation for Decree No. 607/2020 is the third issue to be examined. The generally accepted principle of law enforcement is the proper motivation of their decisions by public authorities regardless if they are the Constitutional Court, the President, or public administration bodies. As noted above, Decree No. 607/2020 does not contain such a motivation, except for the reference to the Article of CPC. This motivation is crucial to assess whether a particular type of measure is necessary to apply to ensure criminal proceedings. It allows determining risks for criminal proceedings that potential actions of the suspect may pose and restrictions that should be imposed on the person dismissed from the office. The President stated that the Decree was signed in order to “restore justice and resolve the constitutional crisis.” (The President of Ukraine signed..., 2020) Given this motivation of the President, Decree No. 607/2020 was issued to continue the negative for the Constitutional Court processes, which began in November 2020 and was called the “constitutional situation,” rather than to achieve the objectives of criminal proceedings. At the same time, by the above position of the State Bureau of Investigation, a suspension of a CCU judge along with his Chairman is the only possible way to prevent the latter from influencing other witnesses of these criminal proceedings – CCU officers, their resistance to provide documents at the investigator's request, interrogations, etc.

**On the constitutionality of Decree No. 607/2020**

The enactment of the Decree has provoked many critical assessments concerning its potential unconstitutionality. On April 8, 2021, the Constitutional Court of Ukraine received a constitutional petition from 49 people's deputies of Ukraine on the constitutionality of the Decrees of the President of Ukraine “On suspension from office of a judge of the Constitutional Court of Ukraine” dated December 29, 2020, No. 607/2020; “On suspension from office of a judge of the Constitutional Court of Ukraine” dated February 26, 2021, No. 79/2021; “On Some Issues of Ensuring the National Security of Ukraine” dated March 27, 2021, No. 124/2021 (Constitutional petition of 49 people's deputies..., 2020; Decree of the President of Ukraine, 2021a; Decree of the President of Ukraine, 2021b). Since the unconstitutionality of legal acts is established exclusively by the Constitutional Court in Ukraine, and there is no such decision at the time of writing, we will try to assess the arguments regarding the unconstitutionality of Decree No. 607/2020 below.

On December 30, 2020, a publication entitled “On the Decree of the President of Ukraine On suspension from the office of a judge of the Constitutional Court of Ukraine dated December 29, 2020, No. 607/2020” appeared on the official website of the Constitutional Court of Ukraine (Decree of the President of Ukraine, 2020a). This publication is posted on behalf of the Legal Department of the CCU and assesses the constitutionality of Decree
Before assessing the separate arguments for their content, we should note that the publication of materials on the official website of the Constitutional Court is debatable in terms of the status of both the Constitutional Court and a separate structural unit of its Secretariat. The publication concludes the Decree “is legally invalid and cannot be executed as it is issued by the President of Ukraine, exceeding his constitutional authority, contradicts the constitutional principles for the organization of state power in Ukraine and the constitutional principles of Constitutional Court of Ukraine, encroaches on the constitutional and legal status of a judge of the Constitutional Court of Ukraine.”

The Legal Department of the CCU consider this act as unconstitutional given:

1. Exhaustive nature of the constitutional powers of the President of Ukraine, which does not provide for such powers as the suspension of a judge of the Constitutional Court.

In this aspect, we should highlight that, under the Constitution, the president of Ukraine has no power to suspend a judge of the CCU. Similarly, the President has had no power to dismiss judges of the CCU from office since 2016. However, the legal position set out by the Constitutional Court in the case of Decision dated September 16, 2020, No. 11/2020 (Decision of the Constitutional Court of Ukraine, 2020) cannot be fully applied to these circumstances. The CCU actually concluded within the above Decision that the powers of the President, challenged in the course of the constitutional proceedings, are beyond his competence and should be transferred to another body (for example, the Cabinet of Ministers). In this case, the President has particular powers to appoint judges of the Constitutional Court that affect their status. Therefore, such an argument of the Legal Department of CCU cannot be independent and unappealable. In other words, if the Parliament is empowered to suspend a CCU judge from office under the procedural law, will this make the provision constitutional? The answer is probably not.

2. Impossibility to apply Article 154.3 of the CPC to judges of the Constitutional Court.

The Legal Department of the CCU believes the Constitution of Ukraine does not provide for the possibility to suspend a judge of the Constitutional Court of Ukraine from office. As for judges of courts of general jurisdiction, paragraph 6 of Chapter I of Article 131 of the Constitution of Ukraine provides for their temporary suspension to administer justice. On the contrary, the Constitution of Ukraine establishes only the grounds and procedure for dismissal of a judge of the Constitutional Court of Ukraine, termination of his or her powers, arrest or detention in custody (Articles 149, 149-1 of the Constitution of Ukraine).

The counterargument may be as follows: According to Article 24 of the Law of Ukraine On the Constitutional Court of Ukraine, a suspension of a judge of the CCU can be applied per standard procedure provided that it does not include such exceptions as detainment, detention in custody or arrest of a judge. These exceptions are applied to a CCU judge per special procedure.

If Article 154.3 of the CPC is allowed to be applied to judges of the Constitutional Court, it can be applied, by analogy, to the Prosecutor General, half of the Council of the National Bank of Ukraine, the National television and radio broadcasting Council of Ukraine. This may significantly shift the balance of checks and balances, established at the constitutional level, towards the President.
The Constitutional Court should investigate this issue within the framework of constitutional proceedings and, accordingly, should form a legal position.

3. The ability of the President to suspend a judge of the Constitutional Court violates the unified status of the CCU judges appointed by different subjects.

The Legal Department of the CCU considers it will be a gross violation of the constitutional and legal status of all judges of the Constitutional Court of Ukraine if one of such subjects for appointment (in this case – the President of Ukraine) is granted the right to “suspend judges of the Constitutional Court of Ukraine from the office” while the other subjects (Verkhovna Rada of Ukraine and Congress of Judges of Ukraine) are not. We believe such an argument is completely self-sufficient and logical.

Oleksandr Vodiannikov expediently draws attention to another aspect, which may indicate the potential unconstitutionality of the provisions of Article 154.3 of the CPC. He believes this provision establishes a special procedure for suspension from office as a measure to ensure criminal proceedings against a separate category of officials who, according to Article 106 of the Constitution, are beyond judicial control. Thus, in the case of all other persons, the decision to suspend a person from the office is taken within the adversarial procedure by an investigating judge or a court, composed of the investigator, inquiry officer, prosecutor, and defense. However, the procedure for suspension of CCU judges is not similar, as the decision is made solely and discretionary by the President of Ukraine (Vodiannikov, 2021).

Thus, the application of such a measure to ensure criminal proceedings is extrajudicial and does not allow the defense to use the remedies and guarantees provided by the CPC.

Given the above arguments, the Decree of the President of Ukraine On suspension of a judge of the Constitutional Court of Ukraine from office dated December 29, 2020, No. 607/2020, is questionable in certain aspects of its constitutionality and, perhaps, even legality.

Until the relevant decisions are adopted within the framework of proceedings of general jurisdiction or a decision of the Constitutional Court, it shall be valid and enforceable. To rely on the first paragraph of Article 60 of the Constitution of Ukraine (No one shall be obliged to execute directions or orders that are manifestly criminal) is not relevant in this case (Decree of the President of Ukraine, 2020b). As the Decree was adopted based on the current provision of the Law, the constitutionality of which was beyond dispute, and therefore, at least given this, the category “knowingly criminal” cannot be applied to this Decree.

We support the thesis by Oksana Kuchynska that argues the necessity to harmonize the provisions of Art.149 of the Constitution of Ukraine, Art. 24 of the Law of Ukraine On the Constitutional Court of Ukraine, and Art.154.3 of the CPC (Kuchynska, 2021).

In addition, we note that a CCU judge shall not exercise the powers of the CCU Chairman in case of his suspension from the office, regardless of whether he considers himself suspended from the office of a judge of the Constitutional Court or not (Press release, 2021). This is impossible under Article 33.4 of the Law of Ukraine On the Constitutional Court of Ukraine, as only a person with the status and office of a judge of the CCU can be the Chairman of the Court. Also, the absence of the Chairman of the CCU does not “block” the work of the CCU, as according to Paragraph seven of this Article, in the absence of the Chairman of the Court,
his duties are performed by the Deputy Chairman of the Court. If they are both absent, the oldest Judge performs their duties.

Regarding the grounds for termination of powers of judges of the Constitutional Court of Ukraine

According to Article 149.1 of the Constitution of Ukraine, the immediate grounds for termination of a judge of the Constitutional Court are:
1. expiration of his or her term of office (remain);
2. attaining the age of seventy (age limit was increased by 5 years);
3. termination of citizenship of Ukraine or acquisition of citizenship of another state (an additional basis occurred);
4. entry into force of a court decision declaring him or her missing or dead, declaring him or her incapable or partially incapable (an additional basis occurred);
5. the entry into legal force of a verdict of guilty against him or her (remain);
6. death of a judge of the Constitutional Court of Ukraine (remain).

Regarding the grounds for dismissal of a judge of the Constitutional Court of Ukraine.
1. Incapability to exercise his or her powers for health reasons.

According to paragraph 1 of Chapter one of Article 21 of the Law of Ukraine On the Constitutional Court of Ukraine, this fact must be confirmed by a medical opinion issued by a medical commission, established by the central executive body that ensures the formation and implementation of state health policy at the request of the Chairman of the Court, and, in his absence, of the Deputy Chairman of the Court, or, in the absence of both, of a judge acting as the Chairman of the Court. If this opinion is insufficient for the 12 judges of the Constitutional Court, the judge who has health problems will still be in office.

2. Violation by a judge of incompatibility requirements.

According to paragraph 1 of Chapter one of Article 21 of the Law of Ukraine On the Constitutional Court of Ukraine, the issue of violation of incompatibility requirements by a judge is considered at a special plenary session of the Court in the presence of the Standing Committee on Rules and Ethics. If the circumstances that indicate a violation of the incompatibility requirements by the judge are confirmed, the judge shall be notified about the need to eliminate such circumstances within the period established by the Court. If the judge has not remedied the breach of the incompatibility requirements within the period established by the Court, the Court shall decide on his dismissal.

However, can qualification and other requirements for a judge of the Constitutional Court be considered guarantees of his independence? To answer this question, it is necessary to clarify the legal nature of the requirement for a judge of the Constitutional Court, which applies to both candidates for a judge’s office and current judges of the Constitutional Court.

At first glance, this issue is purely theoretical. However, if we turn to the recent practice of the Constitutional Court of Ukraine, in particular to Decision No. 2/2017 dated December 20, 2017 (Decision of the Constitutional Court, 2017), its applied nature becomes clear. In particular, the second part of a separate opinion of Judge Melnyk (2017) devoted to the analysis of the correlation between the qualification requirements and the essence of legal liability. Can a qualification requirement be a guarantee of independence? This question has no common answer due to a lack of a well-established understanding of the legal nature of
the qualification requirement in the scientific doctrine and the difference in the office of judges of the Constitutional Court of Ukraine. Nevertheless, the nature of the requirement for current judges of the Constitutional Court is completely different.

M. Savenko (2001) believes the requirements to judges established by the Constitution of Ukraine and the Law of Ukraine On the Constitutional Court are aimed at ensuring the independence of judges and the Constitutional Court. P. Stetsiuk also mentions particular requirements for judges of the Constitutional Court in the context of their independence (Stetsiuk, 2013).

We assume the requirements for judges can be considered as a guarantee of their independence, as a judge of the Constitutional Court, who does not comply with these requirements, can be dismissed from the office. Article 11 of the Law of Ukraine On the Constitutional Court of Ukraine provides requirements for a judge, determining the criteria for a candidate for a judge’s office and current judges of the Constitutional Court. These requirements are aimed to ensure a high professional level, high moral qualities, and independence of a judge of the Constitutional Court.

According to Art. 21 of the Law of Ukraine On the Constitutional Court of Ukraine, the grounds for dismissal of a judge is his or her violation of the requirements of Part 3, Part 4 of Art.11 of the Law. At the same time, violation of Part 2 of Art.11 (observance of standards of professional ethics) is not unconditional grounds for dismissal of a judge of the Constitutional Court. However, since the notion of substantial disciplinary misconduct is not defined in part one of Article 21 of the Law, violation of standards of professional ethics may fall under the category of substantial disciplinary misconduct and be grounds for dismissal (Law of Ukraine On the Constitutional Court of Ukraine, 2017). If a judge of the Constitutional Court does not comply with other requirements, enshrined in Art.11(1) of the Law (identical to the fourth paragraph of Article 148 of the Constitution of Ukraine), his or her powers shall be terminated (loss of citizenship, attaining the age limit, etc.). Non-compliance of a judge with the requirements of high moral qualities and recognized level of competence should fall (be a primitive cause) under the category of gross or systematic neglect of their duties. This shows the incompatibility of the status and office of a CCU judge, and therefore, is the grounds for his or her dismissal.

Thus, we can argue that the grounds for dismissal or termination of powers of a judge of the Constitutional Court are non-compliance with the requirements established for his or her office. As the grounds for dismissal of judges of the Constitutional Court guarantee their professionalism and presume that judges and their decisions cannot be misled or subject to other external influences, they are, in essence, a guarantee of their independence. Regarding the above, we can argue that the requirements for the incumbent judge of the Constitutional Court can be considered as guarantees of their independence.

In this aspect, a number of circumstances need to be investigated, such as political neutrality. Under the provisions of the Law of Ukraine On the Constitutional Court of Ukraine, Article 11(3, 4) of this Law defines the incompatibility requirements, non-compliance with which may be grounds for dismissal. A judge of the Constitutional Court must meet the criterion of political neutrality. Namely, it is stipulated at the constitutional level that a judge of the Constitutional Court shall not participate in any political activity.
This constitutional provision is detailed at the legislative level. Thus, under Article 11 (3) of the Law, a judge shall not belong to political parties or trade unions, show support for them publicly, and participate in any political activity. Moreover, at the time of appointment, a candidate for a judge’s office shall not be a member or hold an office in a political party or other organization that has political goals or participates in political activities; be elected to an elected position in a state authority or local government body and have a representative mandate; participate in the organization and financing political agitation or other political activity.

Regarding the above, the following questions arise. Are all of the above circumstances a political activity or a public expression of commitment to a political party? If so, can these circumstances be remedied by judges themselves?

Imagine that a CCU judge funded a political party. On the one hand, the very fact of such funding can be regarded as a public expression of commitment to a particular political party, as this information is available on the official website of the National Agency Corruption Prevention. However, on the other hand, we cannot be sure that such a contribution in favor of a political party was made by him independently and not by a member of his family from the judge’s account. How does such a contribution affect the authority of the Constitutional Court? Is the judge’s subsequent statement that he does not support any political party sufficient to remedy such circumstances?

The Standing Committee on Rules and Ethics of the Court should investigate all these issues, together with the explanations of a judge of the Constitutional Court (including but not limiting to funding a political party as an example of various incompatibility requirements). In case of similar situations, these issues should be established in the practice of the Constitutional Court. At present, the Standing Committee on Rules and Ethics of the Constitutional Court has investigated only one case of the non-compliance of a CCU judge with the requirements of political neutrality. This is a statement by Stanislav Shevchuk, a former judge of the Constitutional Court: “I will never take the oath of office if the election is rigged.” (The Chairman of the Constitutional Court..., 2019). Under the Decision of the Standing Committee on Rules and Ethics of the Constitutional Court of Ukraine (Minutes of April 17, 2019) (Decision of the Standing Committee..., 2019), it was assessed as a political statement, interference in the political process, discreditation of the Chairman of the Constitutional Court, and significant damage to the authority of the Constitutional Court.

However, the Standing Committee on Rules and Ethics of the Constitutional Court of Ukraine did not examine the statement of the Ukrainian Association of International Law (Statement of the Ukrainian Association of International Law, 2019), a member of which board was Shevchuk, a former judge of the CCU. It proposed to support the candidacy of the then head of state in the next presidential election. Although, such a question was submit to be considered by the judges according to the statement of Slidenko (Interview with a Judge..., 2019), the judge of the CCU. Later, Shevchuk, the former judge of the CCU, denied his involvement in this statement (Comment of the Chairman..., 2019). We believe the Standing Committee on Rules and Ethics of the Constitutional Court of Ukraine should have investigated such circumstances to expand the practice of applying the provisions of Art. 11 (3, 4) of the Law of Ukraine On the Constitutional Court of Ukraine.
Draft Law on the Constitutional Court of Ukraine No. 5336-1 (2016) proposed to impose restrictions on any political activity for 3 years before taking office as a judge of the Constitutional Court. However, the current law does not contain such a provision. The Venice Commission had a reservation (Draft Opinion on The Draft Law..., 2016) to such a wording as too harsh, but in our opinion, such a restriction may make sense. As the issue of potential political independence of judges of the Constitutional Court is acute in Ukraine, the establishment of such restrictions with an appropriate transition period can be supported. These restrictions do not solve all problems but complicate the choice of politically dependent candidates for the appointee.

The possibility for a judge of the Constitutional Court to carry out exclusively teaching, scientific or creative activities is another incompatibility requirement, which has a dual purpose: (1) not to distract a judge from direct duties and (2) to avoid conflicts of interest between his or her professional duties and other activities. Extrajudicial activities related to the nature of the main work are permitted (Savenko, 2001).

3. Committing significant disciplinary misconduct by a judge of the CCU, gross or systematic neglect of his or her duties, which is incompatible with the status and office of a judge of the CCU.

Under its Opinion on the proposed constitutional changes, the Venice Commission stated that it should have been clarified that only gross disciplinary misconduct [not ordinary – authors] could lead to the dismissal of judges of the Constitutional Court of Ukraine. Under the revised draft amendments, the vague wording “committing acts incompatible with the status of a judge of the Constitutional Court of Ukraine” was specified by “committing a disciplinary misconduct, gross or systematic neglect of his or her duties, which is incompatible with the status and office of a judge of the CCU.” (European commission for democracy through law (Venice commission), 2015). However, discussions on this provision are still ongoing. At present, only one judge has been dismissed under this circumstance.

4. The submission by a judge of a statement of resignation or of voluntary dismissal from the office.

The events surrounding the Constitutional Court in November 2020 generated many interesting questions. One of them is the possibility of dismissal of a judge of the Constitutional Court in the event of his submission of resignation or voluntary dismissal from the office. On November 3, 2020, people’s deputies announced a statement calling on 11 judges of the Constitutional Court “to vacate seats of judges of the Constitutional Court of Ukraine at their own request or resign immediately.” (Deputies called for the resignation..., 2020) This statement is paradoxical as the decision to dismiss a judge of the Constitutional Court is made by the Court with at least two-thirds of its constitutional membership. Thus, on the one hand, even if the judges have a desire for voluntary dismissal from the office, they cannot do this (even in the event of incapability to exercise their powers for health reasons). On the other hand, it does not allow dramatical reforming the constitutional jurisdiction body under the influence of political factors.

Another problem is that a resigned judge of the Constitutional Court may be forced to exercise his or her powers until their expiration if a majority of colleagues do not support the resignation.
CONCLUSIONS

We can conclude that the procedure for termination of powers of a CC judge plays a crucial role in the mechanism, ensuring the independence of the constitutional court. Proper procedure and clear grounds for termination of powers of a CC judge are appropriate guarantees of independence of judges of the Constitutional Court.

Given the special competence of the constitutional jurisdiction bodies, it is important to ensure their independence from other branches of government that influence the formation of such bodies. In general, the procedure for termination of powers of a judge of a Constitutional Court should perform two functions, namely: to limit political pressure and arbitrary termination of a judge and provide the real possibility for dismissal of a judge in established cases. The existence of a procedure for terminating the powers of a judge of the constitutional court, which ensures the implementation of the above two tasks, is a necessary component of the mechanism for ensuring the independence of the constitutional court.

The constitutional reform of 2016 significantly strengthened the guarantees of independence of judges of the Constitutional Court of Ukraine, changed the procedure for their dismissal, divided and established clear grounds for termination of their powers. Some grounds for dismissal (in particular, disciplinary misconduct) need to be completed at the legislative level. Unfortunately, we are forced to state that even the absence of powers to terminate the powers of judges of the Constitutional Court does not prevent the appointing entities from doing that in a manner not provided for by the Constitution of Ukraine. Even if the possibility of arbitrary dismissal of the Constitutional Court by the President of Ukraine is allowed, it testifies to a deep crisis of constitutional culture, which cannot be resolved solely by changes to Ukrainian legislation.

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Abstract. The relevance of the study is stipulated by the necessity to determine the directions of the rule of law implementation (as a fundamental value of Western law culture) into the national law system. The statistics of the European Court of Human Rights, the study of the rule of law index in the world, the decisions of national courts as to the rule of law principle implementation are analyzed, some decisions of the European Court of Human Rights as to the rule of law are processed. Emphasis is placed on the impossibility of adequate study of the rule of law within the normative understanding of law. The rule of law can function only if the provisions of the natural and law understanding of law are implemented. Only by realizing what the rule of law is can it be implemented into legal practice.

It is noted that the analysis of national courts' judgments allowed experts to draw a number of conclusions about the inappropriate level of the rule of law principle application by domestic judges, which is usually brought to quoting individual judgments of the European Court of Human Rights (mostly the same) or references to articles of the Convention on Human Rights and Fundamental Freedoms (the implicit content of the human rights enshrined in these articles is not disclosed).

The following areas of the rule of law implementation are noted and characterized.

First, the ideological direction: given that the principle of the rule of law is inherent in Western tradition of law based on a natural understanding of law, and is incompatible with the normative school of law, to which indicates the lack of understanding of the content of this principle by a number of judges, then without changing the legal paradigm further implementation of the rule of law principle has no sense. Only by realizing what the rule of law is, it can it be implemented into legal practice. This direction involves radical changes in the system of national law, which can occur only due to involvement of public authorities in legal values.

Secondly, the scientific and practical direction: if within the first direction the emphasis is on future employees of public authorities, this direction concerns those persons who implement the state policy in life today. A prerequisite for holding a position in public
authorities should be a systematic training, an integral part of which should be mastering the subject within which employees will learn about the understanding of human rights, their implicit nature, the rule of law principle, study the practice of the European Court of Human Rights.

Third, the normative and legal direction: the necessity of adoption of the legal act which will systematically define the order of realization of administrative process is proved.

**Keywords:** European Court of Human Rights, implementation of the rule of law, national law, rule of law, rule of law index.

**RELEVANCE OF RESEARCH TOPIC**

In addition to ontological and heuristic functions, any science performs a practical function. Consequently, one of the tasks of scientific research should be to identify ways to improve the relevant social sphere within the subject of study. Therefore, the issue of the rule of law implementation into the administrative process in Ukraine, and borrowing the best practices of European states becomes especially relevant.

It should be emphasized that determining the ways of the rule of law implementation improvement should be preceded by clarification of the existing issues of implementation of this principle into legal activity within the national law system. Thus, some measures have already been taken to implement it. The principle of the rule of law was directly enshrined in the text of the Constitution of Ukraine, and later in the normative and legal acts determining the procedure for certain public authorities activity and those which determine the procedure for the legal process fulfillment. Therefore, it is crucial to study the further process of the rule of law implementation into the administrative process.

We can note that the urgency of studying the directions for improving the rule of law implementation for the national legal science is enhanced by a number of factors, including the following:

1. the very concept of the rule of law is external to the domestic legal system and only from the end of the twentieth century it was borrowed and enshrined into national law;
2. the domestic system of law is largely based on the provisions of the normative understanding of law, with which the principle of the rule of law is incompatible;
3. the principles of law are usually not yet considered as provisions that directly play a regulatory role (they are assigned the role of declarations, slogans);
4. national law system is largely dominated by the understanding of the relationship “a person – state” because of paternalistic discourse, which allows public authorities not to justify decisions, but to refer only to the relevant article of the relevant normative and legal act, as well as in case of human rights restrictions (and as we found out above, legality is only one of the three grounds for the legitimacy of the human rights restriction), which is incompatible with the requirements of the rule of law principle;
5. quite often the substantiation of court decisions is at a low level, references to the provisions of the decisions of the European Court of Human Rights are formal. In the
relationship “a person – public authorities” the principle of human rights priority over the public authorities’ powers is not applied in most cases.

ANALYSIS OF RECENT RESEARCHES AND PUBLICATIONS


At the same time, we emphasize that the most important in the scientific aspect are the monograph by A. Dicey (1915) “Introduction to the Study of the Law of the Constitution” (in which the rule of law was conceptualized) and S. Golovaty (2006) “The Rule of Law” (which clearly, systematically and fundamentally elucidates the rule of law, including through the prism of the national law system).

GOALS OF ARTICLE

The purpose of the article is to determine the directions of further implementation of the rule of law principle into the administrative process in Ukraine.

PRESENTATION OF MAIN MATERIAL

From a methodological point of view, in order to obtain objective results and correctly determine directions for improving the rule of law implementation into the administrative process in Ukraine, we analyzed some statistics data, in particular, statistics on appeals to the European Court of Human Rights (2021) which serves as an indicator of the state of human rights provision within the state (it is clear that a significant number of appeals are considered inadmissible, some appeals are decided as such that do not contain human rights violations enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, however, these statements indicate the state of relations “a person – public authorities”, the implementation of law principles in these respects, the implementation of law itself rather than formalized prescriptions of prescriptive texts, which also allows us to draw appropriate conclusions in the context of the rule of law). We will analyze the data of a specialized annual survey of the rule of law index (World Justice Project, 2020), which is directly related to the subject of our study and reflects the current state of the rule of law implementation in the national law system and some ways to improve the rule of law principle implementation).

The next stage of the study will cover some decisions of the European Court of Human Rights, where systemic violations in the context of the rule of law within the administrative process take place, as well as provide epistemology of application of the European Court of Human Rights practice in national courts decisions clarifying the perception of the rule of law principle application in the judiciary.
After that we will directly dwell on the ways of the rule of law implementation improving. In 2019, Ukraine ranked third in the number of appeals to the European Court of Human Rights (European Court of Human Rights, 2020). The same data for 2020 (European Court of Human Rights, 2021). However, it is worth taking into account the number of inhabitants, so taking into account this variable, we can conclude that Ukraine ranks first in the number of appeals (we will add that during 2012-2016 Ukraine ranked first in the number of appeals to the European Court on human rights). And in 2017, although formally Ukraine was not the first among the states against which applications were filed with the European Court of Human Rights, however, this was facilitated only by the fact that more than 12 thousand applications were removed from the register and added to the other five applications (case “Burmych and others v. Ukraine” (European Court of Human Rights, 2017)).

In the context of our study, the results of determining the rule of law index in the world require special attention. This is an annual study of the state of the legal system within the states in terms of the rule of law implementation (World Justice Project, 2020).

It is noteworthy that virtually all indicators taken to determine the rule of law index relate to public authorities and the results of their activities, which is quite correct, since the rule of law directly affects these institutions and is a means of limiting their power; and arbitrariness prevention. Therefore, the rule of law principle implementation depends primarily not on citizens, but on public authorities.

According to the results of the Rule of Law Index 2020, Ukraine received an index of 0.51. The same index possess such states as Burkina Faso, India, Thailand. For comparison, the index of 0.50 possess the following states: Albania, Benin, Guyana, Gambia, Colombia, Morocco, Moldova, Peru, Serbia, Suriname. We also give the indices of individual European states: Finland – 0.87; Sweden – 0.86; Germany – 0.84; Austria – 0.82; United Kingdom – 0.79; France – 0.73; Spain – 0.73 (World Justice Project, 2020).

Given the abovementioned, it is necessary to refer to the decision of the European Court of Human Rights (2014) in the case “Shvydka v. Ukraine”, where certain aspects of the administrative process are revealed and its legal assessment is given. Thus, in the circumstances of the case, the applicant, being a member of the “Batkivshchyna” political party, wished to express her attitude to the policy of the President of Ukraine (V. Yanukovych at the time), including to the harassment of the opposition and, in particular, imprisonment the opposition leader Yulia Tymoshenko expressed her civil position as follows. During the celebration of the Independence Day of Ukraine, some time after the President of Ukraine laid a wreath at the monument to Taras Shevchenko, the applicant approached the wreath and quite carefully, without touching the wreath itself, tore off part of the ribbon with the inscription “President of Ukraine V.F. Yanukovych”. In addition to the above reasons, the applicant stated that she wished to express the position that the said person could not be called the President of Ukraine. The next day the applicant was detained for petty hooliganism (Article 173 of the Code on Administrative Offenses of Ukraine) and sentenced to ten days’ administrative arrest. At the time of the applicant’s appeal, she had already served her sentence (European Court of Human Rights, 2014).

We focus on the following two shortcomings identified in this case.

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1. An appeal exists in order to be able to review a judicial decision due to a possible error in the substantive and / or procedural law application which has significantly affected the decision. Appeal is a crucial component of justice, preventing the execution of unjust decisions.

Consequently, an appeal against a judgment given when the applicant has already served the penalty imposed on her undermines the very idea of the appeal, the sense of which is to remedy the shortcomings committed in the earlier stages of the proceedings (European Court of Human Rights, 2014). Therefore, the appeal at a time when the applicant had already served the imposed penalty was contrary to the rule of law principle.

2. The analyzed case covers in details another aspect of the administrative process, namely, the general principles of proceedings in cases on administrative offenses.

Examination of the circumstances of the case allows to take the side of the applicant and draw attention to the accusatory nature of the administrative proceedings in her case, to which indicates defying the real motives of her action (instead obscene motives are stated about) and disregarding the person’s right to freedom of expression; the proportionality of the penalty imposed on the applicant (which is appointed contrary to paragraph 16 of the resolution of the Plenum of the Supreme Court of Ukraine of December 22, 2006 № 10 “On Judicial Practice in Cases of Hooliganism”) arouse doubts.

This raises a more global issue which goes beyond administrative law and has a constitutional and law nature (while reflecting in detail, in particular, in the administrative process) and which domestic lawyer – Doctor of Law Sciences, Professor – M. Savchyn (2016) called “postcolonial syndrome”. “The postcolonial syndrome is that the process of exercising power in Ukraine since independence has largely mimicked in a milder version of the Russian imperial practices of government. This misled the constitutional process into an archaic authoritarian framework. The policy of Russian imperial colonialism has led to excessive centralization of power and contempt for local self-government in Ukraine” (Savchyn, 2016). The author also adds: “Excessive centralization of power during the Soviet Union was associated with contempt for the fundamental human rights and freedoms. In particular, it is difficult to find cases of genocide by the state of its own citizens in the world, which can be compared with the Holodomor of 1932/33” (Savchyn, 2016). Certainly, such practices are incompatible with the rule of law principle, as well as with any fundamental principle recognized by civilized nations.

Important in this context is the understanding by public officials of the grounds and limits of the exercise of their powers, the grounds for restricting human rights. In particular, we mean the importance of understanding of the proportionality of restrictive measures.

“Luchaninov v. Ukraine” case also deals with proportionality. Although in this case the disproportion was pointed out by the Chairman of the Supreme Court of Ukraine, who reviewed the case and noted: “The court did not take into account the requirements of Art. 33 and 34 of the Code on Administrative Offenses of Ukraine, namely the paucity of the value of the stolen ..., the age of the offender, the actual absence of damage caused to the company, as well as the fact that Luchaninov O.M. for the first time is brought to administrative responsibility. In such circumstances and in connection with the insignificance of the offence I consider it necessary not to impose fine to Luchaninov O.M., and to be limited to
oral remarks ...” (European Court of Human Rights, 2011). In addition, another issue arises in this case: the unfairness of the proceedings due to a number of factors: the proceeding was not open; adequate time and opportunities were not provided to prepare the defense strategy (European Court of Human Rights, 2011).

This case, as well as the one previously analyzed elucidates a number of aspects of the rule of law principle implementation in the administrative process. Thus, from the latter case we can draw a number of crucial conclusions.

First, it is the use of not formal, but essential and substantive approaches to the exercise of powers. Thus, the Trostianets District Court mostly proceeded from the formal requirements to complete the process of consideration of the case within the period prescribed by law, however, did not take into account the necessity to ensure the rights of the person prosecuted (especially given the circumstances of the offense and damage caused). Choosing between two ways of activity, the European Court of Human Rights, unlike the national court between the aim to close the case and the human right to fair trial chose the latter option. This is fully in line with the priority of human rights over the powers of public authorities. It is important to provide human rights implementation and not to comply with formal requirements.

Secondly, while restricting human rights formal grounds are not sufficient – the predictability of this restriction is by the law. Restrictions on human rights should always comply with the principle of proportionality, be necessary within a democratic society. Herewith the public authority is obliged to justify its own decision, and for this it is necessary, first of all, to analyze and clarify all the crucial circumstances of the case. It should also be borne in mind that a restriction cannot infringe on the essence of law itself, as it will no longer be a restriction but a violation of human rights.

The abovementioned allows us to clarify the promising ways of the rule of law principle implementation into legal activities in general and the administrative process in particular. However, so far only some judgments of the European Court of Human Rights have been focused on. In this part of the study, we also want to draw attention to the application of the European Court of Human Rights decisions by national authorities, mainly courts (at the same time, we also note that national courts in accordance with the Constitution of Ukraine while administering justice are governed by the rule of law principle; therefore if public authorities, legislation on which provides for the rule of law principle do not apply it, the courts should reflect this in their decision, resolving whether to satisfy the relevant appeals). Especially considering that a professional study of this issue was conducted in Ukraine and taking into account the fact that it is because of the practice of this court that public authorities, based on the provisions of relevant regulations, should understand the content of the rule of law principle. This refers to the analysis of more than two thousand court decisions contained in the State Register of Judgments of Courts of Ukraine for 2012-2014 (we note that the above rule of law indices, statistics of appeals to the European Court of Human Rights, some decisions of this court, analyzed above, as well as the analysis of individual decisions of national courts, allow us to conclude that the data obtained in this study are relevant for the present), of which 230 decisions in either case concerned the application of the rule of law principle. And the purpose of the study was to determine the compliance of decisions of domestic courts with the rule of law principle, as well as the
The results of this study revealed, in particular, the following.

1. “93% of the analyzed decisions contain a reference to the principle of the rule of law or to one of its components, on the basis of which justice is administered. At the same time, as a rule, there is no meaningful interpretation of this principle in relation to the essence of the case considered by the court” (Analytical note..., 2016).

2. “30% of judgments contain references to judgments of the European Court of Human Rights concerning “legal certainty” and “legal precision” (Analytical note..., 2016).

In general, the analysis of national courts’ judgments allowed experts to draw a number of conclusions about the inappropriate level of the rule of law principle application by domestic judges, which is usually brought to quoting individual judgments of the European Court of Human Rights (mostly the same) or references to articles of the Convention on Human Rights and Fundamental Freedoms (the implicit content of the human rights enshrined in these articles is not disclosed).

It should be noted that such conclusions correspond to the results of the survey of judges. Thus, only 10% of respondents noted their use of the rule of law principle while administering justice. And only 6% of respondents use the principle of proportionality as part of the rule of law principle. Respondents noted that in most cases they simply referred to the principle of the rule of law or its constituent elements. According to experts, the results of the judges’ questionnaire might indicate that the respondents “do not possess a deep understanding of the content of the Principle and its components, as well as a formal (“ritual”) approach to its application in judicial practice” (Analytical note..., 2016).

CONCLUSION

Therefore, taking into account all the mentioned above, it is necessary to identify the following fundamental directions of further rule of law principle implementation into the administrative process.

The first direction can be conditionally called ideological. Given that the principle of the rule of law is inherent in Western tradition of law based on a natural understanding of law, and is incompatible with the normative school of law, to which indicates the lack of understanding of the content of this principle by a number of judges, then without changing the legal paradigm further implementation of the rule of law principle has no sense. Only by realizing what the rule of law is, it can it be implemented into legal practice. This direction involves radical changes in the system of national law, which can occur only due to involvement of public authorities in legal values. And this, in turn, implies the necessity to increase the level of professional training of students of administrative and law higher education institutions.

The fact that in the European sense, human rights, and the rule of law should be taught in secondary education establishments should be added to the facts mentioned above. Mastering jurisprudence in schools should be aimed not at studying the provisions of current legislation (which by the time of graduation will change the most), but at understanding the fundamental principles of the national law system, the true nature of human rights (which
are requirements for the state and its bodies but not to other persons), which will help students in the making members of civil society.

The second direction can be conditionally called scientific and practical. Within it is worth emphasizing the importance of such events as scientific conferences, round tables, training seminars for civil servants on the understanding and implementation of the rule of law principle. If within the first direction the emphasis is on future employees of public authorities, this direction concerns those persons who implement the state policy in life today. However, in the future it will apply to all employees of public authorities, in particular, in the context of advanced training. In our opinion, a prerequisite for holding a position in public authorities should be a systematic training, an integral part of which should be mastering the subject within which employees will learn about the understanding of human rights, their implicit nature, the rule of law principle, study the practice of the European Court of Human Rights.

The third direction could be called normative and law. The above makes the issue urgent which has long been discussed in legal circles in Ukraine. We mean the adoption of a legal act that will systematically determine the procedure for carrying out the administrative process.

REFERENCES


EUROPEAN COURT OF HUMAN RIGHTS PRACTICE AS A SOURCE OF LAW

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Abstract. The urgency of the research is stipulated by the necessity to study the European Court of Human Rights practice as a source of law at the regional level, which affects the development of national legal systems. The purpose of the article is to elucidate the European Court of Human Rights practice as a source of law for member states to the Convention for the Protection of Human Rights and Fundamental Freedoms (on the examples of individual decisions). The research is based on the understanding of law as a dynamic social and cultural phenomenon having a specific content and is closely related to human dignity, human rights and justice. Legislation is only one form of law that can exist outside the prescriptive texts, which requires the use of the hermeneutic method and content analysis of the European Court of Human Rights decisions.

The article finds out that the European Court of Human Rights is one of the most effective institutions for human rights implementation. Applying the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted in 1950, through a dynamic interpretation, the European Court of Human Rights ensures the effectiveness and efficiency of this international treaty, revealing the content in the aspect of modernity. States parties to the Convention for the Protection of Human Rights and Fundamental Freedoms are obliged to comply with the European Court of Human Rights decisions, which (the court) always follows its practice, ensuring legal certainty and the rule of law. This allows considering the European Court of Human Rights a subject forming legal doctrines at both regional and national levels. The materials of the article can be used for scientific research of the European Court of Human Rights practice as a source of law at the regional level, which affects national legal systems. The main provisions of the article can be used to justify the study of ECHR practice by lawyers as well as law students and civil servants.

Keywords: European Court of Human Rights, human rights, rule of law, source of law, European Court of Human Rights practice.
INTRODUCTION

Today, the state of human rights implementation is the crucial indicator of the public authorities’ activities effectiveness. The fundamental task of the state is to ensure human rights in a civilized society. At the same time, if in the first half of the twentieth century the issue of human rights had a predominantly national character, then since the second half of the twentieth century it has acquired an international character. Human rights have become an important axiological component of a democratic society, which also includes “human dignity, justice, the rule of law, and constitutional democracy” (Kuchuk et al, 2019).

With the adoption of the Universal Declaration of Human Rights (1948) the concept of human rights began to take shape, the main features of which are the recognition of the natural, inalienable, fundamental nature of human rights, human rights should be equal and have priority over the law (they exist regardless of their enshrinement in the text of the law).

However, the changes that have taken place in society since the second half of the twentieth century could not but affect the theory of human rights. The rapid development of the information sphere, globalization and European integration has become the factors that have influenced the development of human rights. Thus, “a number of lawyers claim the emergence of the fourth generation of human rights – somatic rights at the present stage of society development” (Ivanii et al, 2020).

One cannot but agree that the development of business has become an important factor in changing the concept of human rights, in particular, in the context of the verticality of human rights (the addressee of human rights is not only the state but also business) (Orlova et al, 2020).

Relevant institutions’ activities, as well as their respond in a timely manner to social change are crucial to monitor the implementation of human rights. One of such institution is the European Court of Human Rights (ECHR) established within the Council of Europe. As G. Ulfstein, M. Ruud and A. Follesdal (2020) noted, the institutions for ensuring the effectiveness of the Convention for the Protection of Human Rights and Fundamental Freedoms play an important role in European and international law order.

It is the ECHR that ensures the relevance of the Convention for the Protection of Human Rights and Fundamental Freedoms provisions (1950), the conformity of its norms with the present time. Herewith, the interpretation of the ECHR provisions should be consistent with “the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society”(ECHR, 1989).

The ECHR, while interpreting the Convention (1950), is a kind of subject of creation of the legal doctrines in the field of human rights (Inal, 2020), which affect the legal systems of the states-parties to this Convention. Thus, it is important to know the activities of the ECHR as an institution influencing the development of national legal systems of a number of states.

Therefore, the aim of this study is to elucidate the practice of the ECHR as a source of law for states-parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (on the examples of individual decisions).
MATERIALS AND METHODS

The research is based on understanding of law as a dynamic social and cultural phenomenon that has a specific content and is closely related to human dignity, human rights and justice. Legislation is only one of the forms of law that can exist outside the prescriptive texts, for example, in the form of principles of law, we will mention, in particular, the principle of the rule of law.

The paper takes into account the approach according to which the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms are implicit and acquire their meaning through their interpretation by the ECHR, therefore, the source of law is not the decisions of the ECHR but the ECHR’s provisions (however, let us accentuate that these provisions acquire particular content by means of the ECHR’s practice). In this case, the interpretation of the Convention provisions by the ECHR is carried out in accordance with the principle of dynamic interpretation. The obligation of the States-parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is to comply with ECHR decisions in cases concerning them, as well as the consistency of ECHR practice, which provides legal certainty, stipulates the necessity of national states to follow legal provisions formed by the ECHR changing their legislation.

The study of individual decisions of the ECHR was carried out using a hermeneutic method and the content analysis method, which allowed to take into account the specific circumstances of the case, the peculiarities of national legal systems, presence of discretion in public authorities while regulating public relations and the necessity to understand the Convention as a contract on human rights and fundamental freedoms collective implementation. (ECHR, 1978) One of the fundamental provisions of the study is that the discretion of public authorities as to law and order insurance has certain limits, which are determined, among other things, by the essential nature of human rights, and the principle of the rule of law.

In deciding the case, the ECHR takes into account the national aspect, but also pays attention to the international (universal and regional) aspects, analyzing the presence or absence of consensus of states concerning the issue solving.

The use of logical methods of analysis and synthesis ensured the reliability of the obtained results of the study.

The study is based on an analysis of about 50 judgments of the European Court of Human Rights in cases against different states.

RESULTS AND DISCUSSION

Beginning with the second half of the twentieth century, when the international system of human rights provision started taking shape, the institutions monitoring implementation of certain international treaties were established, influencing the formation of established practice of public relations legal regulation. The ECHR is one of the most effective human rights’ ensuring institutions. Applying the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted in 1950, through a dynamic
interpretation, the ECHR ensures the effectiveness and efficiency of this international treaty, revealing the content in the aspect of modernity. States-parties to the Convention for the Protection of Human Rights and Fundamental Freedoms are obliged to comply with the ECHR’s decision, which (the court) always follows its practice, ensuring legal certainty and the rule of law. This allows considering the European Court of Human Rights a subject forming legal doctrines at both regional and national levels.

This determines the expediency of: 1) purposeful study of the practice of ECHR, in the context of its impact on national legal systems and international law, by lawyers; 2) perception of ECHR practice as a source of law and its study in the process of training lawyers in higher legal institutions; 3) the practice of ECHR study by civil servants who are supposed to ensure human rights.

The ECHR has been established to monitor the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms provisions. The decisions it takes are binding on the States concerned. An important task of the ECHR is to ensure the implementation of the rule of law and legal certainty, which makes it impossible to make radically opposite decisions in cases with similar circumstances. As K. Nikonorova (2019) rightly points out, the ECtHR does change its legal position only in exceptional cases, referring to the development of law in the context of a new social and economic situation. Therefore, the decisions of the ECtHR are based on precedent. Every decision of the ECtHR, all its practice is aimed at the Convention principles implementation.

“It is easy to see that the Convention norms are general in nature, and human rights are mostly stated in an abstract, evaluative form. However, given that it is impossible to formulate an exhaustive list of rights and forms of their implementation in the text of the Convention, the true meaning of the Convention is clarified only after interpretation and application in court decisions” (Yagunov, 2010).

This allows us to talk about the precedent nature which is inherent in the ECHR decisions. However, the issue of whether the judgments of this Court are precedent is debatable in the legal literature and should be examined separately; however, few deny the existence of well-established ECHR practice and the Court’s follow-up to similar findings. Some aspects of this topic are fairly systematically covered by S. Pattinson (2015), including the correlation between precedent at the national level and precedent at the regional level. V. Zavhorodnii (2015) described various approaches to understanding the nature of ECHR decisions, indicating the arguments of each party. At the same time, within the framework of our study, the described issue is not significant based on the binding nature of ECHR decisions (in particular, in the context of measures taken by the state to further prevent violations of the Convention for the Protection of Human Rights and Fundamental Freedoms) and that is why we do not join this discussion.

In the framework of our study, it should also be noted that there is no single mechanism for implementing the ECHR decisions among the states parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

Thus, it should be noted that on July 14, 2015, the Constitutional Court of Russia issued a ruling on the implementation of ECHR decisions in the Russian Federation, according to which if there is a contradiction between the ECHR decision and the Russian Constitution,
priority is given to the Constitution. In such cases Russia will refuse to comply with the "disputed" decisions of the Court. The Constitutional Court of Russia will assess the constitutionality of ECHR decisions on the basis of an appeal from public authorities (Ministry of Foreign Affairs of Ukraine, 2015).

Ukraine has adopted the Law "On Enforcement of Judgments and Application of the European Court of Human Rights Practice" (2006), according to which Ukrainian courts apply the Convention and the Court practice as a source of law and which determines the procedure for enforcement of ECHR decisions and taking general measures.

Researchers also note problematic aspects of the ECHR practice application in Turkey. For example, Tuba Inal (2020) elucidated the role of the ECHR in changing gender norms in Turkey, emphasizing that Turkey is one of the states where the most frequently human rights are violated (based on the analysis of the number of appeals to the ECHR) and where patriarchal culture still prevails, which is protected, including by the judiciary. In the study, the author elucidates the long-standing resistance of courts and other institutions of the Turkish state to adopt an important rule to ensure equality of human rights – the right of a married woman to keep her name, as well as the changes in Turkish national legal system that became possible due to ECHR practice (Inal, 2020), in particular, these are cases of violation of Art. 8 and Art. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms by Turkey: Ünal Tekeli v. Turkey (2004), Leventoğlu Abdülkadiroğlu v. Turkey (2013), Tuncer Güneş v. Turkey (2013), Tanbay Tüten v. Turkey (2013).

In the context of our study, the conclusions of Tuba Inal (2020) on the formation of a discourse in Turkey by individual judges that the issue of preserving premarital surnames by women belongs to the realm of human rights and not to the issue of family or Turkish unity are important. This further provided the opportunity to implement ECHR decisions.

"While the deeply patriarchal state and society is resisting internalization, the developments in this case demonstrate that even on the subject of gender norms, the hard-shell case of norm diffusion, courts are important actors perforating the shell, changing the discourse, and pushing the process forward" (Inal, 2020).

Crucial for understanding the essence of human rights, in particular the right to freedom from tortures was the case of Ireland v. the United Kingdom (1978), in which the ECHR formulated a number of provisions regarding the delimitation of torture, inhuman and degrading treatment.

The concept of a “minimum level of cruelty” was formulated in this case: only the achievement of this level by treatment or punishment indicates the presence of torture, inhuman and degrading treatment or punishment and indicates a violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The ECHR noted the absolute nature of the right enshrined in Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. No emergency, even a threat to the life of the nation, can justify the application of illicit treatment or punishment to a person.

The ECHR, in the case mentioned above, assessed, among other things, the "five techniques" of interrogation: standing by a wall, covering one’s head with a cap, exposing oneself to noise and depriving oneself of sleep, food and drink, and interpreted them as inhuman and degrading.
At the same time the interpretation of these methods is fully consistent with the understanding of torture in modern conditions. That is why it is worth noting the attempt to reconsider this case at the request of Ireland. “The applicant Government requested a revision of the Court’s judgment of 18 January 1978 to the effect that the use of the five techniques of interrogation in depth amounted to a practice not merely of inhuman and degrading treatment but of torture within the meaning of Article 3 of the Convention” (ECHR, 2018). However, the ECHR noted that the material provided by the applicant did not meet the requirements set for review.

The case of A. v. the United Kingdom (ECHR, 1998) is worth mentioning in the context of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This case is important because of the interpretation of such a feature of human rights as equality, as well as for the perception of the rights of the child.

According to the circumstances of the case, the stepfather beat A. with a stick (repeatedly) for the purpose of upbringing, because the child was disobedient, did not respond to the parents’ remarks, and violated discipline at school. The stepfather was accused of assault with bodily injuries. However, most jurors pleaded the stepfather not guilty to assault, which resulted in bodily harm.

A. appealed to the ECHR with a complaint of violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms by the UK, as the public authorities did not protect him from degrading treatment by his stepfather.

It should be noted that the legislation in force at that time provided for the possibility of parents to legally punish the child. “Parents or other persons in loco parentis are protected by the law if they administer punishment which is moderate and reasonable in the circumstances. The concept of “reasonableness” permits the courts to apply standards prevailing in contemporary society with regard to the physical punishment of children” (ECHR, 1998).

In the Court’s view, such legislation does not comply with the rule of law principle, does not provide the child with effective measures of restraint on the part of the parents. As a result, the ECHR found a violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and awarded satisfaction in the amount of ten thousand pounds and twenty thousand – compensation for costs.

Let us note that the government has agreed that the legislation in this area should be changed. As we can see, it was due to the ECHR that national legislation was changed. In fact, this decision helped to recognize that a child is also endowed with inalienable, natural rights on an equal footing with an adult. Traditions and legislation, if they do not meet the requirements of the rule of law, cannot be a regulator of public relations. Human rights have priority in the event of a contradiction between human rights and the law.

The ECHR also dealt with cases involving a legally and morally ambiguous issue, euthanasia. These include: Sanles Sanles v. Spain (ECHR, 2000), Pretty v. the United Kingdom (ECHR, 2002), Haas v. Switzerland (ECHR, 2011), Koch v. Germany (ECHR, 2012), Gross v. Germany. Switzerland (ECHR, 2014).

In general, the analysis of euthanasia decisions leads to the conclusion that the ECHR adheres to the issue of neutrality in such cases, analyzes the national legislation of the
defendants in a particular case (given the lack of consensus within Europe on euthanasia and the wide limits of public authority discretion).

At the same time, it is worth focusing on the judgment in Pretty v. the United Kingdom (ECHR, 2002), in which the ECHR stated that Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted as including a negative aspect. This article does not grant the right to die, it does not provide for the possibility of creating the right to self-determination, that is, to give a person the right to choose death and not life.

It should be noted several ECHR decisions that have significantly influenced the improvement of the Ukrainian legislation. First of all, let’s mention the case of Nataliya Mikhaylenko v. Ukraine (ECHR, 2013), which influenced changes in the Ukrainian civil and civil procedure legislation. By the circumstances of the case, the incapacitated applicant applied to the national courts for reinstatement of her legal capacity. The national courts did not accept her application, as the Ukrainian law did not provide for the possibility of an incapacitated person to go to court on his own (only the guardian had such an opportunity). In addition, the legislation did not provide for an automatic review of the decision on incapacity for a certain period of time and the decision itself did not contain the terms of limitation of legal capacity.

Nataliya Mikhaylenko appealed to the ECHR with a complaint about Ukraine’s violation of Art. 6 § 1 and Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, due to the impossibility of directly filing an application with a court to restore her civil capacity and discrimination due to lack of direct access to court. Let us note that the ECHR considered the application only for breach of access to a court right (Article 6 § 1).

ECHR (2013) reiterated that the right of access to a court is not absolute and it might be limited based on the necessity for state regulation, so the implementation of this right might change due to changes in legislation. In this matter, the national government possesses certain discretion. However, restrictions on the right of access to a court cannot infringe on the substance of the right itself. Herewith, the legitimacy of the restriction of the right of access to court is subject to a three-part test: the restriction should be established by law, have a legitimate purpose and be proportionate.

The ECHR (2013) reiterated that the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees rights that are not illusory, theoretical, but that human rights are practical and effective. This is especially true of the right of access to court, given that a fair trial plays an important role in a democratic society.

It is also important for the ECHR to take into account the comparative analysis of the legislation of European states on access to court for incapacitated persons to determine the existence of consensus among states on this issue. “The Court notes that the approach pursued by domestic law, according to which an incapacitated person has no right of direct access to a court with a view to having his or her legal capacity restored, is not in line with the general trend at European level. In particular, the comparative analysis conducted in the case of Stanev (cited above, §§ 88-90) shows that seventeen of the twenty national legal systems studied provided at the time for direct access to the courts for persons who have been declared fully incapable (ibid., § 243)” (ECHR, 2013).
Taking into consideration the abovementioned, the ECHR's conclusion that the applicant had been denied justice and, accordingly, a violation of Art. 6 § 1 took place, is quite logical. The improvement of criminal procedure legislation in Ukraine was significantly influenced by the case of Volokhy v. Ukraine. The applicants complained to the ECHR of a violation of Art. 8 and of Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms due to the state's failure to respect their right to respect for correspondence, and the lack of effective remedies to declare interference with their rights illegal and to obtain compensation (ECHR, 2006).

In the circumstances of the case, the militia confiscated the applicants' mail (the investigation action was carried out in accordance with the procedure provided for by the Ukrainian law). However, ECHR (2006), examining whether the law clearly established the circumstances in which law enforcement agencies could review correspondence, concluded that Ukrainian legislation did not define with sufficient clarity the limits and conditions for the authorities to exercise their discretion on the issue under consideration. It was emphasized that the phrase “according to the law” not only refers to national law, but is also related to the requirement of the quality of “the law”, that is the requirement to comply with the “the rule of law” principle.

The two cases mentioned above concerning Ukraine, as well as the case of A. v. The United Kingdom allows drawing an important conclusion, especially for the post-soviet states:
1. law is not identified with the law and might have other forms of manifestation, for example, the principle of the rule of law;
2. a reference to a prescription of legislation is not enough to restrict human rights; such a restriction should be carried out for a legitimate purpose and be necessary within a democratic society (it should be proportionate);
3. the existence of a prescription of the law does not indicate the existence of normativeness of the rule established by the prescription: the law should comply with the rule of law principle, and not to encroach on the essential nature of human rights.
4. restricting human rights, public authorities should not only refer to the article of the law, which provides for their authority to act accordingly, but also to justify their actions (especially important is the reasoning of the decision by national courts, which is one of the factors of legitimacy).

CONCLUSIONS

Thus, in monitoring States' compliance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the ECHR interprets the provisions of the Convention, filling them with meaning. At the same time, the ECHR usually does not deviate from the legal provisions formulated by it (in order for the ECHR to change its position, it is necessary the significant change of the situation, building consensus on the issue within the States Parties to the Convention, etc.). Therefore, States-parties to the Convention should study the practice of the ECHR, which significantly influences changes in their national legislation, serving as the source of law. Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms and the ECHR practice, which
reveals the implicit nature of the provisions of the Convention, should be considered as the source of law at the regional and national levels.

The abovementioned allows us to formulate the following provisions, having a recommendatory nature:

1. the ECHR practice should be the subject of targeted research by scholars, in the context of its impact on national legal systems and international law (both universal and regional);
2. the perception of ECHR practice as the source of law necessitates its study in the process of training lawyers in higher education institutions, which requires the introduction of the relevant academic subject into the educational process;
3. the study of ECHR practices should be a mandatory element of the civil servants training, who should implement human rights.

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Typology of the Fourth Generation of Human Rights

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Abstract. The article examines the approaches of foreign and Ukrainian scientists to the division of human rights into three generations and the adoption of the category «fourth generation of human rights» into the scientific turnover. It has been established that both the initiative to put the said proposal into practice and the legislative consolidation of human rights defined as belonging to the fourth generation of human rights at national and international levels are ambiguously perceived by representatives of different nations. It is emphasized that human rights are a complex of natural and indestructible freedoms and legal possibilities, which have emerged due to the fact of human existence in society. Jurisprudence acknowledges the existence of three generations of human rights, each of which had arisen from the need to meet needs that arose alongside the course of human evolution. Nowadays, we can say that a radically new generation of human rights is emerging. Its appearance is related to the technological progress of humanity. The rights of the fourth generation are a category of rights that is ambiguously perceived by society in different countries. A large number of such rights is criticized both by religion and by morality. At the same time, notwithstanding the ongoing scientific debate on the formation of the fourth generation of human rights, it is necessary to acknowledge the existence of human rights, which include the right to die, the human right to dispose of the organs and
tissues of his body, sexual rights, reproductive rights, the right to change sex, digital rights.

The fourth generation of human rights is in its formation, and therefore the scientists’ proposed approaches to the classification of human rights based on exhaustive lists cannot fully reflect its actual state. In our opinion, at the present stage of its formation, the catalog of human rights of the fourth generation should include digital rights and somatic rights. It is important to emphasize that the doctrinal discussion of the fourth generation of human rights will not provide a complete overview of the topic. Therefore, there is a need to conduct a comprehensive analysis of specific human rights of the fourth generation at the international level, taking into account the consequences that their introduction or refusal to be recognized and implemented may result.

**Keywords:** Human Rights, the generation of human rights, digital rights, somatic rights.

**INTRODUCTION**

Despite the active scientific discussion during the XX century and at the beginning of the XXI century, a topic of human rights issues continues to attract the attention of representatives of the legal doctrine of different nationalities. The subjects of their research incorporate both theoretical and practical aspects of human rights. The prior includes the classification of human rights, in particular, their division into several generations. An analysis of recent research and publications in this area suggests that scholars generally acknowledge the actuality of three generations of human rights, characterizing them as follows.

The first generation of human rights (XVII – XVIII centuries) lays down the foundation of individual liberty. Its formation has been precipitated by the need to, firstly, protect people from state arbitrariness and, secondly, to guarantee the legal equality of people under the law and before the court. The list of primary rights of the first generation includes the right to life, the right to liberty, the right to private property, and others. Their legal framework was summed up by the adoption of the International Covenant on Civil and Political Rights of December 16, 1966. (International Covenant..., 1966a)

The second generation of human rights (first half of the XX century) is an assemblage of social, economic, cultural rights. All of them have developed during the fight against social inequality as a result of the advancement of the universal standard of living. Examples of the fundamental rights of the second generation are the right to work (with concomitant warranties such as performing under equitable conditions and receiving equal pay for equal work), the right to use cultural heritage, the right to have an adequate standard of living, etc. Their legal support was also achieved through the adoption of a codified international act – the International Covenant on Economic, Social and Cultural Rights of December 16, 1966. (International Covenant..., 1966b).

The third generation of human rights (second half of the XX century) is a set of so-called collective rights, namely the rights of nationalities, nations, as well as the rights of vulnerable groups (women, refugees, children). The formation of this generation of rights is associated with the emergence of national liberation movements and with the worsening of
global problems, notably in the second half of the twentieth century after the Second World War. The list of fundamental rights of the third generation includes the nation’s right to self-determination, the right to peace (Declaration of the United..., 1972; Declaration on the Right..., 1986; Rio Declaration..., 1992).

Some scholars, the number of which increases every year, insist that a new type of rights has emerged between the XX and XXI centuries. Therefore, they believe that such human rights are to be included in the new generation of human rights. Scientists mostly attribute the appearance of the fourth generation of rights to the development of technical progress of society, in particular biology, genetics, medicine, chemistry, IT. At the same time, it is noteworthy that the representatives of the legal doctrine have not yet managed to reach a consensus on which human rights to include in the fourth generation and which of the said rights have derived from the rights of previous generations.

In light of the foregoing, the purpose of the article is to analyze the approaches to the phenomenon of the fourth generation of human rights and to discuss the authors’ vision of their typology.

MATERIALS AND METHODS

Various methods of scientific research were used to achieve the objective of the article, specifically the introduction of a definition, characterization, and a thorough typology of the fourth generation of human rights. In particular, the historical-legal method was used in the analysis of the scholarly works on the theory of the division of human rights into generations. Systemic, normative, and formal methods facilitated the examination of the legal content, namely international legislative and judicial acts concerning the rights which have emerged between the XX and XXI centuries. The comparative-legal method allowed to confront legal and factual perceptions of those rights in different countries. The method of forecasting was used to determine the possibility of the future expansion of the catalog. The methods of generalization and synthesis were used to form the complete list of human rights exhibiting the characteristics of the fourth generation.

The study of issues was conducted in three stages, namely reviewing previous work concerning the fourth generation of human rights, exploration of the current legal action towards said rights, and composition of authors’ typology. At the first stage, we have carried out theoretical analysis and comparison of existing methodological approaches with a goal to understand the customary classification of human rights into four generations presented in the Ukrainian and foreign legal scientific literature.

The scientific discussion on the emergence of the fourth generation of human rights exists for many years. Legal researchers debate whether those rights are a derivative of existing types or a completely new formation, which rights to include in the comprehensive catalog and based on which characteristics. However, it is too early to talk about reaching a shared opinion among explorers and developing an accepted position on many of the following issues under discussion.

One of such debatable issues is the definition of human rights included to the fourth generation, which differs exceedingly among the scientists.
For example, M.A. Lavrik (2005) argues that the rights of the fourth generation are limited by the so-called somatic, or biological, human rights, including the right to die, the human right to dispose of organs and tissues of the body and their transplantation, sexual human rights, reproductive rights (artificial fertilization, the right to abortion, the right to sterilization, the right to contraception), the right to change sex.

A.B. Vengerov (2000) defines the rights of the fourth generation as the rights of humanity in general and includes the following rights: the right to peace, environmental, information rights, the right to nuclear safety, space.

M.P. Avdeenkova and Y.A. Dmitriev (2005) define the right of the fourth generation as the right to physical freedom.

Alternatively, G.B. Romanovsky (2009) believes that the core right that should determine the vector of development of the fourth generation of human rights should be the right to die in its various manifestations (suicide, euthanasia, etc.).

According to A.N. Golovistikova and L.Y. Grudtsyna (2008), the fourth generation of human rights should exclusively include information rights and technologies.

A. Cornescu (2009) proposes the possibility of referring to the fourth generation of rights as of the rights of future generations, ones that can not belong to an individual nor a social group. He suggests a list of rights that belong to humanity as a whole, for example, rights deriving from exploration and exploitation of cosmic space.

Whereas F. Pocar (2015) criticizes the concept of the division of human rights into three generations and emphasizes that it is necessary to add a fourth generation of human rights, which includes rights related to information technology.

V. Vitiv (2016) concludes that the fourth generation of rights contains a new paradigm of freedom of information: the development and distribution of information technology, the emergence of a global information space, the transition to the new forms of a socio-economic system; those rights cause changes in political processes (emergence of states with information society) and sets up a need to ensure the independence of actions and the choice of lawful conduct of a person based on equal access to information, protection from incomplete or fake data and protection from the dissemination of personal information about the person.

For his part, P. Sukhorolsky (2013) disagrees with the views of other scholars on the need to distinguish the fourth generation of human rights as solely new information rights. According to the scientist, information rights cover human rights belonging to all three generations. A fundamental innovation that could lead to a new generation of rights (digital rights, Internet rights) could be considered as a separation of certain aspects of the information society in a completely new space, to which the jurisdiction of states and the effect of existing legal acts would not extend.

At the second stage, we have conducted a thorough analysis of the acceptance of the human rights of the fourth generation at the international legal level. We believe that refocusing legal scholars’ attention from solely doctrinal research to the overview of international law is necessary for achieving the goal of creating a scrupulous catalog. Representatives of international cooperation make a significant contribution to the formation and development
of said rights by ratifying global acts, conventions, declarations, and the practice of international courts.


Considering the predominance of declarative rules of conduct in this area of legal relations over those legally binding, judges of the European Court of Human Rights make an invaluable contribution to the development of the general concept of understanding human rights of the fourth generation. Their work includes dozens of cases related to various types of human rights, which scientists incorporate in the fourth generation. Among the most famous of these are the following cases: Laskey, B. France; Diane Pretty v. the United Kingdom; Evans v. the United Kingdom; Vallianatos and Others v. Greece (European Court of Human Rights, 1992, 1997, 2002, 2006, 2013).

A significant amount of judicial consolidation of the human rights of the fourth generation is performed by the European Union’s legislature. In particular, its Parliamentary Assembly and the Council have adopted more than fifty recommendations on stem cells, human genome protection, biotechnology, and intellectual property, medical data protection, human organ trafficking, xenotransplantation, the establishment of umbilical cord blood banks, and more (Council of Europe, 2014).

On the other hand, the development of a shared international legal understanding of human rights of the fourth generation is significantly hindered by their unequal national perception, both legal and factual. In particular, homosexual relationships are considered natural for many countries in Western and Northern Europe, Canada, the United States, and Australia. However, Iran, Yemen, Saudi Arabia, Sudan, Nigeria, Somalia, Iraq, and Syria implement a death penalty for participating in such relationships. The right to euthanasia is legally recognized in Belgium, Luxembourg, the Netherlands alongside several US states, but in England, Bosnia and Herzegovina, Iran, France, the Russian Federation, and other countries, including Ukraine, euthanasia is prohibited. The right to free access to the Internet is guaranteed to all citizens without any restrictions in the majority of the world. However, in countries such as Belarus, India, Egypt, China, Myanmar (Burma), North Korea, Saudi Arabia, Syria, and Turkey, access to this right is strictly controlled by the state and, in some cases, is prohibited under criminal penalty.

At the third stage, the results of the generalization of doctrinal approaches to the categorization of different types of rights that emerged at the turn of the XX and XXI centuries and the analysis of he most famous among them modern international law-making activity were reconciled and used to develop the authors’ approach to their formalization.
Based on the results of a systematic analysis of scientific and scholarly literature, international legal and national human rights acts, as well as the case law of the European Court of Human Rights, we concluded that legal doctrine does not provide a single approach to understanding the fourth generation of human rights.

By the authors’ view, scholars from different countries generally interpret the fourth generation of human rights as too narrow. According to common understanding, it consists of specific individual human rights, such as the right to protection from stress, the right to die, to access the Internet, sexual rights, the right to change sex, etc. Although the attempts to substantiate an expanded interpretation are common, their authors, listing several different types, consider their catalog of fourth-generation human rights an exhaustive list and do not suggest the possibility of further evolution and differentiation. Usually, those scholars suggest including environmental rights, somatic rights, the right to nuclear safety, and space rights to the human rights of the fourth generation based on criteria of becoming prominent between the XX and XXI centuries.

We allege that available lists of the human rights of the fourth generation should be considered inconclusive because of the current formation of the latter. Authors of existing catalogs can not claim to have acquired its final form. Therefore, until the representatives of the international community develop a unified approach to understanding the fourth generation of human rights and normatively define that perspective in a convenient international legal form, we suggest describing the list of the human rights of the fourth generation as incomplete.

**RESULTS AND DISCUSSION**

From our standpoint, the diversity of doctrinal approaches to understanding the fourth generation of human rights indicates their relevance at the present stage of human development. Simultaneously, the narrow interpretation of the fourth generation of human rights by identifying them with only one type of human rights is disputable. After all, the fourth generation of human rights is still at the stage of its formation and therefore has not yet acquired its final form. We believe that an exhaustive list of the human rights included in the fourth generation needs to be based on its definition by the governments through generally accepted forms of international law. We consider the human rights of the fourth generation as the ones that emerged in the fields of digital technology law and somatic rights to layout the initial formation of a catalog. Let us dwell on their characteristics in more detail.

Human rights connected to digital technologies are intended to ensure free access to the use, creation, and publication of digital works, as well as access to the use of electronic devices and communication networks, including the Internet. The most famous among them are the right to access the electronic network, the right to use virtual reality, the right to communicate freely and express opinions on the Internet, the right to privacy of personal data. We emphasize that the implementation of human rights in the field of digital technologies (sometimes called «digital rights») requires additional efforts from states to address various issues.
One of the issues is the need to guarantee the right to free access to the Internet and the equal fulfilment of arising opportunities. By way of illustration, according to the International Agency «We are social» as of 2018, only 58% of Ukrainians used the Internet. Such a low percentage of users creates a kind of digital discrimination. After all, while some citizens receive a range of opportunities in the field of digital technologies, in particular, ordering and using e-tickets, getting seats in online queues, supporting petitions, etc., other citizens are entirely deprived of this opportunity. Thus, the introduction of the right of free access to the Internet requires predicaments to ensure the same level of access to the network for all people (in Norway, 97% of citizens have access to the network) [9]. Other serious problems emerging with the introduction of this spectrum of rights are the lack of a reliable way to protect and keep private data secret and the total digitization of all spheres of public life, which increases the risk of cyberattacks and invasions of privacy.

Besides, the conversion of information into digital format threatens the establishment of a digital dictatorship by the state and total control over the data of citizens and their personal lives. In particular, in China, the state monitors any movement of a person, his actions on the Internet, participation in commodity-money relations, as the chief means of payment is the official electronic currency of the state. Additionally, when talking about digital rights, we cannot ignore the imperfections of technology and the constant danger of losing information due to viruses, bugs, breaks in the operation of technology, and other unforeseen circumstances that can lead to loss of personal data and other undesirable consequences. The spectrum of digital rights includes rights, the existence of which is morally problematic. There is a threat that the introduction of the right to life in virtual reality will create an opportunity for a person to stop living in the material world, which is contrary to the basic moral norms of society and the guiding principles on which law is based. The peculiarities of rights related to digital technologies include the fact that access to them may be limited. Concurrently, the state and digital service providers (for example, a provider) can limit it.

The second group of rights, which constitute the human rights of the fourth generation, are the so-called «somatic rights». They most often mean the freedom of a person to dispose of his or her own body. A list of such rights unequivocally recognized by the representatives of legal doctrine is still in development. However, the generalization of scholars’ views on the types of rights belonging to the group of somatic human rights makes it possible to identify the following most frequently mentioned rights: the right to change sex; the right to organ transplantation; the right to clone; the right to artificial insemination; the right to surrogacy; the right to genetic modification; the right to euthanasia; the right to have an abortion. We must note that, in contrast to digital rights, somatic rights are actively addressed during both academic and political discussions. Their implementation is problematic because most of these rights oppose the norms of morality and religion, and society is unable to predict how their introduction will affect future generations and their development. Controversy over the introduction of somatic rights also arises in the international arena, when some states support the practice of introducing certain rights, while others openly condemn them. For example, in the UK surrogacy is permitted, while in France the introduction of such a right would be contrary to the law on adoption and inalienability of the human body.
One of the types of somatic rights, which has been the subject of public and scientific debate for a long time, is the human right to die. Although the human right to life is enshrined constitutionally, which logically implies that a person has the opportunity to refuse to exercise this right, including having the right to terminate life – the right to die, death, as a phenomenon inevitable for any biological species, does not require legal protection, and the consolidation of such a right would conflict with the provisions that human life is the greatest social value of the state. Outside the legal sphere, this right is condemned from the standpoint of morality and religion. From the point of view of religion, God gives human life to man, and therefore only God has the right to take it away. Thus, to deprive oneself of life means to encroach on the authority of God. The legislative enshrinement of the right to die under certain conditions, namely the right to active and passive euthanasia, deserves special attention. Euthanasia is the practice of terminating the life of a person suffering from an incurable disease. The issue of the legalization of euthanasia is more ambiguous than the right to an ordinary death. The basis of euthanasia is the fact of human suffering. On the one hand, human life is the highest social value, and it must be protected from its beginning until the onset of biological death. On the other hand, when a person realizes the inevitability of death from disease, and every moment of his life he suffers from unbearable physical pain, deprivation of his right to a dignified death is a direct encroachment on the inalienable right to honor and dignity. In addition to the above-mentioned controversies that arise over the exercise of this right, there are many controversial issues related to medical ethics. In particular, the doctor who took the Hippocratic Oath turns into a murderer, because he is forced to take a person’s life, even at his will, instead of saving him (Nikolsky and Panishchev, 2011).

Similar problems apply to other newly created somatic rights. Thus, the group of rights related to the practical application of reproductive technologies, including surrogacy, cloning, artificial insemination, causes significant contradictions.

Surrogacy is a method of reproduction in which a biological mother’s egg, fertilized by the biological father’s sperm, is transplanted into the uterus of another woman, who carries the baby throughout the pregnancy and then gives birth. In the case of the procedure of establishing parentage, the rights of the biological father will prevail over the rights of the genetic mother if there was a use of reproductive technologies. The main argument in favor of legalizing surrogacy is to create opportunities for infertile couples, or couples with genetic defects in the reproductive system, to have a child and thus obtain an opportunity to exercise their natural right of parenthood. Confirmation of the relevance of the introduction of this right is the information of the World Health Organization for 2018, according to which 5% of the human population can not have a child for immunological, genetic, anatomical, and other reasons. From a negative side, the legalization of surrogacy can lead to a change in the value spectrum of society, with its deviation towards immorality, cynicism, and mercantilism. After all, the birth certificate of a child will actually turn into an employment agreement. There are precedents of a surrogate mother refusing to give the children she bore to the biological parents. Since two embryos took root in the body at once, she demanded that her parents double the payment (Marco, 2016).
A more controversial right related to reproductive technology is the right to have an abortion. Abortion means any artificial termination of pregnancy. The World Health Organization estimates that approximately 55 million abortions are performed worldwide each year, killing at least 55 million people growing. If we consider the problem from this point of view, abortion is one of the most dangerous phenomena for society. When parents kill their seven-year-old child, in the eyes of both public morality and law, they become immoral, unscrupulous murderers. In fact, under the conditions of abortion, the situation is identical. The church also openly condemns abortions. In this regard, the Declaration on Euthanasia, issued on behalf of the Roman Catholic Church, states that nothing can justify the killing of a human being, be it an embryo, a fetus, an incurable person. The main argument in favor of legalizing abortion is a woman’s exclusive right to dispose of her own body and life. Neither the state nor the church nor the society has the right to interfere in this process because the woman will be responsible for the newborn child, and she will have to take care of it. According to S. G. Stetsenko, society creates significant psychological pressure on women, replacing the concepts of an embryo and a child too radically, because the embryo is both not legally and physiologically human, but the woman who bears it is a full-fledged person who may suffer from bearing and giving birth (Stetsenko, 2002).

The human right to clone is perceived to be the most ambiguous of all fourth-generation reproductive rights. Cloning is a process of asexual formation and cultivation of a new sex separating being by repeating the genetic code of an existing creature. In contrast to the rights above, human cloning is prohibited internationally, and no country in the world recognizes this process as legal. At this point in human development, society is unprepared for such a process, both morally and technically. The following range of nuances determines the danger of introducing the cloning process:

1. The cloning process is a violation of the legal principle of human dignity. The value of human life becomes equated to biological material;
2. Everyone has the right to individuality and uniqueness. A clone that is a human being is deprived of such a right;
3. The possibility of creating a large number of people can lead to the deflation of the clone’s life worth, its discrimination, and consumerization (slave and dangerous labor, warfare), and the devaluation of human life in general;
4. The method of cloning is technically imperfect and its efficiency is extremely low, even in the case of its implementation on animals. Conducting such an experiment on humans is likely to lead to the appearance of defective individuals. However, only reproductive cloning is legally prohibited, while therapeutic cloning (obtaining stem cells from the embryo) is legally permitted in many countries, such as the United Kingdom. Thus, the issue of cloning requires further research both by science and by the legal regulation (Prohibit all forms of cloning, 2005).

Nowadays, the right to genetic modification of man is becoming more and more widespread. Genetic modification is an artificial replacement of the organism’s genotype with the use of genetic engineering. This branch of science is relatively new. The first operation for artificial gene replacement took place in 1993. Despite this, genetic modification is developing extremely rapidly. Genetic modification opens opportunities for the treatment of many
diseases, such as severe combined immunodeficiency, melanoma, HIV, and others. However, despite all the advantages of this technology, it contains several nuances. This technology can be used not only to treat individuals, but also to improve or change their physical performance before or after birth. The practice of changing one’s physical characteristics for the better completely destroys the principle of each person’s individuality and threatens the emergence of criteria for the ideal person as a basis for discrimination.

CONCLUSIONS

In conclusion, it should be emphasized that the fourth generation of human rights is still in development, and therefore the approaches proposed by scientists to classify its rights based on existing lists can not fully reflect its actual state. In our opinion, the list of human rights of the fourth generation at the present stage of its formation includes rights related to digital technologies and somatic rights. At the same time, it is necessary to note that a doctrinal discussion of the fourth generation of human rights alone is not enough. Therefore, it is long overdue to move from the format of a scientific discussion to a fundamental, comprehensive analysis of specific human rights of the fourth generation at the international legal level, taking into account the consequences of their introduction or refusal to recognize and implement them.

Further research and practical elaboration of this issue remain relevant for the entire international community and states individually. After all, a clear understanding of the fourth generation of human rights has not been developed yet. We still need to establish the proper law-enforcement of the rights of the fourth generation on the levels of universal, international, bilateral, and regional relations.

This article emphasizes the need to intensify the international discussion on the development of representatives of different states and peoples of a global concept of human rights of the fourth generation and the transition to coordinated implementation of its provisions to the national level.

This article can be useful for the scholars of the human rights of the fourth generation, professors giving lectures on human rights, students of the legal theory, employees, or advisers of governments and international organizations.

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PRECONDITIONS OF ADMINISTRATIVE RESPONSIBILITY: DOCTRINAL ISSUES

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Abstract. A thorough analysis of liability for administrative offence is not possible without clear understanding of its preconditions. The problem of preconditions for administrative responsibility is directly related to administrative delictization of offenses, effectiveness of the fight against delict, prominent state policy in the field of law enforcement and law order. In this aspect, the role of the preconditions for administrative responsibility is a lot more important because they formulate proper foundations for achieving its general objectives. Thus, they determine the effectiveness of administrative responsibility at sectoral and general social levels. The importance of the definition is due to the urgent needs of rule-making and law enforcement practice, the effectiveness of which directly depends on how reasonable and appropriate each administrative delict norm is. Unfortunately, despite all its scientific and practical significance, the issue of preconditions for administrative liability has not been resolved yet. Therefore, there is a need to form unified, consistent scientific approach to understanding the grounds for administrative liability. To this end, the article provides a critical analysis of the basic doctrinal concepts of the preconditions of administrative responsibility. A wide range of social, economic, technical and other factors that determine the effectiveness of administrative responsibility, its current state, its dynamics and prospects for its development have been studied. Discovered the role of these factors in creating a favorable socio-economic and information-technical environment for the implementation of the main tasks of administrative responsibility, in particular: offences prevention, reliable protection of public relations and education of citizens in the spirit of law. The author concluded the scientific and practical expediency of the systematic study of the preconditions for establishing administrative responsibility (preconditions for administrative delictization) and the preconditions for the effectiveness of administrative responsibility.

Keywords: preconditions delict, administrative offense, administrative responsibility, the grounds of administrative responsibility, administrative delictization.
INTRODUCTION

A comprehensive consideration of liability for administrative offenses cannot be carried out without clear definition of its preconditions. The effectiveness of administrative liability (both at the level of application of certain administrative delict norms and at the level of the administrative law institution) depends on many preconditions, starting with the quality of legislation and ending with the level of authorized jurisdiction objects training.

The question on preconditions of liability for administrative offenses are closely related to the issues of rule-making, law enforcement, judicial proceedings, control, supervision, as well as executive and administrative activities. Their importance is stipulated by the huge social importance of such tasks like „protection of the rights and freedoms of citizens, property, constitutional order of Ukraine, rights and legitimate interests of enterprises, institutions and organizations, law and order; strengthening the rule of law, crime prevention, educating citizens in the spirit of precision and strict observance of the Constitution and Laws of Ukraine, respect for the rights, honor and dignity of other citizens, the rules of coexistence, conscientious performance of their duties, responsibility to society” (see: Article 1 of the Code of Ukraine on Administrative Offenses – hereinafter: CUonAO). Influencing the effectiveness of administrative and legal protection of wide range of public relations, they determine the objective state of functioning and development in many spheres of public life. Unfortunately, despite their undeniable importance, the issues of preconditions for liability of administrative offenses remain unexplored.

LITERATURE REVIEW

It would seem that the gap within the legal regulation of the preconditions for administrative responsibility should be filled by a doctrinal concept based on the compromise of scientific opinions and consolidated position of the legal community. However, indeed this is not the case at all. In the theory of administrative law there is no single approach to understanding the preconditions of administrative liability, their content and classification. Moreover, a huge breadth characterizes the palette of scientific views on the preconditions of administrative responsibility. Some few of other administrative and legal phenomena have received such a large number of contradictory definitions, assessments and interpretations by the lawyers of today. Either some few other concepts are interpreted so differently through reference, educational and scientific literature.

For example, in the context of analysis of special features of the subject of administrative delict A. Sydorchuk formulated the thesis that “the main prerequisite for the onset of administrative liability of a person who has committed a harmful act is reaching a certain age (Sydorchuk, 2018). From our point of view, this thesis can hardly be considered as completely justified. Even if we consider the preconditions of administrative liability at the level of a single offense, the age of the offender can be attributed to them under no circumstances. After all, in the theory of administrative law, reaching the age of administrative responsibility is recognized as mandatory feature of the offense and integral part of its legal structure. The absence of this feature excludes the possibility of qualifying the offense as an administrative
delict, hence the possibility of bringing a person to administrative responsibility. Therefore, reaching a certain age is direct condition of liability for administrative offense.

Instead, the preconditions in the domestic dictionary literature are understood as “a condition that must be fulfilled before other things can happen or be done” (Oxford, 2010) and “preconditions of existence, origin, functioning, etc. of something” (Busel, 2005). Taking into account this way of understanding, the age of the offender cannot be considered as precondition for administrative liability. Reaching a certain age does not establish preliminary, favorable conditions of liability for the offense committed by him. In fact, it is a direct and necessary condition for its occurrence.

For the same reason, it seems impossible to agree with K. Godueva and K. Chumak, according to whom, precondition of liability for an administrative offense, should be considered as follows: “determined fact of committing offense (predicate act)” (Godueva and Chumak, 2017). It is quite obvious that in this case the predicate act is being constructive (read an integral) feature of the objective side of administrative offense. The commission of such an act is necessary condition for the qualification of administrative offense. In other words, the predicate act does not promote administrative liability and does not create favorable circumstances for it. It is a direct factor in its occurrence, without which the responsibility is impossible.

1. BASIC APPROACHES TO UNDERSTANDING THE PRECONDITIONS OF ADMINISTRATIVE LIABILITY

The following examples clearly illustrate wide diversity and divergence of scientific views on the phenomenon of preconditions of administrative responsibility. Representatives of administrative and legal science mostly differ in their vision of number and typology. They understand nature of preconditions differently, and interpret their meaning in various ways.

The scientific position of I. Koterlin seems to be very original, from the point of view that “the necessity is an objective precondition of responsibility, while the subjective precondition of responsibility is connected with the presence of will and corresponding moral principles” (Koterlin, 2010). Although this statement is somewhat abstract (in fact, it reveals the general philosophical aspect of human responsibility to society), it is worth noting in terms of distinguishing between objective and subjective preconditions of administrative responsibility. It is obvious that the commission of administrative offense (as a factual basis for administrative liability) can be influenced by a wide range of objective and subjective factors, ranging from low level of individual legal awareness and ending with criminal’s possession of certain technical means. In relation to administrative liability for a particular offense, these factors can be thought as objective and subjective preconditions, which, in its turn, keeping in mind their different nature, deserve some particular study.

However, far from all attempts to consider the preconditions of liability for administrative offense through the prism of objective and subjective categories may be observed quite successful. A clear example is the reasoning of N. Serdiuk, who refers substantive law to the objective preconditions of administrative liability, which consolidate the composition of misdemeanors, and administrative procedure legislation, as well as the fact of the
offense (Serdiuk, 2005). It is impossible to agree with such a notion of the preconditions of liability for an administrative offense. After all, the material and procedural provisions of administrative delict law are the legal basis of administrative liability, without which the latter is generally impossible. These are not preliminary, but direct conditions for the onset of administrative liability for particular offense; these are its legal grounds and the core element of its mechanism.

There is hardly the need to dispute about the actual encroachment. Its consideration as precondition (not a grounding) for administrative liability is contrary to its fundamental principles: legality, lawfulness, reasonableness, and so on. The scientific approach, according to which the basis of legal liability is not being so much the fact of delict, but the relevant procedural document, containing sprouts of pernicious idea with the possibility of coercion without factual grounds. This concept subconsciously orients the subject of administrative jurisdiction to the fact, that proving the involvement of a person into the commission of a delict is something optional and secondary, whereas the main thing is to make a decision on the case, and this in itself will be sufficient foundation for punishment (Gurzhii, 2013).

On the background of the above-mentioned, scientific position of N. Serdiuk seems insufficiently convincing and open to criticism. In general, in our opinion, the consideration of the preconditions of administrative liability for a particular offense (i.e. on the level of a single accident) is difficult to recognize as productive, both from theoretical and practical points of view. It goes without saying that it provokes some interest, but only in terms of psychological and behavioral aspects of individual existence within society (development of his legal consciousness, formation of his values, influence of physiological, psychological and other factors upon his behavior, etc.).

Much more important for achieving the goals of administrative responsibility is the analysis of its preconditions on general institutional level or on the level of certain types of offenses. This analysis involves study of wide range of social, economic, technical and other factors that determine functioning of the institution for administrative responsibility, its current state, its level of efficiency, dynamics and prospects for its development. The study of these factors, as well as their impact on liability for administrative offenses plays significant role in creating favorable socio-economic and informational-technical environment for the implementation of the main tasks of this institution, in particular, to combat administrative delinquency, reliable protection of public relations from unlawful encroachments, education of citizens in the spirit of law and the like.

In the context of considering the preconditions of administrative liability on general institutional level (level of certain types of offenses), special attention should be paid to two aspects of this issue: first, the preconditions for establishing administrative liability for mandatory rules of behavior violation (preconditions for administrative delict); secondly, the prerequisites for effectiveness of institution in general and within particular areas of public life (preconditions for the effectiveness of administrative responsibility).
2. PRECONDITIONS FOR ADMINISTRATIVE INTRODUCTION OF ADMINISTRATIVE LIABILITY (PREREQUISITES FOR ADMINISTRATIVE DELICTIZATION OF OFFENCE)

Preconditions for administrative delictization of offenses cover a system of factors that determine the need to protect and defend certain range of public relations through sanctions of administrative delict rules. In other words, it is a prerequisite for the introduction of administrative liability for certain illegal acts. Right in this aspect A. Gurzhiy considers the preconditions of administrative liability, emphasizing the socio-economic factors of administrative delict of motor transport offenses. As the author quite rightly emphasizes: “To assess real scale, determine trends in development, determine impact on modern society and economy of negative social phenomenon, it should be analyzed by the social and economic parameters only... Socio-economic characteristics of crime determines the strategic objectives, choice ways of their implementation, the amount and structure of related costs. Even minor miscalculations in assessing the socio-economic parameters of delict are priced quite highly. Most of them result in unreliable forecasting, low quality of planned activities and, as a consequence, poor efficiency of their implementation” (Gurzhii, 2011).

It is difficult to disagree with this opinion. Firstly, basing upon the calculation of economic and demographic consequences of offenses, the conclusion should be made about their social danger, the validity of protection on corresponding public relations by administrative-delict sanctions, the importance of establishing/ strengthening responsibility for their certain types. Only on those grounds, it is possible to develop an effective program to combat delict, in particular, in terms of measures for preventing administrative offenses.

Nevertheless, as history and modernity show, the range of prerequisites for administrative liability (administrative delict) application into practice is not limited to social and economic preconditions. Sometimes the establishment of administrative responsibility for certain actions takes into account public morality, the course of public policy and some other factors. For example, such a violation as petty hooliganism (Article 173 of the CUonAO) does not cause socio-demographic or economic harm either on the level of a single delict or on the scale of society. The objective need for its delictization is stipulated by requirements of morality, ethics and aesthetics based on the ideas of mutual respect and polite behavior in public places. In its turn, the origins of establishing responsibility for the production and promotion of St. George’s (guard) ribbon (Article 173-3 of the CUonAO) lie in the historical and political plane.

It goes without saying, that the political and moral-ethical preconditions of administrative responsibility needs careful and thorough studies, since in some cases they contribute to the administrative delictization of offenses, the assignment of administrative penalties, the expansion or narrowing of the subject of administrative and delict protection. However, unfortunately, the representatives of this science branch do not pay proper attention to them, but focusing on the consideration of socio-economic preconditions of responsibility for administrative offenses. In this case, almost always just statistical indicators are proposed as an object of scientific analysis: economic losses, demographic processes, etc. (Yushkova, 2013; Tropina, 2012). Questions about the nature, roots and significance of the
preconditions for the introduction of administrative liability within domestic legal literature are not currently covered.

3. PRECONDITIONS FOR THE EFFECTIVENESS OF ADMINISTRATIVE LIABILITY

The above applies equally to the preconditions for the effectiveness of administrative liability. For all its undeniable importance, the relevant issues are traditionally outside the „field of view” of modern researchers. Although efficiency (as the ratio between the result achieved and the resources used) is the main criterion for determining social role and importance of administrative responsibility, neither the effectiveness of this institution nor its preconditions have ever been subjected to thorough scientific analysis.

In this regard, we consider it appropriate to refer to the general theory of law, in particular, to those of its provisions, relating to the effectiveness of legal regulation. Considering effectiveness of legal regulation in two aspects (as “the relationship between the actual results and objectives of establishing (sanctioning) the rule of law” and as “the relationship between the results of legal regulation, as well as costs and efforts to implement it”), representatives of general law state it due to a wide variety of factors (preconditions).

In particular, as general social prerequisites for the effectiveness of legal regulation P. Rabinovych defines: compliance of the norm with objective laws (normality) of existence and development of man and society; compliance of the norm with the specific historical conditions of its functioning, the real possibilities of its implementation (material, spiritual, temporal, personnel, etc.); compliance of the norm with the real needs and interests of those subjects, the relations between which it should regulate, reflect and take into account; compliance of the legal norm of the state of legal consciousness and morality, the level of general culture, public opinion of the mentioned subjects; compliance of legal norm with the conclusions of those sciences (social, natural, technical) that „subjectively” study the objects that are in the field of legal regulation; compliance of the legal norm with the general laws of purposeful organization and self-organization of systemic phenomena.

At the same time, to the legal (special-social) preconditions of the effectiveness of the legal norm, this scientist includes legal consolidation of the dominant needs of society; substantive certainty of the activity of the law-making body; definition of the boundaries of legal regulation; conditionality of law-making activity by objective conditions of society development; change in the scope and type of legal regulation; features of lawmaking as a result of the creative process; systematic legislation; quality of legislation; perfection of legal technique; clear definition of types of legal liability that occurs for violation of regulations, the mechanism of its implementation (Rabinovych, 2007).

From the point of view of the founder of the morality of law theory, the American researcher L. Fuller (Lon Luvois Fuller) considers morality as an important prerequisite for the effectiveness of law. As the author emphasizes: “Any deviation from the principles of internal morality of law is an insult to personal dignity. To judge person’s actions based on unpublished or retroactive laws, or to order a person to perform some impossible action is to demonstrate complete disregard for the capacity on self-determination. Conversely, if the idea that a person is incapable of responsible actions, legal morality loses its grounds for
existence. Under such conditions, the application of unpublished or retroactive laws to it is not even an insult, because there is nothing to insult here. Even the term “judge” becomes inappropriate here: a person is no longer judged, but is being influenced upon (Fuller, 1969).

In turn, O. Kurakin identifies purely psychological preconditions for effectiveness of legal regulation; a person in his/her behavior is guided not only by legal requirements, but also their own interests, established views, ideas, emotions, experiences, feelings. Therefore, if these features coincide in many individuals, the psychological factor becomes general and it becomes a prerequisite for the effectiveness of legal regulation associated with the psychotype of a social group and the prevailing views within it (Kurakin, 2015).

Some authors distinguish between objective and subjective prerequisites for the effectiveness of legal regulation. Moreover, if the objective prerequisites they include general social factors (socio-economic system, management system, existing forms of ownership), then under the subjective preconditions they are proposed to understand the following: scientific validity of legal regulation, timeliness of lawmaking, improvement of existing legislation, stability of legal regulation, clarity of legal requirements, active functioning of law enforcement agencies, etc. (Stadnik, 2019).

In addition, in special literature there is also a thesis that one of the prerequisites for the effectiveness of legal regulation is the level of knowledge of legal requirements by legal entities. This thesis is based upon the fact that the implementation of the rule of law by a particular entity is usually more effective in cases where the entity is quite aware of its content. After all, ignorance of legal norms makes it impossible for them to be systematically, consistently and properly implemented (Perepeliuk, 2016).

Based on the analysis of these approaches, it can be stated that the vast majority of them have a proper theoretical basis and reveal the most important aspects of the prerequisites for effectiveness of legal regulation. Each of them is a significant contribution to the formation of comprehensive picture of the prerequisites for the effectiveness of law, as well as its individual branches and institutions. However, before proceeding to their consideration within the context of the effectiveness of the institution of administrative responsibility, we have to make some comments.

First, if we consider the effectiveness of legal regulation in conventional sense (that is, as the degree of realization of its goals, as well as the ratio of its results to the costs incurred), its connection with the morality of law is not always traceable. After all, from the point of view of achieving the goals set by the subject of creation (sanctioning) of objective law, morality may or may not be a factor influencing efficiency. World history knows many examples when laws, far from the requirements of morality, have successfully solved the problems of the present moment. Conversely, laws completely „imbued” with the ideas of morality and humanism did not always achieve the goal. In particular, this applies to laws aimed at combating delict. After all, a successful fight against crime is possible only on the grounds of compromise between the norms of morality and the social need to use coercion.

Secondly, the above-mentioned classification of the preconditions for the effectiveness of legal regulation into objective (general social factors) and subjective (related to the processes of lawmaking and law enforcement) is methodologically unfounded. The fact is that such phenomena of legal reality as the development of legislation, stability of legal regulation, the
rule of law exist independently of the will and idea of the individual. In this sense, they are as objective as general social factors: socio-economic system, management system, forms of ownership, etc. If we consider the categories of objective/subjective in the broadest sense (i.e. through the prism of independence/dependence on humanity in the whole), then in this approach, any social, economic, legal and other factors of the effectiveness of law will be considered as subjective, because they are all nothing but a manifestation of social lifetime.

Thirdly, we consider it inexpedient to separate preconditions into independent group related to the psychology of society and individual social groups. In the sociological aspect, social psychology is considered as an element of social consciousness, i.e.: a set of ideas, theories, views, thoughts, feelings, beliefs, emotions, moods, which reflect nature, material life of society and the entire system of social relationships. Since public consciousness is considered as general social prerequisite for the effectiveness of legal regulation, then, obviously, social psychology should be considered in the same quality.

Similarly, it is not necessary to single out into separate group a factor like the level of legal knowledge of legal entities. As an element of public legal awareness, this factor belongs to the legal prerequisites for the effectiveness of legal regulation.

Finally, the vast majority of scientific classifications do not take into account the influence of state and political factors on the effectiveness of legal regulation. Meanwhile, the state, as a political organization of power, endowed with monopoly for creation of objective law, it acts as its sole creator and guarantor of its binding force. With the help of law, the state implements its external and internal functions, outlines its goals and activities (i.e., determines public policy), regulates public relations, ensures their stability, protection and defense. Thus, the content, direction, quality and effectiveness of law are largely determined by the state, its ideology, policy, activities, system of institutions and other state and political factors. The above-mentioned allows us to consider these factors as extremely important and independent group of preconditions for the effectiveness of legal regulation.

CONCLUSION

Taking into account these comments, we can identify the following main groups of preconditions for effectiveness of legal regulation:

- general social preconditions: the state of socio-economic and scientific-technical development, social consciousness (social psychology and social ideology), social morality, spiritual and cultural development of society, the level of social responsibility;
- state and political preconditions: political course of the state, official ideology, efficiency of mechanisms of public administration, orientation of political will of the top state leadership;
- legal preconditions: validity and quality of legal regulation, the state of legal system and system of legislation, the development of legislation, the effectiveness of mechanisms for rule-making and law enforcement; the level of legal awareness (legal knowledge and legal culture) of the population, the professional level of the subjects involved into the processes of creation and implementation of law, etc.

It should be borne in mind that these factors have positive impact on legal regulation (they increase its effectiveness) only if at a certain historical stage of their existence, status
and level of development they meet the objectives of legal regulation and contribute to their achievement. The absence of these factors, as well as their „dissonance“ with the objective processes of development of objective law, its principles, assignments and forms of implementation does not just fail to contribute to the effectiveness of legal regulation, but on the contrary they hinder it. In other words, the prerequisites for the effectiveness of legal regulation in relation to the latter can be manifested in both positive and neutral or even negative qualities.

Nevertheless, from the point of view of legal science, which focuses on the development of legal system, building the legal state and the establishing legal values, the positive aspect of the preconditions for effectiveness of legal regulation is of paramount importance. The study of the preconditions for effectiveness of legal regulation should not be an end in itself. Its purpose is not just to find out the range of factors that determine the effectiveness of legal regulation, but to ensure that these factors are taken into account when establishing and implementing objective law in order to ensure their most effective organizational impact on public relations. Bearing this mind, the prerequisites for effectiveness of legal regulation are considered by us, firstly, in a positive aspect (i. e. as prerequisites for high efficiency of legal regulation).

Thus, summarizing modern approaches to understanding the preconditions of legal regulation (in particular, on the level of institution of administrative liability) prerequisites of liability for administrative offenses can be defined as a set of generally social, political and legal phenomena and processes that create favorable conditions for establishing and effective implementing of administrative responsibility.

REFERENCES


ADMINISTRATIVE-TERRITORIAL REFORM IN UKRAINE: NORMATIVE-LEGAL ASPECT OF DECENTRALIZATION REFORM IN UKRAINE

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Abstract. The need for effective, capable self-government inevitably faces the need to change the spatial organization of local governments. In turn, the territorial organization of executive bodies also turned out to be far from optimal. In Ukraine, there have been discussions for many years about the reorganization (reform) of the entire system of public power in the country. But they have mainly always concerned the redistribution of powers in the power triangle at the national level: President – Parliament – Government. Since independence, changes have taken place here many times. However, despite the changes taking place in this redistribution at the national level, people living in specific towns and villages continue to face the same problems.

To date, not clear enough mechanisms have been implemented to form effective local self-government and territorial organization of government to ensure the provision of high quality and affordable public services, meet the interests of citizens in all spheres of life in the territory, harmonize the interests of the state and local communities, establishing cooperation between the authorities and local governments.
Currently, the second stage of decentralization in Ukraine continues in 2020-2021. The Cabinet of Ministers of Ukraine has identified the need for further reform process, introduction of decentralization in Ukraine as one of the priorities in the state, which will continue the development of local self-government, territorial communities and in general will enable the growth of Ukraine's economic indicators.

In this regard, this article is aimed at studying the state of administrative-territorial reform in Ukraine, as well as outlining areas for improving the legal aspect of decentralization reform in Ukraine, as for further development of the legal framework, to continue the reform requires a number of important laws.

**Keywords:** administrative reform, decentralization, public authorities, local governments, territorial communities.

**INTRODUCTION**

The structure of the system, the balance of power and the order of functioning of local governments and public authorities in Ukraine contain elements of potential conflict, as it is not fully regulated and enshrined in law. The solution of this problem becomes possible under the condition of reorganization, distribution of all power functions and power powers between executive bodies and local self-government bodies, which is not considered possible without decentralization and optimization of administrative-territorial structure in Ukraine by forming territorial communities. sufficient powers to enable communities to address local issues on their own to meet their needs.

In Ukraine, such a process of formation of a new system of administration, the process of reform and reorganization has already begun and continues today. Legislative support for a radical change in the system of local government, local self-government and their territorial basis at all levels began to take shape in 2014.

In accordance with the Order № 333-r of the Cabinet of Ministers of Ukraine „On approval of the Concept of reforming local self-government and territorial organization of power in Ukraine“ (2014), hereinafter referred to as „Concept“, set the start and vector of direction for the reform process and the mechanism of functioning of local self-government bodies and their powers.

The above Concept sets out the main problems, from the point of view of public authorities, that need to be addressed.

Thus, in accordance with the issues enshrined in the above Concept, Ukraine laid down the constitutional principles of local self-government, ratified the European Charter of Local Self-Government (1985), adopted a number of basic legal acts that create the legal and financial basis for local self-government.

However, since the adoption of the Constitution of Ukraine (1996) and basic regulations on local self-government, the development of local self-government has actually been carried out only at the level of territorial communities of cities of regional significance, as the vast majority of territorial communities unable to perform all the powers of local governments.
MATERIALS AND METHODS

Achieving the goal of the study necessitated the development of 13 regulations and notifications on the government portal governing decentralization in Ukraine, as well as the use of general scientific (analysis and synthesis, methods of empirical research) and special methods (systemic and structural-functional).

RESULTS AND DISCUSSION

Problems of functioning and reform of local self-government in Ukraine are studied by scientists, scientists – representatives of many sciences, first of all, they are specialists in the field of public administration and local self-government. The most famous scientific works are the publications of V. Andriyash, V. Antonenko, T. Astanova, E. Afonin, M. Baimuratov, O. Batalov, I. Bubenko, O. Chepel, V. Butenko, V. Zablotsky, L. Dem’yanenko, V. Kuybida, V. Malyukova, M. Pukhtinsky, Y. Sharov and others.

Despite numerous studies and existing scientific achievements of domestic scientists in the disclosure of this issue, there are still issues in the relationship between public authorities and local governments, in the processes of division of powers, decentralization, further implementation of the European Charter of Local Self-Government.

For example, V.V. Zablotsky (2015) the blocked analytical state and perspective transformations of administrative reform determine that a characteristic feature of the current state of Ukraine is its European integration direction of development, which provides, ensuring all, a significant transformation of the public administration system, a key element of which is self-government. The problem of compliance of the local self-government system of Ukraine with the requirements of the European Charter is covered in the recommendations and resolutions of the Parliamentary Assembly of the Council of Europe (Resolution № 1179 of 1999) and the Congress of Local and Regional Authorities of Europe (Recommendation № 48 and Resolution № 68 of 1998).

As noted by Olga Chepel (2019), analyzing the international experience, namely the peculiarities of decentralization processes in Ukraine, Poland and Latvia, and other European states, such unitary states as Denmark, Norway, Sweden, Poland, the Czech Republic, Estonia, France, shows that the transfer of significant powers from state authorities to local self-government bodies, so that those bodies that are closest to the people have as much power as possible, ensuring change of local self-government, respectively, elimination of artificial barriers (excessive permits, instances, excessive control of the center) for business and entrepreneurial activity, creation of transparent investment climate and opportunities of able (money, resources) communities to effectively address issues of population importance and development their territories.

CONCLUSIONS

In Ukraine, it was no longer possible to postpone decentralization due to a number of negative factors: the imperfection of the existing structure of the administrative system;
uncertainty of the status of many administrative-territorial units and division into categories; significant difference in population, area and other parameters; inconsistency of the administrative-territorial division of Ukraine operating in the EU country; low efficiency of local self-government bodies; insufficient tax base for budget financing of regional and local development; lack of mechanisms of influence on the production and social spheres; imperfection of the system of legal relations within the administrative units of local self-government bodies and local state administrations; polarization of interests of the center and regions; lack of conditions for investment and development of local business. Thus, it was necessary to determine the territorial basis of local governments and executive authorities on the basis of the current situation, development forecasts, experience of leading countries; principles of separation of powers between local governments at different levels and between local governments and the executive; calculate the required amount of resources at each level; to make the organizer of the new self-government accountable to the voters and the state; to ensure the limitation of the possibilities of the state bureaucracy’s influence on the socio-economic life; use the self-organization of society as a mechanism of socio-economic development; addressing the issue of openness and transparency in the administration of local taxes and fees by local governments; creation of favorable legal conditions for involvement of inhabitants of territorial communities in acceptance of administrative decisions on places, development of forms of local democracy; creation and administration of the Unified State Register of Acts of Local Self-Government Bodies within the framework of the implementation of the new budget program «E-Government in the Sphere of Development of Communities and Territories of Ukraine»; creation and administration of the State Register of Powers of Local Self-Government Bodies within the framework of the implementation of the new budget program «E-Government in the Sphere of Development of Communities and Territories of Ukraine».

To further develop the legal framework, to continue the reform it is necessary to adopt a number of important laws:

- On the principles of administrative-territorial organization of Ukraine. Within the framework of the current Constitution, it determines the principles on which the administrative-territorial structure of Ukraine should be based, types of settlements, system of administrative-territorial units, powers of state authorities and local self-government bodies on administrative-territorial organization, formation, liquidation, establishment and change. borders of administrative units and settlements, maintaining the State Register of administrative-territorial units and settlements of Ukraine.
- About service in local governments (to state in new edition). Ensure equal access to service in local governments, increase the prestige of service in local self-government, motivation of local employees to develop communities and their own development;
- Regarding state supervision over the legality of decisions of local self-government bodies;
- About the local referendum;
- Update of laws on local self-government, on local state administrations, etc.
DISCUSSIONS

The system of local self-government today does not meet the needs of society. The functioning of local governments in most local communities does not provide the creation and maintenance of a favorable living environment necessary for comprehensive human development, self-realization, protection of human rights, providing local governments, their institutions and organizations of high quality and affordable administrative, social and other services, in the relevant territories (hereinafter – public services).

The implementation of permanent financial support through the district budgets of small territorial communities using the system of equalization subsidies is burdensome for the state budget and hinders the development of small towns and large settlements. The system of territorial organization of power also needs to be improved in order to increase the efficiency of social development management in the respective territory.

Preservation of disproportion of the administrative-territorial system as the basis for the existence of irrational territorial organization of power (lack of an integral territory of the administrative-territorial unit of the basic level, the presence of the territorial community of a village, settlement, city in another territorial community or in another administrative-territorial unit city) leads to a conflict of competence both between local governments and between local governments and local executive bodies.

As stated in the Concept (2004), the implementation of structural reforms will achieve a sustainable economic effect provided that the priorities and stages of these reforms are harmonized with the reform of local self-government and territorial organization of power.

To implement the provisions of the Concept and the objectives of the Action Plan, it was necessary first of all to make appropriate changes to the Constitution of Ukraine, as well as to form a package of new legislation. Amendments to the Constitution were primarily intended to address the formation of executive bodies of regional and district councils, reorganization of local state administrations into control and supervisory bodies, to give a clear definition of the administrative-territorial unit – the community. Through the efforts of domestic specialists, practitioners, scientists, and experts, the draft amendments to the Constitution were developed and submitted for wide public discussion. The proposed changes were supported by the public and praised by the Venice Commission. Unfortunately, political circumstances did not allow the Verkhovna Rada of Ukraine to adopt the amendments to the Constitution on decentralization submitted by the President of Ukraine. Therefore, in 2014, the Government launched a reform within the current Constitution.

It should be emphasized that the main results of the Concept (2004) should be: strengthening the legal, organizational and material capacity of territorial communities, local governments, conducting their activities in compliance with the principles and provisions of the European Charter of Local Self-Government, introduction of a mechanism for local state administrations and the population to exercise control over the provision of public services by local self-government bodies, territorial bodies of central executive bodies; introduction of standards (norms) of quality of public services provided to the population by local self-government bodies of basic and regional level, criteria of quality assessment; creation of favorable legal conditions for the widest possible involvement of the population in management decisions, as well as the development of forms of direct democracy; formation
of an effective territorial system of local self-government bodies and local executive bodies to ensure sustainable socio-economic development of the respective administrative-territorial units; formation of united territorial communities, capable of resolving issues of local significance independently or through local self-government bodies; socio-economic development of territorial communities and regions; stimulation of economic development of territories as a result of improvement of mechanisms of influence of local governments on definition of priorities of local economic development; defining clear boundaries of each administrative-territorial unit, ensuring the ubiquity of the jurisdiction of local governments in the territory of the respective administrative-territorial unit and preventing the presence within the community of other administrative-territorial units of the same level; formation of executive bodies of regional and district councils; change of the status of local state administrations from bodies of general competence to control and supervisory bodies in the system of executive power with the function of coordinating the activities of territorial bodies of central executive bodies in the respective territory; ensuring the distribution of powers between local and regional self-government bodies, local state administrations and territorial bodies of central executive bodies.

According to Article 5 of the Basic Law of Ukraine – the Constitution of Ukraine (1996), the people exercise power directly and through public authorities and local governments. In Ukraine, local self-government is recognized and guaranteed (Article 7 of the Constitution of Ukraine). Public authorities and local governments, their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine (Part 2 of Article 19 of the Constitution of Ukraine).

Article 2 of the Law of Ukraine «On Local Self-Government» (1997) defines the concept of „local self-government in Ukraine”, namely: it is a state-guaranteed right and real capacity of the territorial community – villagers or voluntary association of residents of several villages, settlements, cities – independently or under the responsibility of bodies and officials of local self-government to resolve issues of local importance within the Constitution and laws of Ukraine. Local self-government is exercised by territorial communities of villages, settlements, cities both directly and through village, settlement, city councils and their executive bodies, as well as through district and regional councils, which represent the common interests of territorial communities of villages, settlements and cities.

Reform of local governments and territorial organization of power in Ukraine (decentralization), aimed at creating conditions for the formation of effective and responsible local government, the creation of a basic subject of local government – a capable territorial community.

Thus, taking into account the above needs, there is a need to form a basic basic regulatory package of documents that would ensure a clear and smooth, without legal conflicts, the functioning of the new system.

The first steps were to amend the Budget (2010) and Tax (2010) codes of Ukraine. As a result, there was financial decentralization, namely local budgets increased.

The next step in decentralization in Ukraine was the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine «On Voluntary Association of Territorial Communities» (2015). This Law regulates the relations arising in the process of voluntary association of
territorial communities of villages, settlements, cities, as well as voluntary accession to the united territorial communities. Due to the norms of this Law, neighboring city, settlement, and village councils may unite into one community, which will have one joint local self-government body.

The Basic Law in Ukraine – Article 140 of the Constitution of Ukraine (1996) states: local self-government is the right of a territorial community – villagers or voluntary association of villagers of several villages, settlements and cities – to decide on local issues within the Constitution and laws of Ukraine. Local self-government is carried out by the territorial community in the manner prescribed by law, both directly and through local governments: village, town, city councils and their executive bodies. District self-government bodies representing the common interests of territorial communities of villages, settlements and cities are district and regional councils. The issue of organization of district administration in cities belongs to the competence of city councils. Village, settlement, city councils may allow on the initiative of residents to create house, street, neighborhood and other bodies of self-organization of the population and give them part of their own competence, finances, property.

The Law of Ukraine «On Local Self-Government in Ukraine» (1997) defines the concept of a territorial community, namely: a territorial community is residents united by permanent residence within a village, settlement, city, which are independent administrative-territorial units, or voluntary association of residents of several villages, settlements, cities with a single administrative center.

Voluntary association of territorial communities of villages, settlements, cities is carried out in accordance with the following conditions in accordance with Article 4 of the Law of Ukraine «On Voluntary Association of Territorial Communities» (2015): 1) within the united territorial community there can be no other territorial community, which has its own representative body of local self-government; 2) the territory of the united territorial community must be inseparable, the boundaries of the united territorial community are determined by the external boundaries of the jurisdiction of the councils of the united territorial communities; 3) historical, natural, ethnic, cultural and other factors influencing the socio-economic development of the united territorial community are taken into account when making decisions on voluntary association of territorial communities; 4) the quality and availability of public services provided in the united territorial community may not be lower than before the union.

From the date of taking office of the village, settlement, city council elected by the united territorial community, in the manner prescribed by this Law, the reorganization of the relevant legal entities – village, settlement, city councils, elected by the united territorial communities and located outside the administrative center of the united territorial community, by joining them to a legal entity – village, settlement, city council, located in the administrative center of the united territorial community. Upon completion of the reorganization, the relevant legal entities – village, settlement, city councils shall be terminated in the manner prescribed by this Law. Legal entity – village, settlement, city council, located in the administrative center of the united territorial community, is the successor of the rights and obligations of all legal entities – village, settlement, city councils elected by the united territorial communities.
from the date of acquisition powers of the village, settlement, city council, elected by the united territorial community. The name of the representative body of local self-government of the united territorial community as a legal entity consists of a part that is derived from the proper name of the settlement, determined by its administrative center, in the form of an adjective and the corresponding general name of the representative body of local self-government (village, settlement, city council).

The state provides informational, educational, organizational, methodological and financial support for voluntary association of territorial communities and joining united territorial communities. Methodological support for voluntary association of territorial communities and joining united territorial communities, determination of the scope and form of support is provided by the central executive body, which ensures the formation and implementation of state policy in the field of territorial organization of power, administrative-territorial organization, local self-government development.

In addition, the Resolution of the Cabinet of Ministers of Ukraine № 214 (2015) approved the Methodology for the formation of affluent territorial communities. This Methodology determines the procedure for developing a long-term plan for the formation of territories of communities in the region (hereinafter referred to as „long-term plan”) and the conditions for the formation of project-capable territorial communities. This Methodology enshrines the basic concept, namely: «Project-capable territorial community (hereinafter referred to as the able-bodied territorial community) – territorial communities of villages, settlements, cities, which as a result of voluntary association (voluntary joining of the united territorial community) are able to ensure the appropriate level of provision independently or through relevant local governments public services, in particular in the field of education, culture, health care, social protection, housing and communal services, taking into account human resources, financial support and infrastructure development of the relevant administrative-territorial unit.».

The next component of the legal framework governing the functioning of local governments, decentralization and development of territorial communities is the Law of Ukraine “On Cooperation of Territorial Communities” (2014), which defines the organizational and legal framework for cooperation of territorial communities, principles, forms, mechanisms cooperation, its stimulation, financing and control. Article 1 of this Law stipulates that “cooperation of territorial communities” (hereinafter referred to as “cooperation”) is a relationship between two or more territorial communities carried out on a contractual basis in the forms specified by this Law in order to ensure socio-economic, cultural development of territories, improving the quality of services to the population on the basis of common interests and goals, effective implementation by local governments of the powers defined by law. Such cooperation is based on the principles of: 1) legality; 2) voluntariness; 3) mutual benefit; 4) transparency and openness; 5) equality of participants; 6) mutual responsibility of the subjects of cooperation for its results. The subjects of cooperation are territorial communities of villages, settlements, cities. Territorial communities cooperate through village, settlement and city councils. Cooperation is carried out in the form of: 1) delegation to one of the subjects of cooperation by other subjects of cooperation of performance of one or several tasks with transfer to it of corresponding resources; 2) implementation
of joint projects, which provides for the coordination of the activities of the subjects of cooperation and their accumulation for a certain period of resources for the purpose of joint implementation of relevant measures; 3) joint financing (maintenance) by the subjects of cooperation of enterprises, institutions and organizations of communal form of ownership – infrastructure facilities; 4) formation of joint utilities, institutions and organizations – joint infrastructure facilities; 5) formation by the subjects of cooperation of a joint governing body for the joint implementation of the powers specified by law. At the state level, cooperation is stimulated by: 1) provision of subventions to local budgets of subjects of cooperation in priority spheres of state policy; 2) transfer of objects of state property to the communal property of the subjects of cooperation; 3) methodological, organizational and other support for the activities of the subjects of cooperation. The state stimulates cooperation if: the ability of the subjects of cooperation to ensure the implementation of the statutory powers is strengthened; additional resources, including financial, are involved in cooperation; cooperation is carried out by more than three subjects of cooperation; broad public participation in cooperation is ensured.

The Law «On Cooperation of Territorial Communities» (2015) created a mechanism for solving common problems of communities: waste disposal and recycling, development of common infrastructure, etc.

Summing up the first part of the reform, we can highlight the following key results of decentralization reform: In Ukraine, the decentralization process began in 2014 with the adoption of the Concept of Local Government Reform and Territorial Organization in Ukraine (2014), laws of Ukraine «On Cooperation of Territorial Communities» (2014), On Voluntary Association of Territorial Communities» (2015) and amendments to the Budget (2010) and Tax (2010) Codes – on financial decentralization. This process made it possible to form, in accordance with the provisions of the European Charter of Local Self-Government (1985), a significant, effective and capable institution of local self-government at the basic level – united territorial communities. According to the government portal (2021), 670 OTGs were formed during the 6 years of the reform, in which 4882 communities voluntarily joined. Of these, 936 OTGs held the first local elections. The government has approved long-term plans for the formation of communities in 24 oblasts, which cover 100% of the oblast’s territory. The area of formed OTG is almost 47% of the total area of Ukraine. More than 70% of the population of Ukraine lives in OTGs and cities of regional significance. Therefore, with the amendments to the Tax and Budget Codes, from January 1, 2015, local governments received more funding to increase economic capacity. The united communities have acquired the powers and resources that cities of regional significance have, in particular – the transfer to the local budgets of OTG 60% of the personal income tax on their own powers. In addition, revenues from taxes remain entirely on the ground: the single tax on the profits of enterprises and financial institutions of communal property and property tax (real estate, land, transport). In addition, OTGs have direct inter-budgetary relations with the state budget (before the reform only oblast and rayon budgets, budgets of cities of oblast significance had direct relations), they are provided with appropriate transfers (grants, educational and medical subventions, subventions for development) community infrastructure, etc.). Legislative changes also gave local governments the right to approve local budgets regardless of the
date of adoption of the law on the State Budget. Such improvements have already yielded
the first noticeable results. Own revenues of local budgets from 2014 to 2019 increased by
UAH 200 billion. (from UAH 68.6 billion to UAH 267 billion). It is a real tool for influencing
the achievement of results and responsibility for the trust of communities. On January 23,
2019, the Cabinet of Ministers of Ukraine (2019) initiated the transition to a new stage of
decentralization reform, which involves consolidating the successes and forming capable
communities, changing the territorial structure at the district and community levels, clear
delineation of powers and functions of control. development of forms of local democracy.

January 23, 2019 № 77-r The Cabinet of Ministers of Ukraine approved by the Order
«Action Plan for the implementation of a new stage of reforming local self-government
and territorial organization of power in Ukraine for 2019-2021» (2019), which sets the
following main objectives: territorial basis for the activities of authorities at the level of
communities and districts; transfer (decentralization) of powers of executive bodies to local
self-government bodies and their delimitation on the principle of subsidiarity; creation of
an adequate resource base for the exercise of the powers of local self-government bodies;
formation of an effective system of service in local governments; development of forms of
direct democracy: elections, referendums.

2020 has become a key year in the formation of a basic level of local self-government: most
of the existing small local councils will unite, take over most of the powers, use resources
properly and be accountable for their actions or inactions to the people and the state. This
will create a solid foundation for the next steps in local government reform, as well as
accelerate reforms in health, education, culture, social services, energy efficiency and other
sectors.

One of the main reasons for the new zoning is to prevent duplication of powers of district
bodies and self-government bodies of newly created communities in one territory. The
division into districts is based on the methodological recommendations of the Ministry of
Development of Communities and Territories of Ukraine (Ministry of Regional Development),
which is based on the standard of the European Union. Among the criteria for the formation
of the district – location within one area, coverage «usually at least 150 thousand inhabitants,
compactness and continuity of the territory». The center of the district was chosen in the
following sequence: first – cities – regional centers, then – cities with a population of at least
50 thousand. The districts usually included communities located within a 60-kilometer
zone of accessibility from the district center. If the community was equidistant from 2 or
more district centers, it was included in the district whose district center was closer to the
community administrative center.

According to the Blagodatne community of the Nikolaev area of the Pervomaisky area.
(2020), January 1, 2021, all schools in Ukraine should become the property of communities.
The key in the work of the district state administration after January 1, 2021 is social
protection, state programs and coordination of various bodies of the SES, police, forestry.
District councils will be a support for those institutions that communities will not be able to
afford. It is a part of district hospitals, out-of-school educational establishments, children’s
and youth sports schools, orphanages, homes for elderly people. The key thing that the
district loses after the transfer of power to the communities is money, namely 60% of the
personal income tax (PIT), who live within the district. Instead of the district, they will go to the communities immediately. The district budget will now be largely replenished by utilities that remain on its balance sheet and subsidies from the state budget. The staffing problem that may arise for district employees is solved in such a way that most specialists will be able to find jobs in OTG staff and services, which will inherit most of the functions that the district government takes care of under the current model.

The second stage of decentralization in Ukraine is currently underway. According to the Minister of Community and Territorial Development Oleksiy Chernyshov, the decentralization reform will be completed in 2021 during a press conference dedicated to the 100 days of the government’s work in Ukraine.

CONCLUSIONS

Given the above, the following conclusions can be drawn: in Ukraine it was no longer possible to postpone decentralization due to a number of negative factors: the imperfection of the existing structure of the administrative system; uncertainty of the status of many administrative-territorial units and division into categories; significant difference in population, area and other parameters; inconsistency of the administrative-territorial division of Ukraine with the current norms in the EU countries; low efficiency of local self-government bodies; insufficient tax base for budget financing of regional and local development; lack of mechanisms of influence on the production and social spheres; imperfection of the system of legal relations within the administrative units of local self-government bodies and local state administrations; polarization of interests of the center and regions; lack of conditions for investment and development of local business. Thus, it was necessary to determine the territorial basis of local governments and executive authorities on the basis of the current situation, development forecasts, experience of leading countries; principles of separation of powers between local governments at different levels and between local governments and the executive; calculate the required number of resources at each level; make local governments accountable to voters and the state; to ensure the limitation of the possibilities of the state bureaucracy’s influence on the socio-economic life; use the self-organization of society as a mechanism of socio-economic development.

To further develop the legal framework, to continue the reform it is necessary to adopt a number of important laws:

• On the principles of administrative-territorial organization of Ukraine. Within the framework of the current Constitution, it determines the principles on which the administrative-territorial structure of Ukraine should be based, types of settlements, system of administrative-territorial units, powers of state authorities and local self-government bodies on administrative-territorial organization, formation, liquidation, establishment and change. borders of administrative units and settlements, maintaining the State Register of administrative-territorial units and settlements of Ukraine.
• About service in local governments (to state in new edition). Ensure equal access to service in local governments, increase the prestige of service in local self-government, motivation of local employees to develop communities and their own development;
• Regarding state supervision over the legality of decisions of local self-government bodies;
• About the local referendum;
• Update of laws on local self-government, on local state administrations, etc.

In 2021, the Constitution is expected to be amended to decentralize, which is needed to further advance the reform and complete it.

According to the Government, in order to further reform and obtain the expected results, it is necessary to form an effective local self-government and an optimal system of territorial organization of power on a new territorial basis by: consolidation of the reform of local self-government and territorial organization of power in Ukraine by making appropriate amendments to the Constitution of Ukraine; distribution of powers between local self-government bodies and executive bodies, including the powers of territorial bodies of central executive bodies, their subdivisions, taking into account the principle of subsidiarity and the new territorial basis; introduction of a balanced budget model of revenues and expenditures of local governments to perform their own and delegated powers; reformatting of local state administrations in accordance with the new competence, the main powers of which will be to ensure law and order, respect for the rights and freedoms of citizens, implementation of state and regional programs, coordination (interaction) of territorial bodies of central executive bodies, administrative supervision of legality Local Government; development of forms of inter-municipal cooperation, in particular concerning creation and activity of city agglomerations; addressing the issue of openness and transparency in the administration of local taxes and fees by local governments; creation of favorable legal conditions for involvement of inhabitants of territorial communities in acceptance of administrative decisions on places, development of forms of local democracy; creation and administration of the Unified State Register of Acts of Local Self-Government Bodies within the framework of the implementation of the new budget program «E-Government in the Sphere of Development of Communities and Territories of Ukraine»; creation and administration of the State Register of Powers of Local Self-Government Bodies within the framework of the implementation of the new budget program «E-Government in the Sphere of Development of Communities and Territories of Ukraine».

RECOMMENDATIONS

The materials of the article can be used for further research of administrative-territorial reform in Ukraine, improvement of the legal framework and introduction of decentralization, as well as of practical value for all interested public authorities and concerned citizens

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Abstract. E-government is a form of public administration which promotes efficiency, openness and transparency of public authorities and local governments with the use of information and telecommunications technologies to form a new type of state focused on meeting the needs of citizens. E-government is studied as a way, a form, the concept, system and mechanism of cooperation between the state (public administration) and public sectors (civil society). As a method for legal communication between civil society and public administration, e-government plays the role of a means of public self-government, which involves interactivity and continuity of interaction between citizens and the state, the presence of public control over the activities of public authorities. This article is dedicated to reveal the role of e-government for realizing the goals of legal communication between its participants in public life. However, further in-depth analysis requires understanding the role of e-government as a means of legal communication, changing the focus and direction of its development in the digital age, as well as exploring promising areas of legal regulation of virtual legal relations between public authorities and civil society. The implementation of e-government in Ukraine should be provided on a qualitatively new level to develop...
efficient legal communication between government and society as a whole, strengthen confidence in the state and its policies, improve cooperation between public authorities and local governments, business, citizens and civil servants. The authors of this article adhered to its purpose, which is to analyze the understanding of the role of e-government as a means of legal communication, changing the focus and direction of its development in the digital age, and exploring promising areas of legal regulation of virtual legal relations between government and civil society.

**Keywords:** legal communication, e-governance, digital society.

**INTRODUCTION**

The development of e-government is one of the main factors in ensuring the success of reform and increasing the country’s competitiveness. The reform of any industry in modern conditions is aimed at the widespread use of modern information and communication technologies to achieve the required level of efficiency and effectiveness. After all, it is the tools of e-government that can significantly improve the quality of service for individuals and legal entities and increase the openness, transparency and efficiency of public administration.

In the framework of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Ukraine must ensure the integrated development of e-government in accordance with European requirements.

The introduction of e-government is also a basic prerequisite for building an efficient digital economy and digital market in Ukraine and its further integration into the EU digital single market (Digital Single Market Strategy for Europe).

Moreover, the development of e-government and democratic processes, the application of a universally recognized system of democratic values, in particular the participation of citizens and civil society institutions in the formation and implementation of public policy play a key role in ensuring economic and social progress.

E-government or governance with the widespread use of various information technologies since its inception has been aimed at improving the efficiency of government with citizens, businesses and other administrations, i.e. to reduce the total cost of time and money.

However, the Conference of e-Leaders of the Organization for Economic Co-operation and Development (OECD) discussed the need to change the focus and direction of e-government: increase the efficiency and effectiveness of administrations by posting e-government services on the Internet.

In Ukraine, e-government is still in its basic stage of development, which makes it important to study effective methods and forms of public administration and public policy in the information society.

Analysis of the use of e-government in Ukraine shows its fragmentary nature, duplication of work and inconsistency of regulations. E-governance is not a mechanical combination of
new information technologies and existing outdated administration. This is a new philosophy of public administration, for its implementation it is necessary to develop a fundamentally new legal framework and adapt it to the relevant international documents, especially the EU, and to the peculiarities of the use of information technology itself.

E-government is a complex process and is a practical tool for realizing the goals of legal communication between its participants in public life.

In the scientific legal literature, the problem of legal communication remains insufficiently studied. Issues of legal communication have been studied by both domestic and foreign scholars. In particular, J. Habermas studied the communicative act, G. Peters studied the history of communication, Mark van Hook considered law as communication, A. Polyakov is a representative of the communicative approach to law, A. Tokarska studied legal communication in the context of non-classical legal understanding, I. Chestnov analyzed the dialogic interaction in law. Various aspects of legal communication were studied by V. Bachinin, N. Luman, S. Maksimov, N. Onishchenko, P. Rabinovych and others. Scientific analysis of the works of famous scientists gives grounds to state the lack of unity in approaches to understanding the nature, concept and essence of legal communication.

However, further in-depth analysis requires understanding the role of e-government as a means of legal communication, changing the focus and direction of its development in the digital age, as well as exploring promising areas of legal regulation of virtual legal relations between public authorities and civil society.

MATERIALS AND METHODS

The methodological basis of the study consists of a system of philosophical, general scientific and special scientific methods. The work is based on a comprehensive approach for the analysis of legal communication, as well as a general scientific method of dialectics. The combination of general epistemological methods of analysis and synthesis, abstract and concrete in the knowledge of state and legal phenomena, induction and deduction allowed to realize the requirements of objectivity, completeness, integrity, validity and systematic research. System-activity approach in clarifying the role of legal communication in the process of law enforcement and law-making activities.

Moreover, statistical approach was used to study the level of e-government readiness by country and cyber offences counteraction.

RESULTS AND DISCUSSION

A. Tokarska highlights the joint solution of issues by means of legal communication. Tackling of problematic relations lies in the plane of legal communication, which is the source of formation and object of application of law. The law cannot be the unappealable will of the legislative public administration or the will of another state; it can be developed as an ontological result of intersubjective interaction (Tokarska, 2016).
In the era of rapid development of information and communication technologies, legal relations are characterized by large-scale processes of digitalization. The study of the problems of legal communication requires a new approach to modern jurisprudence on the basis of existing developments in the theory of state and law, philosophy of law, sociology of law, linguistics and other sciences. Legal communication is the basic purpose of interaction of subjects of law for balancing of positions, the decision of problem situations. In fact, legal communication is relevant where and when there is a conflict, a mismatch of positions, different views on solving the problem situation.

Legal communication arises and develops in the process of society development. Its origins date back to the era of the ancient world. The first oral and written communicative acts have the character of religious norms that expressed the motives of human behavior. The theory of communication was studied by Plato, Aristotle, Cicero, M. Aurelius, and A. Augustine, who initiated the theoretical elaboration of the idea of social dialogue (Kononenko, 1994).

Regarding the understanding of the original function of communication as an effective tool for regulating social relations, the views of researchers coincide (V. Kravitz, L. Ozadovska, O. Petroye, A. Polyakov, A. Tokarska, I. Chestnov, etc.).

According to O. Petroye’s opinion the first concept of social dialogue is the idea of solidarity, which marks a set of different aspects of unity – interests, beliefs, values, actions in relations between people who share common values and form a certain social integrity (Petroye, 2012).

A Polyakov, a representative of the communicative theory of law, believes law is a form of normalized psycholinguistic activity of subjects (physical and legal) in the context of communicative intersubjective interaction, the consequences of which are objectified in legal culture, social institutions, legal texts and affect legal awareness, legal norms and legal relations that form a single legal structure (Polyakov, 2002).

According to Mark van Hook, law is always essentially based on communication: communication between the legislator and citizens, between the legislator and the judiciary, communication between the parties to the contract, communication in court. This communicative aspect is considered today in the framework of the legitimation of law: a rational dialogue between lawyers as the main guarantee for the „correct” interpretation and application of law (van Hook, 2012).

The diversity of assessments of legal communication allows us to declare legal communication is:

1. the process of exchange and interaction (interaction) of legal information used by various state and legal institutions in management activities of organizational, economic, social and other nature;
2. the process of realization of legal communication is carried out by social institutions that create and transmit legal information in time and space; 3) interpersonal legal communication in the process of communicative-legal relations (Provencher, 2013). Thus, legal communication is a set of processes and entities that ensure the purposeful circulation and dissemination of legal information and legal knowledge in the modern information space.
During legal communication, intersubjective legal relations arise, which are the source of the rights and obligations of the subjects. The rules of law enshrine the rights and obligations of the subjects, on the basis of which they enter into communication both with each other and with the state. The ability to enter into legal communications is inherent in the subjects of public relations – citizens, their associations, public (public) authorities etc.

Objective factors influencing legal communication include the following: the state of law and order, the appropriate level of legal protection and social adaptation in society, the effectiveness of legal norms, flexibility and harmony of the legal system, timely response to changes in society. Legal communication affects the development of Ukrainian society in the context of European integration.

Over the past two years, Ukraine has been experiencing a concentrated impact of challenges of various kinds: from internal socio-political problems to external information and military aggression. Communication becomes an integral part of the national security system when there is a consistent effort to destabilize the situation in the country, which ultimately aims to undermine public confidence in the government, and thus dismantle the existing system of government (Yablonsky, 2016).

An important aspect of the impact of law on the state is its communicative nature. In particular, the ability of the legal norm to enshrine the rights and obligations of the subjects, on the basis of which they enter into communication both with each other and directly with the state. The opportunity to enter into legal communications is inherent for every subject of public relations without exception: for people, their associations, public administration etc. (Kozyubra, 2015).

The development of information and communication technologies contributes to changes in public relations, which in turn have an impact on the institution of interaction between the state and citizens. The state must provide civil society with legal information, provide comments on regulations, which increases the level of their legal knowledge and, consequently, legal culture.

The essence of communicative interaction between the state and civil society is not just a dialogical act, where the experience of cooperation is formed, which in the future will be the basis for the development of a high level of legal culture to ensure the rule of law in society. This is expressed in the following:

• communicative interaction: the basis of interaction – the legal awareness of the subjects of law, formed in the process of legal relations, the action of law and the legal system;
• the principle of justice, which is an integral part of professional activity in the field of law;
• the lawful conduct of the subject of law: freedom and morality.

The most difficult expression of the nature of communicative activity is the manifestation of the degree of freedom in combination with the degree of responsibility of the subjects of communication, freedom, and the requirements of morality.

Legal communication is the main purpose of interaction of subjects of law for realization of the rights and freedoms, the decision of legal conflicts. In fact, legal communication is actualized when there is a conflict, a mismatch of positions, different views on the solution of the legal situation. The conflicting nature of the relationship between the subjects of law
is transmitted as an inevitable sign of social existence. Therefore, its study is perhaps the most difficult feature of research in legal communication. As a rule, the manipulation of conflict communication is usually hidden behind the substitution of subjective and objective intentions to prove their «legality» of each social phenomenon, the boundaries of which are «vague and clearly not visible» due to the variety of causes and phenomena. Analysis of legal communication in the plane of conflict proves that interaction is not always simple, and informative communication (communication) is partly fundamentally complicated for the sake of one thing: the achievement of each side of its goal.

Based on the principles of democracy, the goal of the state is not to submit to a single government, but to create a system of legal communication and legal communication aimed at reconciling the will of citizens who participate in them, forming legal ties that ensure the realization of their legal interests. Law as a subject-communicative system is characterized by a special way of communication (Horbenko, 2017).

**DISCUSSIONS**

What makes civil society important and strong in any context is not its existence as an entity but rather the quality and number of relationships between citizens and state actors that are mediated by a variety of institutions and organizations, including sometimes branches of the state itself (Uphoff; Krishna, 2004). Hence, e-government is an effective way and form for cooperation between civil society institutions (CSI) as well as between public administration and CSI.

In Ukraine, the sphere of legal communication «government-public» is regulated by information legislation, which at the time of its adoption met key democratic standards, but currently it is not able to meet the needs of society. The authorities are still obliged to «inform» and «cover» their activities, and not to make decisions in the process of dialogue with the public. Despite the fact that de facto relevant legislation (openness, transparency of public authorities and local governments, citizen participation in the development and implementation of public policy) are quite developed, their implementation is of inadequate quality. It should be noted that in the last decade the study of legal communication is necessary because it is used in almost all areas of public relations that require legal regulation. This is facilitated by the implementation of technologies of e-government, e-justice, e-democracy, e-parliamentarism and e-parliament, the need to combat cybercrime and cyberterrorism, regulation of the Internet. The modernization of law requires the conscious support of citizens who will provide ICT in the process of new forms of interaction between government and society in accordance with the principles of deliberative democracy. A large set of theoretical and practical problems has recently been developed autonomously in this regard within the concept of electronic rule-making (e-rule development). It is significant that with the support of the world’s leading law schools – Yale, Harvard, New York and other theories, methodologies and technologies have found support and dissemination not only in the United States but also in the world’s leading countries (Noveck, 2011).

The need for state influence, the formation of a separate state policy in the field of information society and the creation of favorable conditions for the development of

The very concept of «e-government» was introduced into political and scientific circulation by specialized research organizations that deal with a wide range of issues related to the functioning of the state, in particular, international organizations such as the UN, World Bank, International Union of Electricity language. Currently, this concept is multifaceted and multidimensional, due to the emphasis on various aspects and principles of implementation and functioning of e-government. A separate issue is the problem of understanding e-government in different countries, which is associated with different levels of education in the country, its ICT potential, traditions of public administration, the level of socio-political consciousness of the population and so on.

With the advent and development of information and communication technologies, the approach to public administration has changed, new concepts and concepts have emerged, including e-government and e-governance. They are used both to characterize the processes of public administration and the formation of civil society.

The ancestor of these concepts and concepts was the United States. Their main content can be understood from the US Strategy, which emphasizes that ‘the President’s vision of a new administrative reform emphasizes the need to change the operational component of the government in terms of its own functioning and interaction with the citizens it serves.

The basis of this change are three principles:

• government should focus on the citizens, not on the bureaucracy;
• government should focus on the results of its activities;
• government should be based on the market, actively promoting innovations (Office of Management and Budget, 2002).

Nowadays e-government and e-governance have become global phenomena: governments of developed countries use these concepts to promote citizen participation in public life and empower them. Despite the single semantic orientation of the concepts, they nevertheless differ in their content. Thus, the common denominator for e-government and e-governance is that both e-government and e-governance provide for the automation or computerization of existing paper procedures, which will prompt new leadership styles, new ways of discussing and making strategic decisions, new ways conducting business, new ways of conveying the views of citizens and communities, as well as new ways of organizing and providing information.

The authors of this study believe that e-government should be considered in a broader functional sense, namely: as a way of effective, constructive and targeted legal communication between civil society and public administration.

E-governance provides the public with ample opportunities to participate in the political life of society and is expressed in the interaction of government, citizens and non-governmental public institutions based on the widespread use of ICT (The European eGovernment Action Plan 2011–2015).

The cornerstone of the reform of government-citizen relations is the Draft Principles of Government Information Strategies: Convergence of Government with Citizens and Business,
preparing for the OECD in October 2013 (Draft OECD Principles on Digital Government Strategies, 2013). In essence, it is a roadmap that describes how digital opportunities can enhance the importance of the public and reduce the risks associated with the quality of public services, public sector efficiency, social integration and citizen participation, public trust, and multilevel and multi-actor management.

Effective use of ICT to serve citizens on the Internet is a challenge for many governments, especially in developing countries. Government organizations face high levels of uncertainty in the design and delivery of e-government services due to the complexity of technology, deep-rooted organizational routines, and the great diversity in people’s acceptance of technology. E-government requires much more than technical skills to develop and operate successful Internet services. This includes developing strategic approaches to organizing and collecting tangible resources, such as computers and networks, and intangible resources, such as employee skills and knowledge and organizational processes. Therefore, government organizations must consider two factors in order to succeed. These include: the presence of a significant number of citizens who are willing and able to accept and use Internet services; and, developing the managerial and technical capacity to implement e-government programs to meet the needs of citizens (Prattipati 2003).

These two factors are measured as a country’s readiness for e-government. Map 1 shows the level of e-government readiness by country. Obviously, some organizations are better at building e-government systems than others to meet these requirements. Most developing countries have a lower level of readiness to provide e-government services than developed countries. Developing country governments face similar limitations in building e-government. These restrictions sharply shape the mismatch between the level of acceptance and use of e-government in developed economies.

Map 1 - E-Government Readiness by Country in 2007

Sources: UN E-government Report 2008
The United Nations Department of Economic and Social Affairs (UN DESA) conducts a survey of the UN e-government and prepares for two years according to the established methodology. The department is looking at how digital government can promote integrated policies and services in 193 UN member states. The survey supports countries’ efforts to provide effective, accountable and comprehensive digital services to all and bridge the digital divide and leaves no one behind.

Such an e-government survey is a key ranking, mapping and measurement tool that supports the digital transformation of countries.

According to a survey conducted in 2020, the situation with the introduction of e-government in the world has changed significantly in 10 years. Map 2 shows the state of development of e-government in the world as of 2020.

In 2020, there were transformational changes in global development during the unprecedented COVID-19 pandemic. While the pandemic has revived the role of e-government in both traditional digital services and new innovative crisis management efforts, it has also highlighted the challenges and various forms of digital divide, especially among the poorest and most vulnerable groups.

The ranking of 193 UN member states on the level of digital government by 2020, taking into account the volume and quality of online services, the state of telecommunications infrastructure and existing human potential, is led by Denmark, the Republic of Korea and Estonia, followed by Finland, Australia, Sweden, Great Britain, Nova Zealand, the United States, the Netherlands, Singapore, Iceland, Norway and Japan.

Among the least developed countries, Bhutan, Bangladesh and Cambodia have become leaders in the development of digital government, moving from the middle to the highest group of the e-government development index (EGDI) in 2020. Mauritius, Seychelles and South Africa lead the government ranking in Africa. Overall, 65 percent of Member States are at a high or very high level of EGDI (2020 United Nations E-Government Survey, 2020).

Researching international e-government standards should emphasize their recommendatory nature for signatory states that stand in the way of implementing IT technologies in all spheres of life.
However, there are a number of international e-government standards that are clearly enshrined in international instruments on the formation of the information society and are mandatory. In addition to these international documents, these include:

1. The Recommendation of the Committee of Ministers to member states on electronic democracy (e-democracy) (Recommendation CM/Rec (2009);
3. UNCITRAL Model Law on Electronic Signatures (2001);

The Recommendation of the Committee of Ministers of the Council of Europe on e-Government (2004), in particular, sets out the following steps for the development of e-government in the signatory states:

1. Review the policy of implementation of e-government technologies, legislation and practice of its application in this area.
2. Involve relevant foreign and national experts in order to create a joint strategy for the implementation and development of e-government.
3. Develop an e-government strategy that: fully complies with the principles of the national organization of democratic governance; will contribute to the positive development of democratic processes, etc (Recommendation CM/Rec (2009).

Approaching international, in particular, European values is the most pressing issue for Ukrainian society for a long time. This desire requires certain changes from the domestic legal system, which are ideally aimed at raising the standard of public life within the country and improving its position in the international arena. National legal bases are being reformed by adapting them to international and European standards. However, in practice there are certain shortcomings of such implementation, which are most noticeable in the areas of public law, where the state has a wide range of powers.

According to the level of e-government development, Ukraine ranks 69th among 193 UN member states, the e-government development index is 0.7119 (the average index is 0.6). Of course, compared to the data for 2018, when Ukraine ranked 75th in the world, this development has a positive trend, but Ukraine still needs to implement a number of standards and measures to implement the concept of e-government (2020 United Nations E-Government Survey (2020).

In the EU Strategy and Program for the Development of the Information Society, as well as in the Law of Ukraine «On the National Digitalization Program». According to this and other documents, the state has the main organizing, coordinating and controlling role in the relations arising in the process of building the information society and implementing e-government between its main actors: the state, business, international and public organizations: “Creating an open for all, the information society needs new forms of partnership and cooperation between public administration and the private sector, civil society and international organizations.... at the same time, public administration bodies have a leading role in the development and implementation of promising and well-

The Ukrainian government has approved the Concept for the Development of e-Government in Ukraine. The document defines the directions, mechanisms and terms of formation of an effective e-government system in Ukraine to meet the interests and needs of individuals and legal entities, improve public administration, increase competitiveness and stimulate socio-economic development of the state. Implementation of the Concept will allow: to increase the efficiency of public authorities and local governments and achieve a qualitatively new level of government based on the principles of efficiency, effectiveness, transparency, openness, accessibility, trust and accountability; to improve the quality of public services to individuals and legal entities in accordance with European requirements, as well as to ensure the necessary mobility and competitiveness of citizens and businesses in modern economic conditions; minimize corruption risks in the exercise of power; to improve the investment attractiveness, business climate and competitiveness of the country; to stimulate socio-economic development in Ukraine (On approval of the Concept of e-government development in Ukraine, 2017).

However, a number of problems arise in the implementation of this Concept. One of the problems with the introduction of e-government in Ukraine is the lack of a clear hierarchy of interrelated documents from the Constitution of Ukraine, which defines the basic principles of state information policy, to a document that defines, for example, interdepartmental information exchange or circulation. The existing experience in implementing the National Digitalization Program, which currently underlies these processes, has shown its inefficiency, including due to the imperfection of institutional policy.

In Ukraine, e-government is still in its infancy, which makes it important to study the methods and forms of public administration and public policy in the information society.

The analysis of the application of e-government in Ukraine shows its fragmentary nature, duplication of work and inconsistency of regulations. E governance is not a mechanical combination of new information technologies and existing outdated administration. This is a new philosophy of public administration, for its implementation it is necessary to develop a fundamentally new legal framework and adapt it to the relevant international documents, especially the EU, and to the peculiarities of the use of information technology itself.

The state policy of development of information society and e-government as a means of legal communication should be based, first of all, on the principles of cooperation and partnership, which provides control of state actions by society and business, excludes application of command-administrative models and directive mechanisms. Other subjects of the process and among themselves. Thus, the International initiative “Partnership «Open Government» (2011), which Ukraine joined in 2011, provides for the formation of a new type of public sector organization.

In addition to the above principles of cooperation and partnership, public policy for the implementation of e-government must be based on a system of principles such as:

- transparency and openness of government;
- confidentiality and information security;
- common technical standards and mutual compatibility;
• focus on the interests and needs of service consumers;
• control and accountability of the authorities to citizens and society.

Along with new developments and advances in the IT field, there is a need to create reliable protection of cyberspace. To reduce the risk of threats, considerable attention should be paid to cybersecurity.

One of the reasons for the spread of cybercrime is not a technical malfunction or ignorance of programmers, but certain gaps in the law and the lack of uniform rules to be applied in the event of a cyber-attack. In 2016, the Decree of the President of Ukraine approved the Cyber Security Strategy of Ukraine, which aimed to create conditions for the safe operation of cyberspace, its use in the interests of the individual, society and the state. Immediately a year later, in 2017, the Law of Ukraine „On the Basic Principles of Cyber Security of Ukraine“ was adopted. It is considered the first normative document concerning the sphere of cybersecurity. However, this piece of legislation does not contain specific practical rules for application if necessary, it sets out more general provisions and describes the main aspects of this area. The Law of Ukraine «On Basic Principles of Cyber Security of Ukraine” defines the main activities and principles of state policy in the field of cybersecurity, the powers of state bodies, enterprises, institutions, organizations, individuals and citizens in this area, the basic principles of coordinating their cybersecurity activities. The law aims to protect both the citizen and the state as a whole(On Basic Principles of Cyber Security of Ukraine (2017).

The United States is a clear example for Ukraine in the development of cybersecurity. The American experience today is taking over the world, as they have developed effective security standards (NIST Cybersecurity Framework) that actually help detect, respond to, and even prevent cyberattacks. Back in 2016, the United States developed the Cybersecurity National Security Action Plan. In addition, they have criminal law in the field of cybercrime, a number of laws governing cybersecurity issues and policy documents adopted at the state level, including strategies for cyberspace and cybersecurity action plans. Each state also adopts its own regulations to ensure an adequate level of cyberspace protection.

As for the EU countries, they also pay considerable attention to this issue and can serve as an example to follow. The main document that deserves attention and the possibility of its implementation in the regulatory framework of our state is the Directive on Network and Information Security («NIS Directive»). This document sets out the general approach and EU rules in the field of cybersecurity. It aims to step up cybersecurity cooperation between EU countries, as the first thing cybercriminals encroach on is confidential data. This Regulation also refers to the legal standard of cybersecurity, because in case of compliance with the requirements, the level of protection of personal information in the digital environment is significantly increased (Horbenko, 2018).

In 2020 specialists of the National Coordination Center for Cyber Security at the National Security and Defense Council began developing a Cyber Security Strategy of Ukraine, which will determine the priorities of Ukraine’s national interests in cyber security and the main approaches and directions to cyber security. The new Strategy is promised to take into account international best practices for its effective implementation (The National Security and Defense Council, 2020).
Given the above, we can conclude that certain steps have been taken to develop cybersecurity in Ukraine and a big plus in this is US assistance. Of course, it is necessary to improve the national legislation governing information security, to develop possible new programs, plans, and, in addition, it is necessary to implement the adopted norms in practice, using the experience of leading countries.

CONCLUSIONS

Legal communication contributes to the formation of legal values in the modern information space, a positive perception of law, improving the legal policy of the state and state information policy. The conditions of Ukraine’s origin in the world information space are: improvement of the legal mechanism of interaction between government and society, solving the problem of ensuring effective development of national information infrastructure, creation of information analytical system of public authorities, acceleration of modernization of material and technical base, reliable protection of information resources. An effective means of implementing legal communication is the introduction of e-government. The development of the information society and one of its key components – e-government, is a modern global trend that leads to significant changes in public relations and the economy.

The implementation of e-government in Ukraine should provide a qualitatively new level of government and society as a whole, strengthen confidence in the state and its policies, improve cooperation between public authorities and local governments, business, citizens and civil servants.

A well-built e-government system should have a positive impact on the overall course and consequences of further radical transformations in Ukrainian society, first of all, social and economic reform, building a welfare state with influential civil society institutions, especially on issues where methods and forms of interaction are important. public administration bodies and local self-government bodies with a person and a citizen, public organizations.

Further implementation of the policy of building an e-government system directly depends on the political and legal situation of society, the financial and economic capabilities of the state. These factors can make significant adjustments in the process of e-government, in the pace of reform measures. Along with new developments and advances in the IT field, there is a need to create reliable protection of cyberspace. To reduce the risk of threats, considerable attention should be paid to cybersecurity.

In the perspective research, it is expedient to study the peculiarities of the organization of feedback in the sector „citizen-citizen” of e-government and to identify common difficulties that arise in the interaction of state and citizens in the process of providing public services and public control.

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THE GIST OF THE WORLD CUSTOMS ORGANIZATION

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Abstract. In this article there is for the first time offered a theoretical justification for understanding the purpose (goals), tasks and functions of the World Customs Organization as interrelated categories. Emphasis is placed on the fact that the explanation of the essence of any international organization should begin with a description of its purpose (goals), objectives and functions. The position of the authors was formed taking into account the results of the generalization of doctrinal approaches of scientists to understand the essence of the World Customs Organization. Particular attention was paid to the characteristics of the provisions of the Convention establishing the Customs Cooperation Council of December 15, 1950, which is a constituent act of the World Customs Organization, as well as other international conventions, resolutions, declarations and recommendations adopted by this organization. It is emphasized that in contrast to the list of functions of the organization were specified in Art. III of the Convention establishing the Customs Cooperation Council of December 15, 1950, in its text there is no clear and unambiguous statement of the purpose (goals) and objectives of WCO.

As a result of the study, the authors note that the purpose of WCO determines the desired result, the achievement of which should be aimed at the activities of the organization and is to promote cooperation between the governments of its members. And the achievement of this goal necessitates the solution of common tasks for WCO members, which specify the purpose of the organization. It was also investigated that the WCO objectives provided for in the Preamble to the Convention on the Establishment of Customs Cooperation Council do not exhaust their full list, the gradual expansion of which takes place through the adoption of legal acts by the WCO Council. It is also determined that objectives of WCO are subordinated to the functions of WCO.
Keywords: international organizations, international customs law, international customs cooperation, international conventions, Customs Cooperation Council, World Customs Organization.

INTRODUCTION

The essence of any international organization is expressed in its purpose (goals), tasks and functions, which are closely interrelated. In view of this, to ensure the effective operation of an international organization, its goals (objectives), tasks and functions the founding member states usually reflect in the constituent act of the organization in the form of clearly defined, exhaustive lists. The accuracy of their presentation eliminates the risks of conflicts of interest between the organization and its member states, helps to correctly define the boundaries of the legal personality of the international organization, audit its performance and forecast the prospects for its further development. The accuracy of the statement of the purpose (goals), tasks and functions of the international organization in its constituent act and the unambiguity of their interpretation by the representatives of legal doctrine is also important for conducting research on the legal status and activities of the international organization. Therefore, the need to focus primarily on the goals (objectives), tasks and functions of international organizations in the disclosure of their essence has repeatedly being emphasized by the researchers of activities of international organizations from different countries (Moravetsky, 1976; Scharf, 2007; Schermers and Blokker, 2011).

Various theoretical and applied aspects of the World Customs Organization (WCO) activity have repeatedly been the subject of scientific research. After all, today the WCO represents 183 Customs administrations across the globe that collectively process approximately 98% of world trade. As the global centre of Customs expertise, the WCO is the only international organization with competence in Customs matters and can rightly call itself the voice of the international Customs community.

Most often, scholars have analyzed the practical issues of its interaction with the World Trade Organization and national customs administrations to promote trade (Kafeero, 2008; Cheng, 2010; Weerth, 2020), in particular in the areas of determining the rules of origin of goods, customs valuation, nomenclature and trade facilitation, combating customs offenses, etc. (Wolfgang and Dallimor, 2012).

Scholars have often been drawn to the applied aspects of the application of international conventions developed by WCO at the international and domestic levels of legal regulation of customs relations. Among such conventions, the provisions of the Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973 (Kafeero, 2009; Denisenco, 2015), the Convention on the Harmonized Commodity Description and Coding System of June 14, 1983 (Weerth, 2008), Convention on temporary importation of June 26, 1990 (Raykova, 2009) were most frequently analyzed.

The activity of the internal system of representative (Council, Finance Committee and General Political Commission), executive (committees, subcommittees and various working groups, which are divided into four groups depending on the subject of activity: on the tariff
and trade issues (Harmonized System Committee, Scientific Subcommittee, Harmonized System Review Subcommittee, Harmonized System Working Group, Technical Committee on Rules of Origin, Technical Committee on Customs Valuation, Transfer Pricing Focus Group), on procedures and facilitation (Standing Technical Committee; Revised Kyoto Convention Committee; Istanbul Convention Administrative Committee; ATA Contracting Parties; Information Management Subcommittee); on enforcement and abidance (WCO Counterfeiting and Piracy Unit (CAP); Executive Committee; Global Information and Intelligence Strategy Project Group; Commercial Fraud Working Group; Electronic Crime Expert Group); on capacity building (Capacity Building Committee; Integrity Subcommittee) and the WCO Administrative Body (General Secretariat) (Weerth, 2009; Grebennikov, A.V.) (2012).

The interaction of WCO with other international intergovernmental and international non-governmental organizations was studied within the dissertation research „Legal status of the World Customs Organization” by a scientist from Ukraine Ya.I. Muzyka (2015).

At the same time, the scope of WCO’s activities is much broader, which leads to research on the results and prospects of its activities on other issues, including the introduction of innovative technologies in the organization in the context of COVID-19 (Chapa, 2020), training and retraining of national customs administrations (Hesketh, 2020), use and dissemination of accumulated knowledge among all interested participants in international customs relations (Peteva, 2020).

Note that despite the fact that the subject area of research on the activities of WCO is quite diverse, a common feature of many of them is a reference to the purpose (goals), objectives and functions of this organization. In most cases, scientists do not characterize these categories and do not reveal the relationship between them. There are also many examples where the purpose, tasks and functions of WCO are identified or arbitrarily interpreted without regard to the logical connection between them. Therefore, in view of the above, the article offers an author’s interpretation of the purpose (objectives), tasks and functions of WCO, which in interrelation characterize the essence of this organization and serve as the basis of its legal personality as a subject of international customs law.

MATERIALS AND METHODS

Achieving the goal of the paper stipulated the necessity to use various methods of scientific cognition, among them there are: historical and legal method; comparative method; method of analysis; synthesis method; method of generalization. The study of the issue was conducted in three stages.

At the first stage, a theoretical analysis of existing in the legal scientific literature methodological approaches to understanding the purpose (goals), objectives and functions of WCO. Particular attention is paid to the processing of the provisions of the Convention establishing the Customs Cooperation Council of December 15, 1950, which is the constituent act of WCO, as well as other international conventions, resolutions, declarations and recommendations adopted by this organization.
In the second stage, based on the results of generalization of doctrinal approaches to understanding the purpose (objectives), tasks and functions of WCO, as well as the provisions of international conventions and acts adopted by this organization, the author’s approach to the interpretation of the scientific categories studied in the article is developed and argued.

RESULTS AND DISCUSSION

Immediately after the end of the Second World War, European states began to actively develop cooperation in various areas of international relations. International cooperation on customs issues or international customs cooperation was chosen as one of such directions. One of the first steps in this direction was the creation by thirteen European states in 1948, in the structure of the Committee for European Economic Cooperation, founded in 1947, the Customs Committee for the comparative study of various aspects of customs. The latter’s tasks included, in particular, comparing customs procedures in the member states of the Committee for Standardization of These Procedures, developing a common product nomenclature, adopting common rules for valuing goods for customs purposes, and determining the possibility of forming one or more European customs unions.

The result of the work of the Customs Committee on December 15, 1950 was the signing of three international conventions: the Convention on Nomenclature for the Classification of Goods under Customs Tariffs (entered into force on September 11, 1953), the Convention on the Valuation of Goods for Customs Purposes (entered into force on June 28, 1953) and the Convention establishing the Customs Cooperation Council (entered into force on November 4, 1952).

From the outset, on the basis of the Convention establishing a Customs Cooperation Council of 15 December 1950, it was planned to establish a European regional customs organization whose task would be to interpret and apply the two previous conventions. It was in this format that on January 26, 1953, with the participation of seventeen European states, the founding session of the newly formed international organization took place. However, later on, states from other geographical regions of the world also began to show interest in the activities of the Customs Cooperation Council.

As a result, this led to a significant expansion of the member states of the organization and the introduction in 1994 of its unofficial name “World Customs Organization”. As the range of WCO Member States increased, approaches to interpreting its purpose, objectives and functions evolved. However, a comprehensive scientific study of these categories has not been conducted to date. In view of the above, the article proposes an author’s interpretation of their essence as interrelated concepts that together characterize the essence of WCO.

As a result of elaboration of the provisions of the Convention on the Establishment of the Customs Cooperation Council of December 15, 1950 (Convention on the Establishment of the CCC), it should be noted that its text lacks a clear and unambiguous statement of the purpose and objectives of WCO. The exception in this regard is Art. III of the Convention, the text of which enshrines a list of functions of the organization, which scientists often characterize as exhaustive (World Customs Organization, 1950).
Based on the thesis that the essence of WCO is expressed in its purpose (objectives), tasks and functions, which are closely interrelated, their characteristics are proposed to begin with the disclosure of doctrinal approaches to understanding the purpose (objectives) of WCO, which scientists interpret differently.

G.-M. Wolfgang, K. Delimour (2012) and T. Matsudaira (2007) believe that the main goal (mission) of WCO is to increase the efficiency and effectiveness of the customs administrations of its member states around the world.

V.V. Mytsyk (1991) does not mention the purpose of establishing WCO at all, replacing it with the author’s wording of the main purpose of the Convention on the Establishment of the CCC, namely: «the most complete harmonization of customs systems of its participants, development and improvement of customs equipment, customs legislation».

According to K.G. Borisov (2001), the purpose of establishing WCO is to standardize and harmonize customs procedures, and its main objectives include the study of all issues related to cooperation between states in the customs sphere, research and analysis of procedural aspects of national customs systems of member states, coordination and unification in the preparation of draft conventions, agreements and recommendations, development of customs and tariff documents.

In turn, S.T. Alibekov (2012) points out that the main goals of the organization are: a) maximum harmonization and unification of customs systems; b) improvement of customs technique and customs legislation; c) development of cooperation between countries in the customs sector.

Professor K.K. Sandrovsky (2001) and Professor S.V. Kivalov (2009) define the purpose of the formation of WCO as follows: «The purpose of the WCO – is not only the creation of the executive apparatus necessary for the implementation of the life of conventions developed under the auspices of an organization specifically created for the cooperation of states on customs matters. The organization is endowed with broad powers to, as noted in the founding act, ensure the highest possible level of coherence and uniformity of their customs systems and strengthen the study of problems arising in the development and improvement of customs equipment and customs legislation».

At the same time, the text of the Declaration of the CCC on the Challenges of 2000, adopted in June 1987 (Ottawa Declaration), states that the purpose of the Convention is to: «ensure the highest possible level of coherence and uniformity of customs systems and in the course of development and improvement of customs technique and customs legislation ...» , «to promote cooperation between governments on these issues, taking into account economic and technical factors related to it» (World Customs Organization, 2000).

In our opinion, the specific statement of the purpose (goals) of the Convention used in the Ottawa Declaration, as set out in the text of its Preamble, is too broad, as it also contains a description of WCO’s priorities for specifying the purpose of its foundation and activity.

Having differentiated them, it is suggested that the purpose of WCO is to promote cooperation between the governments of its members (World Customs Organization, 1950). It should be noted that these are the governments of all members of the organization, not just the governments of the states that have signed the Convention establishing the CCC.
However, each of the authors in his own way indicates not only the desired (necessary) results, the achievement of which should be aimed at the activities of the organization, but also the direct participants in the WCO customs cooperation, which leads to ambiguous characteristics of its purpose (goals) as well as to reducing the number of species differentiation of its members.

Achieving the goal of WCO necessitates the definition of its priorities, ie important issues that specify the goal and which the organization should strive to solve, because, as V. Moravetsky (1976) wrote, the essence of any organization is the activities aimed at fulfilling common tasks for its members.

It should be noted that, as in the case of the purpose (goals) of WCO, in the theory of international customs law there is no single view of the list of its tasks.

Thus, K.G. Borisov (2001) believes that one of the main tasks of WCO is to study the possibilities of customs cooperation and unification of customs practices of member states, preparation of draft international customs agreements and recommendations on the application of customs tariffs, as well as other areas of customs activity.

N.E. Buvaeva (2013) points out that WCO, as a world-class international intergovernmental organization, has broad tasks to organize international cooperation in the field of customs, in particular, the development of international customs conventions aimed at approximating the legal regulation of customs relations and recommendations for their uniform application and interpretation.

According to N.V. Zhivenko (2007), the main tasks of WCO include: improvement, simplification and unification of customs activities; improvement of customs legislation and practice of its application; strengthening the fight against international crimes by customs means.

S.T. Alibekov (2012) argues that the task of WCO is to improve the efficiency of customs administrations by promoting international customs standards.

In turn, O.V. Grebennikov (2012) considers the main tasks of WCO in one list with its functions and V.V. Mytsyk (1991), directly notes that the main tasks of WCO are defined in Art. III of the Convention on the Establishment of CCC, etc.

In our opinion, the above views of WCO activity researchers on the priorities of the organization can be considered debatable, because they do not take into account the provisions of the Preamble to the Convention on the Establishment of CCC, and some of them identify WCO's tasks with its functions.

Therefore, in view of the above, we believe that the WCO’s primary objectives, which specify its purpose and which the organization should seek to solve, are as follows:

1. Ensuring the highest possible level of coordination and uniformity of the customs systems of its members;

2. Intensifying the study of problems arising in the development and improvement of customs equipment and customs legislation.

At the same time, the text of the Preamble to the Convention establishing the CCC draws attention to the fact that the achievement of WCO’s specific goal, namely to promote cooperation between the governments of its members on the above issues (tasks), should be carried out not only in the interests of its members, but also: «In the interests of
international trade, taking into account economic and technical factors related to it» (World Customs Organization, 1950).

Thus, these priority (statutory) tasks of WCO are general in nature, conditioned by its purpose and directly subordinate to it. Like the purpose of WCO, they are relatively promising, stable and permanent, subordinate to the functions of WCO.

At the same time, the WCO tasks enshrined in the Preamble to the Convention on the Establishment of CCC do not exhaust their full list, the gradual expansion of which is due to various factors. In particular, due to the emergence of tasks that did not exist at the time of signing the Convention on the Establishment of CCC, or were unrealistic (ensuring the activities of regional training centers, the use of e-learning programs and electronic data exchange systems), tasks, the formulation of which is determined by the WCO’s need to respond on exacerbating various global problems of mankind (growing terrorism, overcoming economic backwardness in the world, determining the role of customs in providing assistance in dealing with natural disasters), or utilitarian tasks facing WCO during its operation (finding sponsors (donors) to finance the organization’s initiatives in developing countries).

Formal approval of new WCO tasks (both for the organization as a whole and for its individual bodies) takes place through the adoption of legal acts by the WCO Council. Well-known examples of such acts are the Ottawa Declaration of 1987, the Resolution on the Role of Customs in the 21st Century in 2008, the Resolution on the Role of Customs in Disaster Relief in 2011, and others.

For example, in pursuance of the Resolution on the Role of Customs in the 21st Century 2008, WCO is tasked with developing a new strategy in the near future that would involve:

- development of the initiative to promote the effective functioning of trade systems, simplification of the principles of international trade relations, ensuring a sufficient level of state border security;
- representing the position of the customs community at the highest level, strengthening mutually beneficial cooperation with other international organizations in both political and technical spheres (for example, with the World Trade Organization, the UN and its specialized agencies, the International Maritime Organization, the World Bank and the International Monetary Fund) to strengthen the position of customs administrations and increase the importance of WCO initiatives;
- ensuring stable institutional development of customs administrations;
- changing the position of the WCO Secretariat in the context of assisting Member States’ customs administrations (World Customs Organization, 2008).

The tasks of WCO are mediated by its functions, i.e., as V. Moravetsky (1976) emphasized, the processes of the organization’s activities aimed at carrying out its tasks. The task is a sample, and the function is a gradual achievement of the sample; if the task determines what the organization must achieve, the function determines how the organization operates in order to achieve the desired transformation of the sphere.

Therefore, in order to solve common tasks for the members of the organization, WCO is endowed with the following functions:
• study of all issues related to customs cooperation, which the contracting parties have agreed to promote in accordance with the main aims (objectives and tasks) of the Convention;
• the study of the technical aspects of customs systems, as well as related economic factors, in order to offer WCO members practical means of achieving the highest possible level of coherence and uniformity;
• preparation of draft conventions and amendments thereto, as well as making recommendations for their adoption by the Governments concerned;
• development of recommendations to ensure uniform interpretation and application of conventions concluded as a result of the work of WCO as well as conventions concerning the nomenclature for classification of goods in customs tariffs and valuation of goods for customs purposes, prepared by the European Customs Union Study Group, and also the exercise for this purpose of functions which may be directly assigned to it by these conventions in accordance with their provisions;
• the development of conciliatory recommendations for the settlement of disputes concerning the interpretation and application of the conventions referred to above, in accordance with the provisions of those conventions; the parties to the dispute may agree in advance to consider the recommendations of the Council binding;
• ensuring the dissemination of information related to customs regulations and procedures;
• providing interested governments, on their own initiative or at their request, with information or advice on customs matters in accordance with the main objectives of the Convention and making recommendations in this regard;
• cooperation with other intergovernmental organizations on issues within the competence of WCO (World Customs Organization, 1950).
Acquaintance with a list of WCO functions enshrined in Art. III of the Convention on the Establishment of the CCC, allows us to conclude that from the very beginning of the organization the list was not exhaustive and remains so to this day.

CONCLUSIONS

Summarizing the above, we can reach the following conclusions on clarifying the essence of the concepts «WCO purpose», «WCO objectives», «WCO functions» and their delimitation:
1. the purpose of the WCO determines the desired (necessary) result, the achievement of which should be aimed at the activities of the organization and is to promote cooperation between the governments of its members;
2. the achievement of the goal of WCO necessitates the solution of tasks common to its members, which specify the goal and which the organization should strive to solve, namely:
• Ensuring the highest possible level of coordination and uniformity of customs systems of its members; and
• Strengthening the study of problems arising in the course of development and improvement of customs means and customs legislation;
3. the tasks of WCO provided for in the Preamble to the Convention on the Establishment of CCC do not exhaust their full list, the gradual expansion of which takes place through the adoption of legal acts by the WCO Council;

4. WCO tasks are subordinated to WCO functions. The functions of the WCO determine how to carry out its tasks and achieve its objectives. Enshrined in Art. III of the WCO Statute, the list of functions of the international organization is proposed to be considered as inexhaustible.

Thus, despite the existing conceptual similarity of the categories «purpose», «objective» and «functions», their delimitation in the context of WCO’s activities is important and necessary.

RECOMMENDATIONS

The materials of this article may be useful to WCO activity researchers, to teachers who are teaching disciplines devoted to the study of relations in which WCO participates or which are influenced by the activities of this organization, as well as to customs practitioners and subcontractors, as well as for practical employees of customs administrations and business entities that directly interact with the customs authorities on the movement of goods and commercial vehicles across customs borders.

Further research and practical elaboration of this issue remains relevant both for individual states and for the entire international community. After all, in the context of joining the subjects of international law joint efforts against various threats to humanity as a whole, including the spread of COVID-19 in the world, the essence of WCO may change significantly, which may directly affect changes in the national customs administrations of its members-states.

REFERENCES


EUROPEAN COMMON AVIATION AREA: AVIATION LIBERALISATION AND UKRAINE’S ACCESION PROCESS

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Abstract. The signing of the Common Aviation Area (CAA) Agreement between Ukraine and the European Union (EU) is one of the priority tasks on the agenda in Ukraine. The implementation of the CAA Agreement is envisaged in the Association Agreement (2014) between the EU and Ukraine, the Action Plan of the Cabinet of Ministers of Ukraine1 (CMU) and the Strategic Development Plan of the aviation transport. Despite of the officially announced readiness of the Ukrainian side, the signing of the CAA Agreement has been postponed since 2013. Investigation of the external and internal problems for the integration of Ukraine into the CAA creates the topicality of this paper and leads to the purpose of the article. Purpose of the article is comprehensive study of the legal basis and background of ECAA, analyzing the neighborhood policies and hence, the determination of the main directions of incorporation of the EU civil aviation requirements and standards regarding market access, air traffic organization, flight safety, the environment and other issues in Ukraine’s legislation. The article is based on usage of the general and special-legal scientific methods of cognition, as well as formal legal and dialectical approaches. Legal basement of this work, in particular, consists of: a) the Association Agreement between Ukraine and the EU of 2014; b) National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union (adopted by the Law of Ukraine on November 04, 2018, № 2581-VIII); c) the Strategic Plan for the Development of Air Transport (adopted by the Ministry of Infrastructure of Ukraine on December 21, 2015, Decree № 546) and d) the Action Plan to Prepare for the Introduction of a CAA of Ukraine with the EU and its Member States (adopted by the CMU on February 8, 2017, Order № 88-o) and other regulations. Results of the paper include the conceptual theoretic investigation to reveal external and internal problems on the way to the Ukraine’s integration into the CAA of the EU, practical recommendations for the process of approximation of Ukraine’s legislation to the EU’s standards, and contribute to the liberalization of regulation of international air services.

1 Government of Ukraine.
Keywords: Common Aviation Area, liberalization of the aviation market, legislation implementation.

1. INTRODUCTION

The Common European Aviation Area Agreements are comprehensive air transport agreements. In accordance with these Agreements, the relevant aviation markets are gradually opened and integrated, an aviation area with common rules is developed, economic benefits for consumers are offered, as well as new opportunities for the industry are presented. The ECAA is a free trade area for aviation, in particular on flight safety, passenger protection, air carrier liability, environmental protection, competition and state aid.

2. LITERATURE REVIEW AND PROBLEM STATEMENT

This research is based on main scientific achievements of outstanding world scholars, who were successfully studying issues associated with creating legal fundamental sources for the establishment of the CAA from the very beginning, tasks and challenges of international aviation agreements, as well as practical and scientific researches of case studies worldwide on formation of air transportation policy and comparative study of certain zones of the world and process of approximation of national legislation. The research was possible to conduct based on the publications on a comprehensive analysis and historical perspective of the bilateral air transport agreements and Single European sky concept and European Common Aviation Area. Discussions and comparative study of the law policies of “open skies” for a new era in international aviation are the main background of the research due to the eagerness of Ukraine to become a member of a Common Aviation Area. According to the authors’ opinion the way of aviation liberalization and opening of the air transport market process in Central and Eastern Europe could be the example and pointer for Ukraine’s development of air transport towards the access to the European air transport market by means of signing the European Common Aviation Area Agreement in the nearest future.

The CAA Agreement between Ukraine and the EU was initialed on November 28, 2013, however, it was not sign up because of a dispute between Spain and the United Kingdom, which was referred to the Gibraltar airport. Despite of the delays with the signing of the CAA, the need to harmonize the aviation legislation of Ukraine with the EU’s standards has not lost its importance. The necessity of changing the aviation legislation is stated in the association agenda between Ukraine and the EU and in the CMU’s Resolution (2017), which proposes the Action Plan for introducing the CAA agreement and adapting Ukrainian legislation to the EU rules. Hence, the process of formation and development of legal and communicative basis for the EU-Ukraine CAA Agreement’s signing and further implementation of European standards and rules into the aviation area need to be studied as well as challenges, advantages, disadvantages and main conceptual directions of legal work should be identified and revealed.
3. THE AIM AND OBJECTIVES OF RESEARCH

The aim of this research is to make contribution into the Ukraine’s access process into the ECA and study out the issue on challenges of conclusion of the CAA and tasks towards approximation of Ukraine’s legislation to EU rules within the integration into the Common Aviation Area of European Union based on the experience of Balkan countries.

To achieve the goal, authors set the following tasks to:

• reveal internal and external obstacles for Ukraine’s accession to the EU CAA
• study of current state of legal framework of aviation policies and regulation.
• analyse the incorporation process of EU legislation into Ukraine’s legislation: measures to adapt the legislation of Ukraine to the EU legislation in the field of aviation transport.
• evaluate the role of state stakeholders in the process of Ukraine’s accession to the CAA and determine their scope of obligations in approximation to EU standards.

4. SINGLE EUROPEAN SKY: FROM ITS CREATION TO CURRENT CHALLENGES

European integration took place essentially on the ground. At first glance, this appears to be a completely unproblematic, almost trivial and alternative statement. But if one realizes that the European airspace is also an object to be regulated, it becomes clear that there is also a European integration in the air or that this can be a desideratum like its counterpart on the ground. If the manifest border stations have long been a thing of the past, they are in the air up to the present literally limiting.

The EU regulatory initiative “Single European Sky” (SES) has set itself the task of standardizing the European sky (Havel; 1997). However, it took until the turn of the millennium until one could speak of inclusion in the political agenda of the European Union (EU) in the narrower sense.

4.1. Historical background

Around 1960, with the founding of the European Organization for the Safety of Air Navigation, it is possible to begin to speak of a genuinely European airspace policy for the first time.

The first stage covers the longest period from 1960 to 1999. It took the longest period due to the fact the comparatively ambitious founding of Eurocontrol will remain the only European initiative for a long time, provided that this attribute is actually assigned at this point, because the airspace itself is almost assumed to be regulated by national governments (Butcher, 2002). Only when the signs (more precisely: delay statistics) intensify that the measures that allow Eurocontrol’s limited powers to fizzle out at national borders, the European Community institutions feel obliged to bring airspace politically to the European level.

In June 1992 the European Council of Ministers agreed the Third Aviation Liberalisation Package. The Third Package was the culmination of a gradual process of liberalisation of the Community air transport market to which Member States committed themselves in 1986.
The decision to “create a single market in aviation formed part of the move to a single internal market across the whole range of economic activity, as embodied in the Single European Act” (Hobe, 2018). The signing of the Single European Act and the renewed commitment to eliminating barriers to commerce and resource movement created EU-wide markets in a broad range of goods and services, including civil aviation.

The second stage began from the initiative about the creation of the SES was launched in 1999 to improve the performance of air traffic management (ATM) and air navigation services (ANS) improve a better integration of the European sky. Significant benefits are expected from the SES project as, compared to 2004, the SES could (once completed around 2030-2035) triple airspace capacity and halve the cost of air traffic management, improve safety tenfold, and reduce the impact of aviation reduce the environment (Havel, 2011).

4.2. Legal basis

The Single European Act (SEA) sought to revise the Treaties of Rome establishing the European Economic Community (EEC) and the European Atomic Energy Community. This was in order to add new momentum to European integration and to complete the internal market (an area with no internal borders and in which there is free movement of goods, persons, services and capital) by 1 January 1993.

The SEA amended the rules governing the operation of the European institutions and expanded the powers of the then European Community in a number of policy areas.

By creating new Community competencies and reforming the institutions, the SEA opened the way to further political integration and economic and monetary union that would be enshrined in the Treaty on European Union (the Maastricht Treaty).

The Single European Sky (SES) initiative was started in 2000 by the European Commission after the delays to flights in Europe (in 1999).

The SES package is aimed to:

• Enhance safety and efficiency of air transport in Europe;
• Reduce delays by improving the use of scarce airspace and airport resources;
• Improve services and reduce cost to air transport passengers by reducing the fragmentation of the air traffic management in Europe;
• Improve the integration of military systems into the European air traffic management system.

The legislative package adopted in 2004 comprises four basic regulations, which reinforce safety and foster the restructuring of European airspace and air navigation services. The regulations provide the framework for the creation of additional capacity and for improved efficiency and interoperability of ATM system in Europe.

The Framework regulation (EC No 549/2004) – laying down the framework for the creation of the single European sky;

The Service provision regulation (EC No 550/2004) – on the provision of air navigation services in the Single European sky;

The Airspace regulation (EC No 551/2004) – on the organisation and use of airspace in the Single European sky;

4.3 Brexit: UK-EU relations in the aviation sphere

While being a member of the EU, airlines of UK had access to the ECAA (till the end of the transition period, that is till December, 31 2020 (Wright, 2020).

The ECAA was established in 2006 as a follow-up to the Single Aviation Market and is under the control of the European Aviation Safety Agency (EASA), and its legislation is applied by the European Court of Justice (ECJ).

The EU has also negotiated horizontal agreements with 17 other non-ECAA countries. Horizontal agreements (including the EU–USA Open Skies Agreement and the EU–Canada Air Transport Agreement) cover areas such as access rights for airlines, passenger rights and investment (Swinnen, 1997).

The UK Government identified the three most likely options for future UK arrangements with the EU. These are:

- Membership of the European Economic Area (EEA), which is the model currently followed by Norway and which ensures full access to the Single Market;
- Ad hoc bilateral arrangements, similar to the bilateral agreements between the EU and Switzerland (in fact the aeronautical relationships between UE and Swiss Federation are ruled by a special agreement signed in 1999); and
- WTO relationship (e.g. no special/formal arrangement with the EU).

Through these and the ECAA, the UK flights have access to 44 countries, accounting for about 85% of all of Britain’s international air traffic (Di Peio, 2017).

5. THE ESTABLISHMENT OF THE EUROPEAN COMMON AVIATION AREA: NEIGHBORHOOD POLICY

In 2006 the ECAA was established as a single market in aviation services defined by bilateral agreements between EU countries.

Based on the EU acquis communautaire and the EEA, the ECAA actually hoped to achieve the goal of liberalizing of the air transport market by giving any company from an ECAA member state permission to fly between any airport within the ECAA (including the ability of a foreign company to operate domestic flights).

The ECAA agreement was signed by the European Community itself, almost all of the 27 EU members, Norway, Iceland, as well as Balkan countries: Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Kosovo (UNMIK as Kosovo representative under Security Council resolution 1244). Slovakia and Latvia after joining the EU sign it respectively on June 13th, 2006 and June 22nd, 2006. Finally, Serbia signed on June 29th, 2006 and Montenegro on July 5th, 2006 [9].

5.1. The ECAA and the Western Balkans

In June 2006 the EU and the countries of South Eastern Europe signed a memorandum on the setting up of the ECAA by 2010. From the date of the signing of this agreement the ECAA has extended to the Western Balkans. It implies full liberalization of the cross-border traffic between the signatories, an adoption of the aviation legislation and comprehensive restructuring of the sector at the national level. It is expected this agreement leads to rapid
growth of the traffic, encourages foreign investment in the aviation sphere and performs an important role to catalyze wider regional integration. However, to reap the benefits, the Western Balkans countries will need to implement an ambitious reform agenda in a short period of time including reform implications for governments and donors.

Such extension of the European single market for air industry to South East Europe gave a support for business travel, tourism and broader regional integration. The ECAA agreement was initialed in December 2005 and signed in June 2006 (Mölders, 2012). It obliges all signatories to approximate the legislation to the EU’s standards in air transport industry.

It implies the following steps:
• implementation of legislation for the market access liberalization, traffic rights and fares;
• standards on slot allocation and airport ground handling;
• norm on state aid and competition;
• security and safety standards;
• environmental regulations and consumer rights related to aviation and
• the acquis pertaining to air traffic management (ATM) and the SES.

Bilateral air service agreements (ASAs) between countries have traditionally regulated cross-border air traffic rights. Principles stipulated in the 1944 Chicago Convention and notion of national sovereignty over airspace are the main basis for ASAs. Bilateral ASAs define frequency and names of service of certain routes, capacity (e.g. used type of aircraft), airlines (‘designated’ airlines) and the price. ASAs may also contain clauses on airport charges and taxation. “Freedoms of the air” are the traffic rights granted by ASA, they are as follows:
• Freedom Nr.1 (flight over another country) and freedom Nr. 2 (a technical stop in another country) do not provide for freight or passenger flows between two countries that are parties to the ASA.
• Freedoms Nr. 3 and Nr. 4 allow the carriage of passengers / cargo to and from destinations in the two involved countries, but exclude domestic transport or connections with a third country.
• Freedom Nr. 5 allows an airline to take passengers or cargo on a stop in another country before disembarking them in a third country.
• Freedom Nr. 6 allows to carry passengers or cargo between another country and a third country through their own (home) country.
• Freedom Nr. 7 allows to operate flights between another country and a third country without any stopping in their own (home) country.
• Freedom Nr. 8 (referred also as ‘cabotage’) and freedom Nr. 9 (on true domestic) allow domestic flights within another country, with or without a cross-border flight (Hobe, 2004).

The implementation of the ECAA agreement took place in three phases. During the 1st phase, rights of freedoms Nr. 3 and Nr. 4 were completely liberalized. This meant all airlines licensed within the ECAA area obtained the possibility to fly to and from their own countries to any other ECAA destination, without bandwidth or frequency restrictions. The second phase involved a liberalization of the freedom Nr. 5, and allowed airlines to pick up passengers
at a stop in the other country before disembarking them in a third country. Before a party-
country may move to the second phase of the ECAA, however, it was necessary to introduce
a basic package of the aviation legislation, which mainly concerns security and safety
regulations. The third phase included the liberalization of freedoms Nr. 6-8 and complete
transposition of the aviation legislation. No clear target dates were set for the first 2 phases,
and each country could progress at its own pace once it met the necessary conditions [12].

5.2. Neighbourhood agreements of CAA

Inspired by the experience of enlargement to the East, much of the academic debate on
EU’s external relations and the European Neighbourhood Policy comes up with external
influences in terms of the Union’s ability to stimulate third countries’ adaptation to EU rules
and norms [Lavenex, 2008].

The CAA Agreements provide the adoption by neighbouring EU partners of the part of the
Acquis, which contains the European aviation regulations, starting with requirements to
safety. Opening of the market and progressive harmonization of regulatory acts are carried
out consistently and technical assistance is provided to support these partner countries in
taking the necessary measures. The CAA is implemented on the basis of comprehensive
aviation agreements, which promote general economic, tourism and trade relations.
Negotiations on such a comprehensive agreement may begin as soon as a neighboring
country demonstrates its clear readiness and commitment for joining the CAA.

The EU has signed agreements on CAA with the Western Balkans, as well as Morocco,
Georgia, Moldova, Jordan and Israel. The first neighbourhood agreements were concluded
with partners from the Western Balkan and Morocco in 2006 and have been applied starting
from the date of signature. Similar agreements with Jordan and Georgia were signed in
2010. After that agreements with Moldova (2012) and Israel were signed (2013). Moreover,
negotiations on an aviation agreement with Ukraine have been held and it is planned to
sign it in the near future. As for relations with other neighboring countries, negotiations are
underway with Tunisia, Azerbaijan and Lebanon. After all, the total European Aviation Area
can cover up to 50-55 states with a total population of up to 1 billion inhabitants (European
Commission, 2019).

The Communication from the Commission to the Council and the European Parliament
Communication was adopted and setting out a renewed cooperation in transport policy with
the EU’s neighbouring countries, based on the 2007 Commission Communication², which
focused on infrastructure aspects. It covers both: the enlargement countries³ and the ENP⁴,
with primary accent on the ENP countries. The high level of transport cooperation already
attained with enlargement countries can be a model for improving transport connections
with other neighbouring regions⁵.

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² Extension of the major trans-European transport axes to the neighbouring countries, COM(2007) 32,
31.1.2007
³ Candidate countries: Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Turkey.
Potential candidates: Albania, Bosnia and Herzegovina, Serbia, Kosovo (under UNSCR 1244/99).
⁴ ENP East: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine; ENP South: Algeria, Egypt,
Israel, Jordan, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Syria, Tunisia.
⁵ Iceland, Norway, Russia and Switzerland are not covered by this Communication
The Commission has recently reviewed the ENP, the single policy framework for the EU’s relations with its neighbouring partner countries\textsuperscript{6} and offered a new response to a changing neighbourhood. According to this response, transport cooperation will be adapted to the needs of each sub-region. The EU will apply a higher level of differentiation in the transport sector depending on each country’s ambition and readiness to integrate more closely with the EU. EU support, in the form either of financing infrastructure links or of expanding market access, will depend on a progress of the neighbouring countries at this issue (European Commission, 2011).

6. PROCEDURE OF THE UKRAINE’S ACCESSION INTO THE ECAA

The liberalization of the aviation market is inevitable as Ukraine prepares to sign an ‘open sky’ agreement with the EU. In order to approach to this aim, it is crucial to approximate the Ukrainian air transport legislative norms to the European standards and international treaties based on a real step towards implementation of the state plans and programs. Transport infrastructure must be developed to promote Ukraine’s fast economic and social development, taking into account national needs and interests.

Ukraine (as other post-Soviet countries) is intending to make the transformation towards a consolidated democratic system, functioning market economy and efficient democratic state with extensive welfare policies. It is not necessary for Ukraine to ‘reinvent the wheel’ in this matter. “Whatever action is performed by a great man, common men follow in his footsteps. And whatever standards he sets by exemplary acts, all the world pursues” (Prabhupada, 1989).

Therefore, studying of the positive experience of Balkan and EaP countries in the sphere of the CAA will become a basis for Ukraine’s intentions towards preparations for the CAA Agreement signing and further implementation of its standards and regulations.

Even though the readiness was officially announced to the Ukrainian side, the signing of the CAA Agreement has been postponed since 2013. The main reason for the postponement of the signing of this Agreement in 2014-2016 is the scarcity of consensus between the United Kingdom and Spain on the wording of Article 31, Territory, of Article 2, „Definition” of the Agreement, regarding the territorial status of Gibraltar (Rajoy, 2019).

6.1. Legal Basis of negotiation process

In accordance with the clauses of Annex XXII of the Association Agreement (AA) between Ukraine and the EU Members Ukraine undertakes to progressively approximate its legislation to the EU legislation, in particular, in the sphere of aviation industry according to the requirements, stipulated in the CAA Agreement, which was initialed on November 28, 2013 in Vilnius and has not yet come into force. However, in accordance with sub-item (ii) “Aviation” of item 7.4 “Transport” of Section 7 “Other Sectoral Issues” Part III “Operational Part” of the EU-Ukraine Association Agenda, the Parties shall cooperate to prepare Ukraine for the implementation of the EU acquis provided for in the relevant annexes to the AA:

\textsuperscript{6} COM (2011) 303, 25.05.2011
- continuation of implementing measures to align Ukraine’s aviation legislation with the EU legislation;
- implementation of the EU aviation standards, based on the CAA Agreement after its signing and strengthening administrative capacity in the sphere of aviation management;
- support and further development of cooperation with EASA on flight safety issues, including the approximation of certification and oversight systems for providers air navigation services to the relevant EU system.

In accordance with Article 5 “Basic principles of regulatory Cooperation” of the CAA Agreement Ukraine must take the necessary measures to incorporate into the Ukrainian legal system and to implement the requirements and standards of acts of EU legislation listed in Annex 1 to the CAA Agreement, in accordance with the transitional arrangements set out in Article 33 of the Transitional Arrangement.


Hence, the implementation of the CAA Agreement is envisaged by the AA between Ukraine and the EU of 2014, the Governmental Action Plan of 2016, and the Strategic Plan for the Development of Air Transport for the Period up to 2030 [18].

6.2. Current situation

Today the EU Council has mandated the European Commission to open negotiations with Ukraine to develop a common aviation area. The aim is to further deepen aviation relations with Ukraine following the signature of similar agreements with the Western Balkan countries and Morocco.

On December 18-19, 2019 in accordance with Article 467 (3) of the Association Agreement the Parliamentary Committee of the Association, having discussed recent developments in Ukraine and EU-Ukraine relations, and exchanged views on the priorities of future events, both parties agreed on the Final Statement and Recommendation that stress the need to enhance trade and economic cooperation and to continue trade liberalization, including through the swift conclusion of Ukraine-EU Common Aviation Agreement (ASSOCIATION AGREEMENT, 2014).

Therefore, the basic conditions for integration into European and world transport systems are:

- the approximation of the legislation to the European norms and standards in the sphere of air transport,
- compliance with key international agreements and conventions,
• development of international transport corridors, the whole aviation infrastructure,
• safety and environmental friendliness of transportation.

6.2.1. European standards’ adoption in Ukraine. Ukraine has already started to implement EU norms and standards into its legislation, that is, it has started to implement the clauses of the CAA Agreement even before it is signed, unilaterally by voluntary basis.

The CAA requirements for passenger rights, the division of aviation into state, civil and general aviation (“small aviation”), aviation security, environmental protection, etc. were all taken into account during the adoption of the Air Code of Ukraine in 2011.

An agreement signed in 2017 between the State Aviation Service and the European Commission on the convergence of certification systems stipulated that, over the next 5 years, joint work will be continued on achieving convergence of certification systems in the areas of primary airworthiness, maintenance of airworthiness and maintenance of its aircraft components. As a result, in particular, few Aviation Rules of Ukraine, which comply with the EU Regulations, staff training were developed and adopted. In 2017, the State Aviation Security Program for Civil Aviation was adopted, a number of licensing conditions and rules were approved. One of the major innovations of the CAA Agreement is Ukraine’s accountability for EASA aircraft certification. Ukraine should provide mechanisms for conducting EASA standardization inspections and audits. However, the certificates, licenses and other technical documentation must be issued by the national authorities of Ukraine. For example, UkSATSE has been audited in 2018 by EASA and received the certificate, which was necessary to maneuver the aircraft when approaching Uzhgorod airport. However, the appropriate mechanism for regular EASA checks has not yet been developed (Kosse and Kulchytska, 2018).

The issue of opening up the groundhandling services market has not yet been resolved. Developed in February 2017 and revised in November 2018, the Draft of the Aviation Rules “Access to the Groundhandling Services Market at the Airport” has not been considered by the Verkhovna Rada.

Meanwhile, the groundhandling market at airports remains monopolized by individual companies. For example, in November 2018, the Antimonopoly Committee of Ukraine found violations of antitrust laws by Kyiv (Zhulhany) airport and Master-Avia LLC, which concluded a general ground service agreement and ousted other companies from this market. In 2017, Boryspil Airport was fined for UAH 13 million for abusing of its monopoly position in the market of specialized airport services in the area of airport ground services. Thus, work on harmonization of Ukrainian and European legislation in the sphere of air transportation is underway. However, it is difficult to assess the degree of harmonization since such monitoring is not carried out (Final Statement, 2019).

Even the Government’s Priority Action Plan for 2019 aligns Ukrainian legislation with European aviation standards within one year after the CAA Agreement entered into force.

7 Parliament of Ukraine.
6.2.2. Stages of accession period. According to the CAA Ukraine has to incorporate the EU legislation and requirements in the sphere of civil aviation relating to market access, air traffic organization, flight safety, environment and other issues into its legislation. It is planned to provide such incorporation in two stages, and thus two transitional periods are distinguished.

Once the CAA Agreement is signed, the first transition period will begin. It will allow Ukrainian and EU air carriers to fly between any points in the EU and in Ukraine. Ukraine will be involved as an observer in the work of the committee responsible for the distribution of slots at EU airports. Simultaneously, the process of the harmonization and implementation of the Ukraine's legislation will go on. Successful completion of this tasks will allow the start of the second transition period.

During the second transitional period, the EU recognizes crew certificates issued by Ukraine; groundhandling service providers will be able to operate in the territory of the other Party; Ukraine will be involved as an observer in the work of the committee, which determines which airlines are prohibited from operating within the EU.

After Ukraine organizes its airspace in accordance with the EU requirements, the CAA will be fully operational. EU airlines will be able to fly between Ukrainian cities; Ukrainian airlines may fly between EU cities provided that the flight is part of the service serving the point in Ukraine (thus, the Agreement is asymmetrical). The EU will begin to recognize the certificates issued by Ukraine for air traffic management and air navigation services (Kosse and Kulchytska, 2018).

Therefore, the most important and significant effect of signing the CAA Agreement will be the mutual “opening” of the sky for Ukrainian and European carriers. Passengers and airports benefit from an increase in the number of flights between cities of Ukraine and the EU, as well as increase of competition between airlines. Politically, Ukraine will strengthen its position as a European player by gaining access (at least as an observer) to the decision-making process of European aviation authorities.

6.3. Main directions for further contribution onto the fostering of the accession process

Main steps towards Ukraine’s accession into the ECAA should be directed to making complex and fundamental analysis of the whole scope of European norms and standards, which have to be implemented by Ukraine in the aviation sphere to become a full-fledged and real member of the CAA based on the concluded Agreement.

First of all, it is crucial to make contribution into the realization of the Action Plan to Prepare for the Introduction of a CAA of Ukraine with the EU and its Member States (adopted by the CMU on February 8, 2017, Order № 88-o), namely, of the clause on:

a. preparation of implementation plans and enforcement of EU legislative acts set out in Section 2 of Annex III of the CAA Agreement project;


6.3.1. Further directions and perspectives towards Ukraine' accession to ECAA are:

- Incorporation of the EU requirements and standards in the sphere of civil aviation relating to market access, air traffic organization, flight safety, environmental environment and other issues into the Ukraine’s legislation.
- Focus on the implementation of the CAA Agreement in the sphere of EU technical regulations and directives and expect the right moment to resume active negotiations on the signing of the Agreement.
- Organizing the signing of a Memorandum with the European Commission on the convergence of certification systems.
- Fulfillment of the conditions for the transition to the second transition period specified in the SAP Agreement, namely the incorporation into the national legislation of Ukraine of the EU regulations and directives set out in Section 2 of Annex III of the SAP Agreement.
- Simplifying the Ministry of Justice’s regulatory compliance process acts that will allow EU regulations and directives to be adopted by the package and without prolonged adaptation.
- Separation of areas of responsibility of the Ministry of Infrastructure and the Civil Service in the process of incorporation of EU legislation.
- To make a detailed plan on legal changes and influence to ground handling at airports of Ukraine within the CAA
- To evaluate the role of state stakeholders in the process of Ukraine’s accession to the CAA and determine their scope of obligations in approximation to EU standards.

7. DISCUSSION OF THE RESEARCH RESULTS

Ukraine’s orientation towards European community displays in various sphere, particularly, in air transport sector and the legal basement of this vector, in particular, consists of:

a. the Association Agreement between Ukraine and the EU of 2014;

b. National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union (adopted by the Law of Ukraine on November 04, 2018, № 2581-VIII);

c. the Strategic Plan for the Development of Air Transport (adopted by the Ministry of Infrastructure of Ukraine on December 21, 2015, Decree № 546) and

d. the Action Plan to Prepare for the Introduction of a CAA of Ukraine with the EU and its Member States (adopted by the CMU on February 8, 2017, Order № 88-o) and other regulations.

Main objectives of the special authorities of Ukraine in the sphere of access to the ECAA as well as main discussions of this research results are to form and define the priority directions
of development of the aviation transport industry according to the intention of Ukraine to become a part of the CAA, in particular:

- bringing aviation infrastructure in line with international requirements;
- implementation of European standards and requirements in the field of flight safety;
- integration with the European Aviation Transport System through the gradual conclusion of the Agreement between the EU and Ukraine on a Common Aviation Area and participation in an air traffic organization program in a single European airspace;
- deepening Ukraine’s participation in pan-European aviation organizations: the European Civil Aviation Conference, the European Aviation Safety Organization, the European Aviation Safety Agency;
- implementation of the core components of the EU Single European Sky concept. It is proposed to sign a technical agreement between the State Aviation Administration and the European Aviation Safety Agency (EASA) on the Common Aviation Area;
- adoption and implementation of the State Flight Safety Target Program in accordance with ICAO International Standards;
- adaptation of Ukraine’s regulatory framework to ICAO and EU requirements and standards.

CONCLUSIONS

The scale of the future European international air transport market will also be largely scaled by the practical shape of European competition policy.

The EU made important steps towards opening markets, developing a regulated competition shape and unleashing the aviation industry’s potential. There will be a regular need for policy evolution as well as streamlining and modernization of the regulatory framework in order to maintain and enhance this success. A revision of the regulatory framework is currently being discussed with all interested parties, in order to consolidate the basis for an open, competitive, innovative, safe and sustainable aviation market in Europe. It is hoped that it could serve as a useful reference for consideration by partner countries and regions (Sichelschmidt; Wolf, 1993).

As a natural consequence of the abandonment of the concepts of national markets and national carriers within the EU, the creation of the single market is now starting to have an external effect and an EU external aviation policy is emerging.

A genuine internal market for air transport has thus been created across the European Union. But the geographical extension of the single market goes further. In June 2006, the EU and its Member States signed the agreement establishing the European Common Aviation Area (ECAA). This agreement integrates partner countries in South-East Europe into the single market.

The ECAA partner countries also adopted EU air transport laws and regulations. In parallel, these air transport markets were gradually liberalized and integrated into the EU single market (ICAO, Assembly, 1996).

In the future, the Common Aviation Area could be further extended to include Ukraine and other neighboring countries, in particular in the Mediterranean region.
After full implementation of the Agreement Ukrainian airlines will have the opportunity to use unlimited commercial rights to conduct transportation services between Ukraine and the EU and between any EU member-states, provided that the flight is served at some point in Ukraine. The EU airlines will have unlimited commercial rights to conduct transportation services to Ukraine and inside Ukraine. Moreover, such liberalization of the aviation market will be mutually beneficial for both sides of the agreement.

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UNITED TERRITORIAL COMMUNITY AND PROCESSES OF DECENTRALIZATION IN UKRAINE AND FOREIGN STATES: FEATURES OF CREATION AND FUNCTIONING

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Abstract. The article analyzes the peculiarities of the creation and functioning of a united territorial community in Ukraine and foreign countries. It is determined that the reform process in Ukraine at the legislative level is quite fast, but implementation is lagging behind in some places. It is determined that the European Union has a certain influence on the implementation of transformations in Ukraine. In addition, they are all aimed at ensuring the proper depth and pace of decentralization. At the local level, however, there is growing dissatisfaction with the chaos in decentralization and frustration with the lack of promised positive results, although decentralization has been going on for more than seven years.

It is emphasized that in order to prepare the infrastructure, to achieve a real decentralization of power, which is now so much talked about in Ukraine, the neighboring state (which, incidentally, is often equated with Ukraine) Poland, worked long: it took only ten years to develop only decentralization plan. In the countries of „old” Europe, for example in Germany, the reform of local self-government (as a rule, took place within the framework of the reform of the administrative-territorial system) began in the 1960s and in some places continues to this day. However, there are states, of course, that have had several months or weeks to implement decentralization projects.

It is concluded that if we compare the time limits of the formation of UTC in Ukraine and other countries, it is likely that the experience of the Republic of Poland, was used by Ukraine to some extent. Despite the fact that in Ukraine the process of UTC formation is essentially completed, the first elections were held in almost all of them. However, the ability of such
UTCs to perform the role and functions defined by Ukrainian law remains unresolved. And in this case, the experience of Latvia, in the form of subsidies from the state budget – would be very appropriate for use in such decentralization processes.

**Keywords:** united territorial community, decentralization, administrative-territorial system, grants, capacity, international experience.

**INTRODUCTION**

The reform process in Ukraine at the legislative level is quite fast, but implementation is lagging behind in some places. While the European Union has some influence on Ukraine’s transformation to ensure the proper depth and pace of decentralization, dissatisfaction with the chaos in decentralization and frustration with the lack of promised positive results is growing at the local level, although decentralization has been going on for more than seven years.

In order to prepare the infrastructure, to achieve a real decentralization of power, which is now so much talked about in Ukraine, the neighboring state (which, incidentally, is often equated with Ukraine) Poland, worked long: about ten years took only to develop a decentralization plan. In the countries of „old“ Europe, for example in Germany, the reform of local self-government (as a rule, took place within the framework of the reform of the administrative-territorial system) began in the 1960s and in some places continues to this day. However, there are states, of course, that have had several months or weeks to implement decentralization projects.

As the current system of functioning of territorial communities in Ukraine is not perfect and is at the initial stage of its development, studying the experience of foreign countries will allow us to draw some conclusions about the prospects for further development of territorial communities in Ukraine and identify the main directions of implementing best international experience. territorial communities in Ukraine.

The main goal is to identify the best international practices for the development of united territorial communities and determine the directions of their implementation in Ukraine.

**METHOD**

The study primarily uses the comparative law method, which allows us to identify some similar and different aspects in the functioning of the united territorial communities of Ukraine and foreign countries.

The topic of decentralization of public power has long been considered by both foreign and domestic scholars, among whom it is worth mentioning M. Ketting, J. Scott, P. John, as well as O. Boryslavska, I. Zaverukha, M. Izha, V. Kubiida, V. Zagorsky, V. Zolotarev T. Kaganovska, A. Kovalenko, V. Kravchenko, V. Kuybida, O. Kuchabsky, A. Lipentsev, V. Mamonova, N. Nyzhnyk, V. Oluyko, L. Pashko, M. Pukhtinsky, A. Reshetnichenko, S. Seryogin, L. Tovazhnyansky. Despite the existence of a regulatory framework and professional developments of Ukrainian and
foreign scientists, the processes of decentralization and their organizational support remain insufficiently studied.

RESULTS

According to the draft Strategy for Sustainable Development of Ukraine until 2030, one of the priorities is the further decentralization of power, and hence the further development of united territorial communities (hereinafter – UTC), which is emphasized by the theses set out in the Strategy, strategic vision of sustainable Ukraine’s development is based on ensuring national interests and fulfilling international obligations, which includes decentralization and implementation of regional policy, which provides for a harmonious combination of national and regional interests ,(Project of Sustainable Development Strategy for Ukraine until 2030, 2020).

To begin with, let us note that the process of creating UTC is a component of the decentralization process both in Ukraine and in other countries of the world.

Thus, the further development of developments in the perfect and effective development of OTG will contribute to the further implementation of the goals of decentralization defined by law.

The main directions in the decentralization reform in Ukraine, already at the present stage of consolidation of administrative-territorial units, are a clear division of powers between the state and various local and regional authorities, as well as informing the public about the decentralization process, including promoting more citizen participation.

Dozens of articles and monographs have been written on the importance of the existence of decentralization of power, which define the unconditional advantages of the existence of such a phenomenon. For example, G.M. Shapoval determined that the advantages of decentralization in Ukraine should be:

- decentralized government promotes citizen participation in governance;
- is an element of “civil society” or a bridge that connects civil society with the central state; decentralized government is more responsive to citizens’ problems and more able to find solutions that are acceptable to both parties;
- is more efficient and effective in providing services to meet local needs;
- creates a sense of place and community;
- provides opportunities for the development of a new elite;
- is a counterweight to the authoritarian system of the state;
- provides an opportunity to experiment with new structures and policies;
- stimulates competition between regions and communities, etc. (Shapoval, 2019).

It is known that one of the important tools of decentralization of power were UTC, which were created in accordance with the Law of Ukraine “On Voluntary Association of Territorial Communities”, which regulates relations arising in the process of voluntary association of territorial communities of villages, towns and cities. Also voluntary joining of united territorial communities (On voluntary association of territorial communities, 2015).
Legislative and executive bodies have been paying close attention to UTC creation processes for a long time. Thus, on June 12, 2020, the Cabinet of Ministers of Ukraine adopted 24 orders on the definition of administrative centers and approval of the territories of communities of regions (Cabinet of Ministers of Ukraine adopted 24 orders on the definition of administrative centers and approval of the territories of regional communities, 2020) As a result, 1,469 territorial communities have been created in Ukraine (including 31 territorial communities in the uncontrolled territory within the Donetsk and Luhansk regions). Therefore, from 1469 only in 1438 of them on October 25, 2020 the first elections of local chairmen of local councils took place.

Thus, it is possible to say that in Ukraine as of April 2021 1469 OTGs were formed and the process of their formation was completed.

For comparison: in Poland, this process took almost ten years; Hungary – ten months was enough; East Germany – ten weeks, and Czechoslovakia – ten days of the „velvet revolution” (Shapoval, 2019). It is possible to assume that in such processes we were equal to the international experience of the Republic of Poland.

However, creating an UTC is only half the way in decentralization. It is important, first of all, to create affluent communities and, above all, to be financially and economically independent, as stated in several dozen regulations.

Therefore, the future actions of the legislator should be the renewal of the regulatory framework that will be able to provide – the same capacity that so much is said.

It is planned that to continue the reform it is necessary to adopt a number of important laws:

• On the principles of administrative-territorial organization of Ukraine. Within the framework of the current Constitution, it determines the principles on which the administrative-territorial structure of Ukraine should be based, types of settlements, system of administrative-territorial units, powers of state authorities and local self-government bodies on administrative-territorial organization, formation, liquidation, establishment and change, boundaries of administrative-territorial units and settlements, maintaining the State Register of administrative-territorial units and settlements of Ukraine.

• On service in local self-government bodies (new edition), which will ensure equal access to service in local self-government bodies, increase the prestige of service in local self-government bodies, motivate local employees to develop communities and develop themselves.

• Regarding state supervision over the legality of decisions of local self-government bodies.

• About the local referendum.

• Update of laws on local self-government, on local state administrations, etc. (Regarding the further development of the legal framework, 2021)

One of the main aspects of decentralization is the transfer of powers and resources to the level of local governments to meet the social needs of local residents as effectively as possible and to ensure the relationship between residents and the government for quality control and monitoring of local government actions. In this context, fiscal and administrative-political
decentralization will result in significant non-economic benefits for the development of communities, regions and the state as a whole, including: increased trust in government and accountability of government, increased law-abiding, civil society, and the emergence of training of local political leaders (Kravtsova & Storonyanska, 2020).

Scholars claim that Ukraine has still failed to create an effective system of local self-government, and the chronic shortage of financial resources of territorial communities and their excessive fragmentation have not allowed to decentralize the budget system of Ukraine. The problem of distribution of powers between the „center” and local communities is exacerbated by the desire of territorial bodies to have additional budgetary resources with a simultaneous lack of experience in performing additional functions (Shapoval, 2019).

Thus, the issue of UTC capacity, despite the fact that a number of Guidelines for the development of capable OTGs have been developed, still remains open and needs to be addressed at the legislative level.

On the other hand, studies of the effects of decentralization are mixed, but in principle confirm the greater positivity of its results for the state and society. The data obtained confirm the positive impact of decentralization on: education, population density, political concentration and the share of services purchased in the private sector. Statistics show that the world’s richest countries are more decentralized. Negative effects were identified among the levels of local tax rates, the level of personal income, transfers from the central government, the distance to capital, the regional center and unemployment rates (Ahmad, Bordignon and Brosio, 2016).

It should be noted that almost simultaneously with the process of formation of UTC there was and continues to be a process of consolidation of districts, which in the future involves a kind of organizational and legal change of administrative-territorial units.

It seems important to mention the experience of Latvia, which gradually used both methods of consolidation-stimulation of voluntary amalgamation of municipalities and administrative consolidation. Since the beginning of the reform, four years have been devoted to the formation of voluntary associations of municipalities with their financial incentives by providing a one-time subsidy from the state budget in the amount of 1 – 5% of the total municipal budget, after which the next year other municipalities (Shapoval, 2019).

As for such a mechanism in Latvia, it seems quite justified and necessary in the processes of both the formation of OTGs and in the processes of administrative-territorial consolidation, as it has been repeatedly emphasized that the state is obliged to provide subsidies for newly created OTGs in the Ukrainian budget.

Considering the international experience of UTC functioning in foreign countries of the world, I would like to mention the problem that arises in the process of decentralization, which is the choice between equality and hierarchy. For example, the French constitution enshrines the principle that no local authority can exercise power or supervise other authorities in relations between different regional and local institutions, but in reality this is more a formality than a practice. Instead, in the German legal field, the priority is the hierarchy of relations between different levels of government: legislation adopted by land authorities, binding on local governments located in their territories, and a higher level of
regional authorities: (local) authorities have the right to exercise supervision of the activities of the lower (Zabeyvorota, 2014).

In this case, it is impossible to form an unambiguous position for the Ukrainian legislation, although such a practice really confirms the importance and would increase the credibility of the newly created UTCs.

The Analytical Note contains the thesis that based on the implementation of the first steps of the decentralization process in Ukraine, taking into account international experience and domestic realities, the development of urban settlements and villages around large cities by providing jobs for young people is proposed to address the financial capacity of local communities. Infrastructure development, promotion of investments for the implementation of promising innovative projects, which will increase their competitiveness, and thus financial capacity (Analytical note...).

Zabeyvorota T.V., researching the international experience of UTC creation and decentralization processes, determined the following prospects for its implementation in Ukraine. Among which highlights:

- wide consideration of the opinion of the population, which establishes the need for local referendums, opinion polls not only during the transformation, but also when developing the concept of reform, involving the public, local government representatives in special bodies for the development and implementation of reform;
- gradualness, which requires careful preparation, provision and development of infrastructure, study of the state of administrative territories;
- establishing criteria for the creation of new administrative-territorial units without specifying quantitative and qualitative characteristics, the possibility of applying an individual approach to decisions of each region.
- possibility to choose the method of consolidation: unification of municipalities or establishment of inter-municipal cooperation (Zabeyvorota, 2014).

Sharing the opinion of the scientist, we can say that modern development of UTC, although at a slow pace of its development, in some way corresponds to those countries whose experience shows significant results in decentralization processes. However, in terms of UTC capacity, they are inferior to the highly developed countries of the world, and therefore the role of the state in the first stage of UTC creation should be significantly higher than it is now.

CONCLUSIONS

Thus, based on the analysis of the processes of UTC creation and in general the process of decentralization in Ukraine and foreign countries, we can emphasize the certainly important role of borrowing international experience for Ukraine. If we compare the time limits of UTC information in Ukraine and other countries, it is quite probable that the experience of the Republic of Poland was used by Ukraine to some extent. Despite the fact that in Ukraine the process of UTC formation is essentially completed, the first elections were held in almost all of them. However, the ability of such UTCs to perform the role and functions defined by Ukrainian law remains unresolved. And in this case, the experience of Latvia, in the form of
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Abstract. This paper discusses the problems of conflicts that may be from time to time initiated and settled in the field tax legal relations. The emphasis is placed on the suggestion that the evolution of scientific concepts of conflict is based on the interdisciplinary approach: the paper concludes on the impossibility of separating the philosophical, social, psycholinguistic and legal aspects of the conflict. Complex and systematic analysis of the „conflict” category using the integrative approach has been performed as part of the research. Differentiated state-of-art approaches to the conflict as a subject of scientific analysis may be classified into two primary groups: 1) the approaches, where the conflict is considered in a narrow specific sense; 2) the approaches where the conflict is studied from interdisciplinary perspective.

It is determined that any conflict is based on certain confrontation that plays a systemically important framework role both for individual types of conflicts, and for different level of scientific conflict studies. Nevertheless, is concluded that the presence of such confrontation only creates prerequisites for possible behaviour, while the interpersonal relations – i.e. the social category – are pivotal for individual choice of specific communicative interaction strategy.

The legal nature and attributive properties of tax conflicts are also discussed from the financial law perspective. The paper distinguishes five specific groups of factors that confirm the actual presence of conflict tax legal relations.

The special attention is paid to the tax dispute characterization (as one of the tax conflict development stages) and the remedies available for taxpayer rights protections. In particular,
the paper discusses the issues of the taxpayer legal self-defense as the guaranty of subjective rights exercise and lawful interests protection in legal relations as a key for prevention of tax conflicts and disputes.

Finally, the reasons are given to substantiate the conclusion that the tax dispute basically comes down to a mechanism of guaranteeing the interested party’s subjective rights enforcement and the balance of public and private interests in the field of taxation.

**Keywords:** conflict, differences, tax conflict, tax dispute, public and private interests.

**INTRODUCTION**

The relevance of the paper’s subject is based on the use of both conventional scientific approaches to the study of conflict tax relations (such as administrative and judicial procedures of appealing against the actions by tax authorities and collisions of tax legislation provisions with other industry-specific regulations) and more progressive legal theories involving development of optimal tax legal institute model in the modern tax law theory domain. In particular, the latter tendencies include the theory of public and private interest balance in tax law, tax dispute mediation, et cetera. The use of such scientific and methodological methods for development of conceptual foundation of the tax law may become a basic framework for resolution and prevention of tax conflicts as the consequences of interactions between the tax legal relations subjects (taxpayers and tax authorities) under conditions of uncertainty attributed to political, economic and legal factors.

Taxation is an instrument of organized society. Itself a social institution or group of institutions in the broad sense, taxation exists for the service and promotion of other institutions; in and of itself it produces no personal or social utility. Accordingly, the system of taxation rests on the political, economic and social structure and should be fitted to that structure and adapted to achieving the ends and objectives of society (Blough, 1944).

Matuzov N.I. reasonably notes that the domination of state over the individual personality cannot be considered as the rule of law (Matuzov, 1994). Quite the opposite, the state should attempt to maintain the balance between the interest of the state as subject of power enforcing the public interests and the objective private interests of the taxpayers.

In maintaining such balance of public and private interests in relations regulated by the tax law, it is important to proceed from the premise that the tax law provisions related to certain limitations of individual rights and lawful interests provided by the Constitution, should be adequate, proportional, necessary and correlative with the purpose of such limitations recognized by the framework law. It is obvious that, in establishing such limitations, the legislative bodies are not entitled to introduce any regulations that would either violate the basic concepts of specific right or lawful interests, or result in the loss of its actual essence.

It is well-known that the proper implementation of the tax legislation by the taxpayers results in inflow of tax proceeds to the budgetary system of the state, which ensures the proper funding of the socially relevant direction of the state’s financial activities, such as healthcare, social security, pension benefits, et cetera, which does not come in conflict
with own private interests of the individuals, since the taxpayers simultaneously are the citizens consuming the resulting social benefits. Nevertheless, the state should apply its best reasonable efforts in order to develop the tax legislation and its implementation procedures with consideration to such basic taxation principles as fairness, certainty, convenience and cost effectiveness.

Therefore, the complex fiscal policy mechanism is developed in safeguarding of mutual interests of the state and the subjects of entrepreneurial activity standing on the opposite sides of the wealth distribution process. This mechanism allows identification of the interrelation of qualitative changes occurring the public revenue system and the effects of such changes on the business activity level in the country, as well as the extent of social equality and partnership principles implementation as part of the social development.

At the same time, the legal relations are the area with high potential for development of confrontations and differences, therefore, the conflicts between the public state interests and private taxpayer interests often tend to arise. The actual presence of conflictual tax legal relations is evidenced by the following, including, but not limited to: first, by multiple administrative and legal processes between the taxpayers and the tax authorities, as well as other tax process participants (for example, legal agents); second, by the imperfection of the tax legislation, whose gaps result in limitation and even violation of the taxpayer rights in particular, and civil human right and liberties in general¹; third, by varying level of public legal consciousness and tax culture of the tax relations subjects; fourth, by the inconsistency between the tax legislation concepts and economically efficient taxation conditions; fifth, by the grounds for development of means and remedies for legal coordination of disputable legal relations (both in theoretical studies, and in actual course of law-making law-enforcement activities).

In view of the foregoing, the authors believe that the study of the “conflict” category may allow successful avoidance of many mistakes and difficulties at different stages of exercise of rights, and in particular, in resolution of tax disputes arising from collision between the public and the private interests in the taxation field.

MATERIALS AND METHODS

Interactions between the subjects resulting in development of potential non-amicable relations currently attract attention of the growing pool of researchers from various humanitarian science field, including not only the lawyers, economists and taxation experts, but also social studies researchers, psychologists and linguists. Therefore, the methodology of this paper is based on the multidisciplinary approach combining the knowledge and results of extensive prior research in field of tax law and linguistics.

¹ Following the words by Professor Philip Baker: «Some would say that taxation and human rights is an oxymoron. An oxymoron is, of course, the conjunction of two otherwise apparently irreconcilable concepts. I personally do not believe that taxation and human rights are in any way irreconcilable or conflicting; I think human rights are a fundamental aspect of taxation. Human rights limit what governments can do to their citizens – to people affected by their decisions. I think at the moment we are at a very exciting stage, where we are seeing the extension of human rights principles into the tax field, to provide limits to what governments can do to taxpayers. It is part of the balance between the powers of the state and the rights of taxpayers» (Baker, 2001).
Furthermore, ontological status of such interactions, in particular in linguistics field, still remains uncertain: there arise many concepts, terms, definitions (see e.g. review by (Leung, 2002)), resulting in terminological confusion (Nelson, 2001), and the research field attracts new concepts of varying scope and contents (disagreement, conflict, dispute, complaint, argument, etc) (Antaki, 1994; Boggs, 1978; Brenneis, 1988; Eisenberg, 1981; Grimshaw, 1990; Kotthoff, 1993; Laforest, 2002; Pomerantz, 1984; Schiffrin, 1985 et al). This results in need to define the concepts, which would characterize the studied type of inter-subject relations in a most complete and accurate manner, identify its categorial features and establish its place in the discourse activity system in order to support the further search of means for avoidance of conflicts in the tax relations field, timely prevention of tax conflicts, early identification and resolution of tax conflicts through legal remedies and settlement of tax conflict negative consequences.

RESULTS AND DISCUSSION

Negatively characterized relations between two or more subjects are usually associated with conflict – a phenomenon, intrinsically inherently to human being and thinking, which “accompanies humans throughout their entire lives and is reflected and in both incarnations of existence, being concentrated in the internal world and exhibited to the external world” (Yermolaieva, 2005). The presence of “naive” concept of conflict in the consciousness of representatives of different cultural and speech communities, popularity and significance of this scientific concept, however, do not correspond to its clear and unambiguous interpretation. It is obvious that investigation of the conflict verbal manifestation essence may yield any productive results only provided proper employment and use of the clarification potential of humanitarian disciplines offering an insight into the conflict phenomenon.

As part of the everyday life, the conflict is perceived as a wide circle of realities: family argument, military actions, parliamentary discussions, confrontation of internal motives, struggling with own desires and responsibilities, et cetera (Hryshyna, 2002), as well as manifestations of violence regarding of their form (Svietlov, 2003). In the course of a lifetime, any individual inevitably faces the conflict situations and develops his or her conflictological experience – i.e. a certain information about principles, methods and behaviours in pre-conflict and conflict situations accumulated during one’s life and partially inherited from previous generations (Antsupov, 2005). As the studies show (Antsupov, 2008), such empirical individual and collective experience that offers the recipes for optimal conflict situation resolution plays an essential role, since the human behaviour strategies during conflict are determined by the personal life experience by 99% and by scientific conflict research knowledge only by 1%.

In addition to everyday practice, the knowledge and understanding of conflict to some extent are developed by the coverage of conflict concept in the Bible, the works of literature and art.

It is a well-known fact that the Christianity is the most common religion in the English-speaking world, so it is reasonable to believe that the Biblical concepts, where the God acts
as the absolute incarnation of good, and the Devil acts as the absolute incarnation of evil, significantly contribute to the development of an English-speaking individual world views.

The Christian philosophy calls for resolution of ideological conflicts and strongly condemns possible confrontations and misunderstandings between the people, although the study results reveal the ambiguous perceptions of war and peace, concord and violence, inherent to both Christian and other religious doctrines. In particular, the Bible content analysis show multiple discrepancies in approaches to the “violence – peace” problem solution (Antsupov, 2008). There are also many inconsistencies in terms of worldview positions of different Christian cultures and communities, as well as in church attitude toward confrontations and societies, acts of war and violence, that tend to constantly evolve over time.

The works of art brilliantly reflect the original confrontation of good and evil, internal intensions and external factors of human behaviour. Furthermore, the art generally illustrates the concept of conflict in a more comprehensive, diverse, “vivid” and individualized manner than science with consideration to the dialectics of public and personal interests (Tsiurupa, 2004).

The conflict as a phenomenon that plays an essential role in the existence of human individual and the society in general always has found its place in the artistic and imaginary forms of reality representation. Literature, painting, sculpture, music, dance, cinema, theatre, and other forms of art have always artistically reflected the conflicts and influenced the formation of attitudes toward this concept among viewers, readers, and listeners. Since its very inception, the art has been a powerful factor in human spiritual and practical exploration of conflict. Furthermore, the artistic comprehension of reality does not oppose the scientific comprehension of the conflict, but rather supplements, intensifies and facilitates it (Antsupov, 2005).

In recent decades, the role of the mass media as a powerful factor influencing human consciousness and behaviour, including in terms of conflict, has increased dramatically. The constant media coverage of various conflicts also influences the masses in this aspect to a large extent. The results of sociological studies, for example, show that watching informational television programs most often invokes in people the feeling of anxiety, concern, defencelessness, fatigue and insecurity (Antsupov, 2008). Obviously, these feelings influence the human the behaviour in conflict situations.

The scientific tradition of conflict research has a long and extensive history. Due to the universal prevalence of the conflicts, the attempts to comprehend this phenomenon date back to the antiquity. As early as VII–VI centuries B.C., Chinese philosophers believed that the source of the development of all things in the world was the constant confrontation of positive (yang) and negative (yin) sides of matter. The Classical Ancient society developed the first scientific speculations about the role of conflicts in the social environment; the conflict was often identified with the struggle of cosmic forces and was considered inevitable (Tsiurupa, 2004). During the following centuries, the outstanding philosophers of different nations (F. Aquinas, N. Machiavelli, E. Rotterdam, F. Bacon, J. J. Rousseau, I. Kant, etc.) attempted to make sense of the concept of conflict or its individual aspects (see literature review by (Antsupov, 2008; Vashchenko, 2000; Herasina, 2002; Hryshyna, 2002) et al).
The significant importance is attributed to the opinion expressed in the 17th century by T. Hobbes, who speculated that conflict was a natural condition of society, a human attitude towards others, conditioned by the desire for power, satisfaction of one’s own needs, etc. (the concept of “a condition of war of everyone against everyone”) (Hobbes, 1985). An essential component of Hobbes’ theory was the recognition of the regulative function of the state in solving the problematic situations. These were exactly the ideas that laid the foundation for modern concepts, where the democratic states have considerable regulatory potential, in contrast to totalitarian ones, where conflicts are resolved in a violent manner.

In the dialectical doctrine by F. Engels, the conflict emerges as a constant driving force; according to the law of unity and struggle of opposites, movement and development are possible only in the presence of confrontation fueling the continuous strive to understand and solve the problems (Frolov, 1980). This view corresponds to the modern philosophical understanding of conflict as a category, and reflects the stage (phase and form) of the confrontation category development, when the opposites that exist in the contradiction turn into extreme opposites (polarity, antagonism), reach the moment of mutual negation of each other and elimination of contradiction (Osypov, 1998).

Besides philosophers, the concept of conflict has attracted attention of many prominent psychologists (Z. Freud, A. Adler, E. Fromm, K. Lorenz, K. Levin, E. Berne and many others), where some of the psychological studies of conflict border on sociological side of research (J. Moreno, A. Bass, W. MacDougal and others). Sociological analysis of conflicts emerged in the XIX century in the works of H. Spencer; a special place in the theory of social conflict is occupied by the works of K. Marx – the forerunner of conflictology, whose materialistic understanding of history enabled a new view of the social relations development. The analysis of the social aspect of conflict received its further development in the works by G. Simmel, T. Parson, L. Koeser, R. Darendorff, C. Boulding and other scholars. The conflict is also currently regarded as the central problem of social psychology (see more in (Antsupov, 2005; Hryshyna, 2002; Stepanov, 2001; Tsiurupa, 2004, etc.)).

Besides philosophy, psychology, sociology and social psychology, the conflict is also regarded as one of the most important problems studied in political science, history, art history, educational science, legal science, military science, etc. (Antsupov, 2008). At the same time, the research data show (Hryshyna, 2002) that perception of the conflict phenomenon by an ordinary laymen person and a scholar often overlap to a large extent.

The modern approaches to the conflict as the subject of scientific analysis may be broadly divided into two main categories:
• Approaches, where the conflict is considered in a narrow specific meaning;
• Approaches, where the conflict is studied from the interdisciplinary perspective.

As part of the narrow specific approach, only those aspects and levels of the conflict that are relevant to the subject studied in a particular scientific discipline are analyzed and researched in a scientific practice.

In the XX century, especially in the second half of the century, the evolution of scientific conceptions of conflict was primary based on the interdisciplinary approach, where the impossibility of separating the philosophical, social, psychological and legal aspects of conflict was recognized and accepted. On the one hand, this has led to the development of an
integrative approach to the analysis of conflict in psychology, sociology, social psychology, legal science, and, on the other hand, such perception contributed to the formation of conflictology as an independent science, based on the postulate that any conflict is based on certain confrontation that plays a systemically important framework role both for individual types of conflicts, and for different level of scientific conflict studies science (Herasina, 2002). This assertion confirms the connection of the conflict with the category of confrontation, thus defining the existential feature of conflict, although failing to define the other essential characteristics and the content of this scientific concept.

In particular, by stating that the conflict is a “rubber-like concept” (Nechyporenko, 1982), the conflict scientists abandon its broad interpretation as “a collision of something with something”, which is consistent for all existing views, but turns out to be meaningless in the scientific sense (Vasyliuk, 2001). The philosophical postulates within the conflictology are instantiated and projected into the plane of human social communicative practice: “conflictology is a unique interdisciplinary domain that combines <...> approaches to description, study and development of conflict management practices applicable to the different type of conflict phenomena arising in various areas of human interaction” (Hryshyna, 2002).

Nevertheless, if we include anything related to confrontation to the category of conflict, the range of “conflict phenomena” would be too numerous and diverse. Therefore, it is difficult to delineate the boundaries of the conflict subject field, which combines the special psychological state of a person; differences in views, beliefs and values; and the struggle of social groups and individuals to achieve one or more goals. For example, the statement that the “object of conflictology is the conflicts in general” (Antsupov, 2008) extends to category of conflict to any “acute negative experience caused by a long struggle of the structures of the human external world ...” (Antsupov, 2008), that is, a special psychological state of a person, which may not manifest itself in communication, although at the same time the conflict is characterized as a “pronounced negative experience” Antsupov, 2008).

However, according to the most available definitions (the conflict as “the sharpest way of resolving significant contradictions arising in the process of interaction, consisting in the opposition of the subjects of the conflict, usually against a background of negative emotions” (Antsupov, 2008), “conflict acts as a bipolar phenomenon – the opposition of two principles, and manifests itself in the activity of parties aimed at overcoming contradiction, where the conflict parties are represented by active subject(ts)” (Hryshyna, 2002), “the conflict – a clash of oppositely directed goals, interests, positions, opinions of subjects of interaction, i.e. a confrontation between people emerging for the purpose of solution of those or other issues in social and private life” (Bandurka, 1997), “the sharpest way of solving existing or imagined contradictions in the process of human interaction, consisting of the opposition of subjects of conflict and usually accompanied by tension of emotional and volitional sphere” (Tsiurupa, 2004), the conflictology researches focus mainly on studying human behaviour in situations of apparent confrontation. The strategic context of verbal communication within the scope of conflict communication is illustrated by G. Lakoff and M. Johnson as a conceptual metaphor „Argument as War”: “We see the person we are arguing with as an opponent. We attack his positions and we defend our own. We gain and lose ground. We
plan and use strategies. If we find a position indefensible, we can abandon it and take a new line of attack. Many of the things we do in arguing are practically structured by the concept of war, and thus is carried out in terms of war as a result of the conceptual system of our culture that we have internalized”.

In our authors, the greatest importance is attributed to the clarification of the value of interpersonal relations as the leading factor determining the strategy of personality behaviour in a conflict situation (Yemelianov, 2003). The two-dimensional model of personality strategies in conflict interactions, developed by K. Thomas and R. Killman, is widely used in conflictology. This model by Thomas and Killman (based on the focus of the conflict participants on their own interests and the interests of the opposite party), is complemented in the aforesaid paper by the third dimension – the value of interpersonal relations.

This offer an opportunity to argue that if the conflict interaction is characterized by a low degree of focus on the interests of the other party, and a high degree of focus on personal interests with the negative assessment of the interpersonal relations value (Yemelianov, 2003), then the conflict results in „disharmonization of interpersonal relations” (Bandurka, 1997) due to manifestations of hostility by conflict participants. Hostility is considered as having a graded nature: the minimum degree of hostility is manifested in competitiveness – behaviour that has a rational in its nature and corresponds to the certain social norms; while the maximum degree of hostility is associated with disregard for social norms, irrational behaviour, the desire not simply to win or secure victory, but rather to suppress, defeat or humiliate the opponent (Filley, 1975).

Therefore, the achievements of conflictological research show that the presence of such confrontation only creates prerequisites for possible behaviour, while the interpersonal relations – i.e. the social category – are pivotal for individual choice of specific communicative interaction strategy.

Tax Conflicts and Their Features. The conflict in law is a type of social conflict, while the tax conflict, in turn, is a type of legal conflicts in general. Their existence is not only subjective, but also objective social phenomenon, because tax conflicts stem from social conflict, the basis of which is the existence of opposing interests: the public and the private (Yefimov, 2018).

The opposite interests of tax legal relations subjects and diversity of objects of tax regulation create potential for tax conflicts with different motivation and character. At the same time, all tax conflicts, as legal phenomena, are characterized by certain common specific features:
1. Parties involved (the parties of a tax conflict represented on the one hand by the taxpayers and tax agents (individuals or legal entities), and on the other hand by the state acting through its tax authorities)
2. Nature of legal relations (the subject of the conflict may only relate to taxes, tax control procedures and challenging of acts or actions by the tax authority representatives);
3. Legal inequality of participants, arising from the relationship of power-subordination, where one party is always a public authority -i.e. a tax authority);
4. Specific legal form (pre-trial / extrajudicial conflict or judicial conflict, which is often called a tax dispute).
The fourth feature determines the remedies available for rights and legitimate interests of the taxpayers.

Tax Disputes and Taxpayer Rights Protection Remedies. It is well-known that the most important sign of democratic development of society and the nation as a whole is not only the presence of legally defined remedies for protection the rights, freedoms and legitimate interests of an individual (person or citizen), but also guaranteed possibility of their exercise and actual enforcement. Therefore, modern national systems for protection of rights and legitimate interests of taxpayers include two forms – jurisdictional and non-jurisdictional. In turn, in Ukraine, the jurisdictional form involves two types of remedies – judicial and administrative, while the non-jurisdictional form preferably includes the remedies of legal self-defense.

The authors see the positive trend in the fact that para. 56.1 art. 56 of the Tax Code of Ukraine (the Tax Code of Ukraine, 2010) provides the taxpayer with choice of alternative methods of appealing against decisions taken by the tax control authority: i.e. administrative or judicial. In other words, in Ukraine, the pre-trial procedure for resolving tax disputes is not mandatory. In this connection, the taxpayers who believe that their rights as in capacity of participants of the tax process, have been violated, have a legal right to immediately apply to court bypassing the stage of administrative appeal.

The very notion of „alternative“, which is understood as an ability to choose one of a number of possible options, contains an element of discretion and variability, which is an inherent feature of progressively oriented social formations. This approach to resolving tax disputes contributes to the development of manifestations of diversity of behavioural algorithms of tax law subjects, and, as a consequence, to the enforcement of their subjective procedural rights.

Many countries are interested in implementing mediation as an alternative dispute resolution in order to deal with tax controversies. The most common reason for countries to implement mediation is to address an excessive and increasing volume of tax appeals, which jeopardize the legal protection of taxpayers (van Hout, 2018).

At the same time, unfortunately, Ukrainian tax legislation has not yet introduced the institution of tax dispute mediation in tax disputes, despite some progress towards solving this problem and the positive experience of implementation of such an institution in some EU countries, such as the UK, the Netherlands, Belgium, etc.

The modern system of Ukrainian taxpayer rights and legitimate interest protection includes two distinct types of remedies – jurisdictional and non-jurisdictional. The jurisdictional remedies available for protection of taxpayer rights and legitimate interest should be understood as a procedural form of exercise of the taxpayers' material rights to protection defined by law, and by the methods of protection of rights and legitimate interests of taxpayers – specific lawful measures aimed at elimination of violation of rights or actual threat of such violation and influence on the offender.

In turn, the jurisdictional form involves two types of remedies – judicial and administrative, while the non-jurisdictional form preferably includes the remedies of legal self-defense. The judicial remedies provide the possibility for protection of the taxpayers' rights and legitimate interests before the national courts (the Constitutional Court of Ukraine and the system of
administrative courts) and international courts (in particular, the European Court of Human Rights). The administrative remedies include the possibility for protection of the taxpayers’ rights and legitimate interests before the bodies of the State Fiscal Service of Ukraine and other state authorities. Other state authorities in this case include the Ombudsman of the Verkhovna Rada of Ukraine and the Business Ombudsman Council, which is an advisory body under the Cabinet of Ministers of Ukraine. The self-defense remedies are based on the concept of self-regulation and the choice of the behavioural strategy by the taxpayers, whose goal is to protect their rights and legitimate interests in the field of taxation. Such remedies consist in the implementation by an affected person of any countermeasures that are not prohibited by applicable law and do not contradict the moral foundations of the society.

Despite the extensive pool of both domestic and foreign publications dedicated to the problems of the taxpayers’ rights protection under administrative and judicial procedures, here, the authors would like to elaborate on the remedies of legal self-defense as a way to protect the rights and interests of taxpayers.

The essence of legal self-defense lies in the fact that the appropriate lawful remedies of protection may be applied by a taxpayer on its own, without recourse to jurisdictional bodies, according to the procedure strictly defined by law. To put it in other way, the legal self-defense consists of the actual actions aimed at the prevention of mitigation of negative consequences of violation of the rights and legitimate interests of a taxpayer, where the latter performs such actions without recourse to a court or other public authority, authorized to consider a tax dispute.

In the opinion of authors, the legal self-defense may manifest itself both as action or as failure to act by the taxpayer. Relying on such interpretation, the authors distinguish two types of legal self-defense – i.e. active-defensive form and preventive form.

In particular, the active-defensive form includes installation of video surveillance cameras in the taxpayer’s premises and audio or video recording (for example, using a camera or mobile device) of the actions by officials of the Stare Fiscal Service of Ukraine bodies during the field tax audit, which disciplines controllers in a certain way and leaves them no choice but to act in strictly defined legal procedural framework. Such right is provided to the taxpayers in compliance with the para. 8, part 4 of the Law of Ukraine on Fundamental Principles of State Supervision (Control) of Economic Activity (Law of Ukraine on Fundamental Principles of State Supervision (Control) of Economic Activity, 2007), which directly states that the state supervision (control) authorities and business entities are entitled to record the process of both scheduled and unscheduled activities or each individual action using the audio- and video recording equipment without interfering with the course performance of such control activities.

At the same time, when using this remedy, the taxpayer should remember that the audio and video recording of actions by the officials and/or officers of the Fiscal Service of Ukraine during the tax audits is possible only with their consent and within the limits of the data privacy and collection legislation. The legal basis for the tax audit procedures are provided by the Tax Code of Ukraine.

Furthermore, due to its legal nature, the audio and video recording of actions by supervision authorities is basically qualified as collection, receipt and creation of information about their
activities. Such legal relations in Ukraine are regulated by both national and international legislative provisions, including, but not limited to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitution of Ukraine (art. 32 and 34) (Constitution of Ukraine, 1996), the Civil Code of Ukraine (para. 2, part 1, art. 302; para. 1, art. 307) (Civil Code of Ukraine, 2003), the Law of Ukraine on Information (part 1, par. 2, art.5) (Law of Ukraine on Information, 1992), and the Law of Ukraine on Access to Public Information (Law of Ukraine on Access to Public Information, 2011).

Following the comprehensive legal analysis of the above-mentioned legislative provisions, it is possible to highlight another problem: on the one hand, the Fundamental Principles of State Supervision (Control) of Economic Activity provides the audited entity a right to create the video recordings of actions by the officials and officers of the public authorities, while, on the other hand, collection, storage and dissemination of information about a person without his or her consent is directly prohibited by the Article 32 of the Constitution (the Constitution of Ukraine, 1996) and Article 302 of the Civil Code (Civil Code of Ukraine, 2003).

However, the authors believe, there is a certain caveat to this situation in the current legislation, and namely in compliance with the para. 2, art. 5 of the Law of Ukraine on Personal Data Privacy (Law of Ukraine on Personal Data Privacy, 2010), any personal data of a person holding a position related to the exercise of state or local self-government functions, official or public powers shall not be treated as confidential information. Also, according to the part 1 of the Decision of the Constitutional Court of Ukraine dated 20.01.2012. № 2-rp / 2012 on the case № 1-9 / 2012 „the information about private and family life of a person shall include any information and / or data on proprietary and non-proprietary relations, circumstances, events, relationships, etc., associated with the person and his family members, except for the information, provided by law, which relates to any person holding a position related to the exercise of state or local self-government functions, official or public powers. Such information about a person shall be deemed confidential“ (Decision of the Constitutional Court of Ukraine, 2012).

Based on the above, it is possible to draw a conclusion that the collection of information (in particular, recording of control activities by of officials and / or officers during a tax audit) is carried out in connection with the performance of official or official powers by such persons and relates to performance of public functions, this cannot be qualified as the collection of confidential information (in particular, information about private and family life or personal data) of individual.

However, in order to avoid multiple and ambiguous interpretations of the content of rights provided to audited and auditing entities, as well as to prevent limitation the taxpayer’s rights during tax audits, the authors consider it advisable to amend the Tax Code of Ukraine and include a direct provision that authorizes the taxpayers to perform audio and video recording of actions by the officials of supervision authorities during tax audits.

Preventive form of legal self-defense in tax legal relations, as viewed by the authors, includes, but is not limited to refusal to perform certain actions. This remedy is not directly reflected in tax legislation. At the same time, the possibility of refusal from fulfillment of illegal requirements by public authorities as a remedy of legal self-defense is provided by
the Article 19 of the Constitution of Ukraine (the Constitution of Ukraine, 1996), according to which no citizen shall be forced to do commit any actions, not provided by the legislation.

An example of application of such legal self-defense remedy is denial of access for officials of the supervision authorities to the audited facility due to violation of the procedure and improper grounds for appointment of tax audit (e.g. performance by supervision authorities of scheduled tax audit more often than prescribed by the Tax Code of Ukraine and / or failure to give written notification specifying the dates of the tax audit date commencement and completion). This means even at the early stage of granting access for performance of the tax audit, the taxpayers are entitled to claim invalidity of the tax audit appointment and performance and exercise their rights for protection against unreasonable and unfounded implementation of tax control in respect of their activities. However, according to the judicial court practice (in particular, according to the Decision by the Supreme Court of Ukraine dated 24.12.2010. No. 21-25a10 (Decision by the Supreme Court of Ukraine, 2010), voluntary granting access to the audit supersedes and voids the legal consequences of procedural violations committed by the supervision authority at the stage of the tax audit appointment.

Therefore, the taxpayers that have the reasons to suspect the violation of procedures and grounds for appointment of the tax audit in their regard, may protect their rights by denial of access to the officials of the regulatory authorities for performance of the allegedly improper tax audit. Nevertheless, if the public officials are granted access for performance of the tax audits, then subsequently the court hearing of appeal may cover only the merits of identified violations of tax and other applicable legislation, compliance with which is controlled by the supervisory authorities.

Consequently, essence of legal self-defense lies in the fact that the appropriate lawful remedies of protection may be applied by a taxpayer on its own, without recourse to jurisdictional bodies, according to the procedure strictly defined by law. To put it in other way, the legal self-defense consists of the actual actions aimed at the prevention of mitigation of negative consequences of violation of the rights and legitimate interests of a taxpayer, where the latter performs such actions without recourse to a court or other public authority, authorized to consider a tax dispute.

Based on the interpretation the legal self-defense the taxpayer's rights may be exercised both in the form of action and failure to act, it is possible to distinguish two types of legal self-defense remedies – active-defensive, which involves the implementation of active actions to protect the taxpayer's rights and legitimate interests, and preventive, which in particular may involve refusal to perform certain actions not provided for by tax legislation and may be associated with illegal, unfounded or baseless requirements by the supervision authorities.

CONCLUSIONS

Legal relations arising between public and private entities in course of financial activities of the state are of multidimensional nature and inherently have high potential for arising of conflicts due to their specific social, political and legal content are a priori conflicting. It has been established that any such conflicts are primary based on the confrontation between public and private property interests.
The desire of a public authority to appropriate financial resources of a private entity – contrary to its wishes – in order to implement and enforce the public-legal interests becomes a consequence of objectively existing confrontation between the interests of public and private subjects.

The demands by the public authorities are counterbalanced by the taxpayers’ subjective right – the right of ownership, which mediates the enforcement of the taxpayers’ legitimate interest – the interest of possession, use and disposal of their property. Management of such conflict is possible through the legalization of financial claims of public authorities on the basis of legislative consolidation of strictly defined conditions, grounds and procedure for the collection of funds from individuals. However, it is obvious that the material law, given the objective and subjective reasons of development of society, the influence of the human factor and other reasons, may contain (and often contains) gaps, which objectively cannot be addressed by the law-makers.

Given this, a tax conflict creates a basis for the transition of a controversy to another stage, which is characterized by the emergence of different initial positions of the parties in the legal assessment of the content of disputed tax legislative provisions and, accordingly, the scope of subjective rights and obligations. Contradiction arising in this case forms the basis for the emergence of a tax dispute, as it requires a solution, the implementation of which is impossible without recourse to the competent authorities of the state.

Therefore, a contradiction arising between public and private parties of tax legal relations, can be considered as a tax conflict, until one of the subjects of such a conflict officially applies for its solution to a jurisdictional body. In other words, a tax dispute is a certain stage in the development of a controversy in the sphere of tax legal relations, or, more precisely, one of its stages – the stage aimed at resolving the controversy. Furthermore, the appeals by the involved party to the jurisdictional body are intended not only to eliminate contradiction occurred, but also to protect subjective rights and secure guarantees for their enforcement.

Consequently, it can be argued that a tax dispute is a mechanism to guarantee the enforcement of subjective rights of affected parties and maintain the balance of public and private interests, because: 1 it is aimed at the protection and restoration of the violated (disputed) right, as well as the prevention of possible violations in the future; 2 it is aimed at resolving the tax conflict arising within the context of enforcement of rights and performance of duties; 3 it is aimed at ensuring the stability of conditions for the implementation of a legal provisions and optimization of legal regulations; 4 consideration of the dispute by the authorized public authorities ensures the stability of the legal system of society.

In fact, the concept of „dispute“ in the legal science and its specific features are directly conditioned by the nature of material legal relations, within the framework of which a particular dispute arises. Tax legal relations are relations of the property nature, in the first place. In this sense, a tax dispute combines features of both administrative-law dispute, in which a jurisdictional body verifies the legality of acts and actions by public authorities, and private-law dispute, in which the competent authority, based on the evidence provided by the parties in the dispute, provides legal assessment of those or other circumstances of disputed material legal relations, determines the presence or absence of certain rights and conditions for their implementation.
In this regard, a tax dispute can be considered as a tax conflict of the subjects of tax legal relations, referred to an authorized jurisdictional body, concerning their mutual rights and obligations, as well as the conditions of their enforcement, and which requires a solution based on a legal assessment of the actual circumstances and verification of the legality of actions of an authority entity in respect of a taxpayer.

Thus, legal mechanisms for resolving tax conflicts are the most effective in the sense that they contribute to overcoming conflicts of tax legislation and other related sectors, stabilize the situation, generate actually defined certain legal, social and economic consequences for the parties to the conflict, as well as guarantee the enforcement of the decision by the governmental or international authorities.

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MARKETING APPROACH TO THE FORMATION OF MANAGEMENT SYSTEM FOR ENTERPRISE STRATEGIC DEVELOPMENT IN THE CONTEXT OF GLOBALISATION

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Abstract. In the context of global consumer and financial market formation, international economic institutions, taking into account special aspects of the present stage in economic development in Ukraine, it becomes necessary to focus enterprises on their own goods competitiveness not only in the domestic, but, moreover, at the foreign markets. In order to achieve objectives in view the enterprise should make maximum use of its internal resources, explore the market environment, predict its development and demands, using all tools of the strategic marketing. Special attention should be paid to the development of marketing strategies since they determine the enterprise course of action and they are aimed at achieving stated targets. Marketing strategy formation is one the most important and essential marketing stages at the enterprise.

Marketing strategy is one of the main long-term plans of the enterprise marketing activity, aimed at choosing target consumer segments. It combines elements of marketing complex, basing on which the enterprise creates its effective marketing events targeted to the marketing goals achieving. Successfully chosen and effectively implemented strategy provides enterprise the opportunity to gain competitive advantage not only in the domestic market, but additionally meet demands of international consumers. Based on research of the issue the article highlights the main features of the management system in the strategic development of marketing strategy at the enterprise.

The article substantiates the necessity of using marketing approach to the management of enterprises and the finding the new ways in the formation of appropriate organisational structures. Marketing approach to the management of enterprise characterises it as
a complex system that allows to link the capabilities of this economic entity with the needs of the market and gain advantages over competitors. It was defined the main factors influencing the organisation of marketing activities of enterprises (external and internal) and factors influencing the behaviour of their end users (social, informational and consumer attitudes).

Keywords: marketing approach, marketing strategy, strategic development, management.

INTRODUCTION

Taking into account globalisation processes, the important feature of the current stage of economic development in Ukraine is orientation of enterprises towards increasing the competitiveness of their products not only in domestic but also in foreign markets. Marketing activities play a key role in this process especially the formation of marketing strategies for their development. Therefore, it is very important to choose a marketing strategy that would meet all the requirements of the enterprise, ensure efficient and profitable work, bring profit and contribute to its further development. Well-founded marketing decision on choosing a strategy will help the enterprise to survive in an unfavourable environment.

Nowadays under the modern economic conditions the most important point in the application of marketing approaches to the managing of the enterprise strategic development in the context of globalisation which occurs through openness of countries, liberalisation of financial flows and national trade mechanisms, formation of global consumer and financial markets and information network is organisation of marketing activity. This is done through answers to the following questions: which of employees will implement all necessary actions; what are the relationships between these employees and the other employees at the enterprise; who will manage the marketing activities and monitor its implementation.

Marketing activity is intensively influenced by the dynamic market environment and other business processes of the enterprise. Effective management methods of marketing activity provide growth of the enterprise competitiveness, entry into foreign and domestic markets with new types of goods, increasing profitability. This highlights the need to explore the features of the management system of marketing activities at enterprises in both Ukrainian and international markets to identify the main influencing factors on the marketing activities organisation and areas of improvement.

Significant contribution to the development of marketing has been made by such foreign scientists as Kotler F., Evans J.R., Drucker P., Doyle P., Starostina A.O., Pylypchuk V. P., Teletov O. S. focus on the issues of industrial marketing and the conditions of its application in the practice of enterprises (Teletov, 2002), scientific publications of Zozulov A. V. devoted to the development of enterprise marketing strategy in industrial markets (Zozulov, 2005).

Alongside this the issue of practical adaptation of scientific and theoretical approaches is still problematic, as there is a discrepancy of theoretical principles and practical aspects in the organisation of marketing management and providing conditions for creating integrated structures in the enterprise management system. The application of the marketing approach
in the enterprise management and the finding new ways in the formation of appropriate organisational structures is becoming relevant.

The research objective is to substantiate the role and meaning of marketing strategy and marketing approach to managing of the enterprise strategic development in the context of globalisation. According to this goal, the following research objectives can be formulated:

• to determine the features of marketing as a business process of enterprise practical activities and describe the sequence of formation process of the marketing strategy at the enterprise;
• to substantiate the need to develop a long-term action plan at the enterprise aimed at achieving its mission with a focus on market needs and taking into account the market as a major factor in the external environment;
• to describe the impact of global informatisation processes that cause radical changes in the structure and nature of world economic and social development;
• to argue the need to use a marketing approach in the management of enterprise strategic development as a comprehensive system that gives opportunity to connect the capabilities of this business entity with the needs of market and gain advantages over competitors.

MATERIALS AND METHODS

The research methodology includes the results of developments in the works of foreign scientists who studied the provisions of marketing theory and provisions marketing activities, the issues of marketing strategies formation at modern enterprises, as well as issues of their implementation. In the process of solving general and special methods are used: dialectical method of scientific cognition, method of analysis and synthesis, comparative analysis, logical-structural method, systematic method.

RESULTS AND DISCUSSION

In order to ensure the successful enterprise operation in the conditions of active influence of globalisation and the formation of the global consumer and financial market, it is substantiated the need to develop a long-term action plan aimed at achieving its mission with a focus on market needs and market as the main external factor. It was defined the essence of the concept „marketing strategy” and described the sequence of the process marketing strategy formation at the enterprise.

In the course of research, the features of enterprise marketing activities, in particular those aimed at the end consumer were identified. These factors influence mainly at their behaviour of consumers and the organisation of producer marketing activities.

It was determined that information support allows to optimise the construction of marketing programs and management decisions, to implement a strategy of active influence on the formation of market demand and sales promotion, to construct the market, as well as to carry out information attack on certain market segments.
In the process of enterprise management strategy formation, a subsystem of functional strategies is created. These strategies are developed in relation to the defining directions of the enterprise activity. The main functional strategies, which are developed as separate blocks within the main strategic concept, include financial, marketing, production, personnel management strategy and others. The implementation of a functional marketing strategy is aimed at creating a set of competitive advantages and effective use of the company market opportunities to achieve its strategic goal. Extremely important role in the marketing strategic management of the enterprise is given to its marketing strategy, which forms the market strategic guidelines (Kudenko, 2003).

To achieve these goals enterprise has to make maximum use of its internal resources, explore the market environment, forecast its development and needs, using all the tools of strategic marketing, paying special attention to the development of marketing strategies as they determine the direction of enterprise activities and aimed at achieving marketing goals. The formation of marketing strategy is one of the most important and significant stages of marketing at the enterprise.

The variety of approaches to defining a marketing strategy is due to the depth of the term „strategy” and the scale of its use. In the economic literature there is no unity of views on the nature and content of the enterprise marketing strategy.

In our opinion, marketing strategy is the main long-term plan of marketing activities at the enterprise aimed at selecting target segments of consumers. It combines elements of the marketing complex, based on which the enterprise carries out its effective marketing activities aimed at achieving marketing goals. Thus, based on the study of this issue, it can be defined the main features of the enterprise marketing strategy.

First, in the course of implementing a marketing strategy the needs of the consumer are taken as a basis.

Second, the concept of „strategy” must be correlated with the concept of „development”. There is no strategy without development. In this regard, the strategy is a set of changes that determine the viability of the enterprise and increase the probability of its survival in a changing environment and globalisation.

Third, the concept of „strategy” is inseparable from the concept of „goal”, which in development serves as the main reference point, reflects the changing trends of interests.

Fourth, the concept of „strategy” cannot be separated from the concept of „forecasting”. The strategy is the result of meaningful and analytical, or rather, scientific prediction of the future, the realities of its achievement, understanding the necessary.

Fifth, the concept of „strategy” is inseparable from the concept of „mission”, which characterises the mission of the enterprise and its role in the general trends of human development.

In the literature there are different approaches to the process of marketing strategies formation, which, in our opinion, can be attributed to two groups. The first group reflects a more traditional approach, covered mainly in the works of foreign authors, and especially in the work of J. J. Lamben (Lamben, 2007). According to this approach, the basis of marketing strategy is the choice of target segments, product positioning and marketing complex – product, price, sales, promotion. Another approach, presented by N. Kudenko (Kudenko,
2003) goes beyond the marketing complex in the formulation of marketing strategies. They are interpreted much more broadly, both in essence and in levels of acceptance. It is argued that marketing strategies are adopted at all levels of government, including the highest.

It is necessary to analyse the following main factors:

- sphere of activity where the enterprise operates, product category, general development trends, features of demand for goods (services), analysis of the functioning of the largest enterprises in the industry, features of production, distribution, etc.;
- market – characteristics of buyers, market segments, market potential, market geography, history and trends of the market, market share of a particular product (service) owned by the company, etc.;
- competitors – characteristics of competitors, their advantages and disadvantages, competitive advantages and marketing policy, market share of competitors
- suppliers and mediators – characteristics, the possibility of changing the supplier; pricing and marketing policy, the effectiveness of cooperation;
- macro-environmental factors – demographic, political, economic, etc.

The formation of marketing strategies begins with a research of the marketing environment at the enterprise, namely the basis of their development is a marketing strategic analysis. Simultaneously the marketing strategy is a component of the enterprise strategic plans, so it must be coordinated with the purpose of the latter, its general strategy and with the strategies of other levels (Kudenko, 2003). This stage should be divided into two areas of analysis: analysis of the marketing (intermediate) environment and assessment of the marketing potential of the enterprise. The purpose of the analysis of the intermediate environment is to determine the level of instability of the marketing environment (study of the modern market, determination of consumer requirements, research of competitors and suppliers). Such kind of analysis is necessary for the company to be ready for future changes in the environment and to respond to these changes in a timely and adequate manner. In the process of analysis determine how the company has filled the selected niche and the relevant market segments, study and evaluate the competitive position of the company in the market on the main factors of competitiveness.

During the analysis of the enterprise internal environment, it is determined the opportunities and the marketing potential that it can count on in the process of achieving marketing goals. Additionally, it is evaluated the entire management system of the enterprise and its individual subsystems regarding opportunities that the marketing environment provides to the enterprise.

Analysing the internal environment, it is advisable to study the features:

- enterprises, namely – the realm of activities, development trends, positioning relative to competitors, etc.;
- goods and services – quality, design, packaging, positioning, advertising support;
- pricing policy – features of formation, comparison with the policy of competitors, perception by customers, sales channels, etc.;
- sales policy – relations with sales channels, their communication;
- communication policy – features and traditions of using different elements of communications, the budget for the promotion of goods, the effectiveness of the elements.

Analysis of the internal and external marketing environment provide the opportunity to understand and formulate marketing goals. Depending on the place of the enterprise in the market, available resources, duration of the period of a turn of the goods, we suggest to specify the basic purposes of marketing focused on:
- winning the consumer and stimulating demand;
- increasing in sales of goods,
- gaining and increasing market share,
- achieving competitive advantages in the market.

It is possible to achieve the enterprise development in different ways. For this purpose, at the third stage of strategy formation one of the existing marketing strategies is considered and selected. At this stage, decisions are made as to how the company will achieve its goals. The following types of marketing strategies are offered: product strategy; product promotion strategy (sales promotion); price strategy; integrated strategies.

After choosing the necessary marketing strategy, which becomes the concept of marketing, it is advisable to move on to the next stage – marketing plan development. It develops a system of programs that should provide the most effective ways to achieve strategic marketing goals. At this stage, it should be determined the targets aimed at ensuring the organisational conditions and marketing areas to improve the efficiency of the enterprise through the productive use of resources.

The final stage of a marketing strategy formation is evaluation and control of results, which occur through the comparison of results with goals. This process provides stable feedback between the process of achieving goals and the actual goals of marketing. This feedback mechanism is used to monitor and adjust the strategy.

Thus, the formation of a marketing strategy consists of five interrelated stages. All of them complement each other and in general the end product is the marketing strategy of the enterprise.

Marketing as a business process in the practical activities of manufacturing enterprises implements the following main functions:
- organisation and implementation of marketing research (analysis and forecasting of the market, study of needs, wishes of consumers, research of marketing strategies of competitors, study of substitute products);
- development of marketing strategy (analysis of the current strategic position in the market, definition of marketing goals, development of marketing strategy);
- development of product policy (decision-making on expanding the product portfolio, development of new products, withdrawal of goods from production; product range planning);
- brand creation (packaging, name, organoleptical properties);
- development of pricing policy (study of the necessary information for decision-making on setting and changing prices, development of pricing strategy);
• development of communication policy (organisation of advertising activities, sales promotion, personal sales, PR events, participation of enterprises in fairs and exhibitions);
• analysis and control of marketing activities (control of sales results, market share, profitability, marketing costs, determining the effectiveness of tactical marketing activities).

Untimely detection of marketing problems affects the reduction of sales (lack of repurchase by end consumers and the refusal of distributors from the proposed product).

In the process of studying the features of marketing activities at the manufacturing enterprises, in particular focused on the end user, it is necessary to specify and identify the main factors influencing their behavior:

1. Social (income level; age; family composition; features of housekeeping, shopping; availability of goods in the retail network; education; profession).

2. Information (product awareness; advertising in the media; consumer experience of the immediate environment; consultations in outlets; information on the product label).

3. Consumer installations (the cost of domestic products should be determined based on the price of similar products of domestic producers; the price of such products should be lower than imported counterparts; low price of imported products indicates the use of unnatural ingredients and a dubious manufacturer; product of domestic producers; – quality under conditions of application of foreign technologies and equipment, etc.).

Among the main factors influencing on organisation of marketing activities at manufacturing enterprises should be noted:

1. External: changes in the legislative and regulatory field; trends in the development of retail trade in the consumer market; mergers, acquisitions and acquisitions in the sectors of the economy; TNC expansion; aggressive strategy of competitors; national features of consumption of consumer goods; investment attractiveness of the market of consumer goods; possibility of crediting.

2. Internal: adequate personnel, financial, methodical, informational, technical support; effective system of motivation; adaptability of marketing service to market changes; compliance of the number of employees of the marketing service with the scale of the enterprise; compliance of the organizational structure of the marketing service with assortment groups; participation in the formation of the general strategy of the enterprise; application of the latest communication technologies.

Formed factors allow to understand consumer behaviour, as well as behaviour of distributors, retailers, competitors and marketing mediators, who are the main market participants.

Marketing is one of the main functions, in the implementation of which special importance is attached to the integration of all resources to achieve the goal of the enterprise, which is a long and sustainable existence in the market.

Marketing approach to enterprise management characterises it as a comprehensive system that allows to link the capabilities of this business entity with the needs of the market and gain advantages over competitors. Effective marketing activities of the enterprise are impossible without the organisation of appropriate management structures – departments,
divisions, etc. Their activities should be based on nine basic principles, the essence of which is as follows:

1. purposefulness – compliance with the mission, goals, strategy and policy of the enterprise, focus on solving purely marketing problems, finding and meeting the needs of consumers;
2. clarity of construction – reasonable specialisation, no duplication of functions, ensuring the unity of management, controllability of performers;
3. flexibility – timely response to changes in the environment;
4. precise definition of activity directions – focus on a specific concept, a clear division of tasks and functions of each unit and executor, vertical and horizontal connections;
5. coordination of actions – complexity of marketing activities to achieve synergies;
6. sufficient financial security, both in terms of marketing activities and motivation of employees of these units;
7. cost-effectiveness – covering the cost of marketing income from the positive effects of marketing activities;
8. high qualification of personnel and their constant special retraining;
9. active policy – search for markets, consumers, unmet needs, creative approaches to solving marketing problems.

Each enterprise can independently form the structure of its marketing department and consequently there are many examples of its construction. There are several typical models that can be both integrated and non-integrated. Non-integrated marketing structures are a set of relevant departments whose impact on the client is not coordinated. However, the activities of integrated marketing structures are complex, it means that they are managed at the one coordinating center.

Using the concept of marketing as a basis for management decisions, the company has a real opportunity to achieve expected commercial result and avoid the threats presented in the market. Sound marketing policy is a tool to ensure effective economic activity, its compliance with market conditions. Effectively planned and implemented marketing activities of manufacturing enterprises increase market share, increase sales, profits and develop new approaches to maintaining the distribution network and attracting new customers, which ensures the functioning and development of enterprises even in adverse market conditions.

Modern industry of information, information systems and communication networks, as well as information technology is a great importance of the development of international marketing and marketing problems, as it allows marketers to conduct large-scale and deep marketing research, operate with large amounts of data related to the global marketing environment. markets, goods and firms of foreign countries, including by connecting to the databases of other organizations and through the integration of communication systems at the local, national, regional and international scales. It facilitates the effective collection, accumulation, processing, systematization and analysis of multifaceted marketing information, expands the application of mathematical methods, complex, optimal econometric models for economic and market forecasting and modeling, creates conditions for efficiency and significantly accelerate the process of marketing programs
and management decisions, conducting simulation tests in the laboratory, leads to the
development of a new type of marketing (electronic marketing).

Global process of informatisation, due to the rapid development of scientific and
technological progress, the transition to new generations of science-intensive technologies,
systems of equipment and materials and a new kind of information exchange, causes radical
changes in the structure and nature of world economic and social development. This is the
basis for defining a new stage in the development of society – the information society, in
which a large amount of information is produced, accumulated, produced and consumed on
a large scale and where the field of information services is constantly evolving.

Information component provides not only orientation in the processes and phenomena
in the marketing environment, but also allows to optimise the construction of marketing
programs and making management decisions and implement a strategy of active influence
on market demand and sales promotion, construct market, and implement not only sales
but also information attacks on certain market segments. New technologies of information
systems provided the basis for highly effective, scientifically sound, comprehensive
marketing research, to prepare the basis for the construction of quality marketing programs
and development of optimal plans for the development of production and marketing and
scientific and technical activities of the company.

Using the information technology not only saves time, but also is a source of improving the
efficiency of the company and its management given that:

- it allows to have constant, timely and direct access to current information about products,
  consumption, market situation and internal station and activities of companies;
- it ensures effective coordination of internal activities through the system of sound
  signals (languages) and e-mail;
- it organises effective interaction with customers by the use of more information and
  visual documents, as well as a fast-messaging system;
- it provides necessary time for such highly productive activities as analysis, evaluation,
  interpretation, conclusions, recommendations.

Typically, such operations with information flows can only be carried out by large companies
or specialised agencies and require significant financial and time costs, the availability of
competent professionals, as well as technologically advanced information support system
and, above all, advanced communication facilities, communications, the latest computer
equipment and software.

Companies that successfully carry out international activities use different types of
information networks simultaneously. In the process of organising the international
marketing activities of the enterprise, all these networks acquire a global character and
their geography extends to all countries of the world.

CONCLUSION

Marketing strategy is one of the marketing tools that aims to achieving marketing goals by
comparing the strengths and weaknesses of the internal environment with the opportunities
and threats of the market. Successfully selected and effectively implemented strategy allows
enterprise to achieve competitive advantages not only in the domestic market, but also to meet the needs of international consumers. That is, marketing strategy plays an important economic role in the activities of any business entity, and social role as well.

The impact of globalisation processes on economic activity simultaneously generates the formation of new determinants of economic development, intensification of competition, the mutual influence of the components of the socio-cultural environment, and forms the current global marketing priorities:

- market management structure. Both within the country and in foreign economic activity, market marketing orientation becomes predominant, and managerial potential is focused on studying and creating demand on a global scale;
- globalisation of international marketing activities. The mutual influence of developed countries, in particular the most influential four (North America, Western Europe, Japan and China), is growing, all environmental factors are becoming similar and interdependent. International segments are being formed that expand the company’s capabilities at the global level;
- socio-ethical marketing. In order to achieve and ensure competitive advantages on a global scale, the company must proceed from the conditions of exacerbation of global social problems, including environmental and food, and offer at least a partial solution to these problems within its activities;
- orientation towards competition. Use of mechanisms of monitoring of actions of competitors and analytical base for their forecasting;
- development of forecasting systems. Use of modern information technologies, software capabilities and products to create an adaptive and flexible model for forecasting future activities;
- individualised marketing. At the present stage of consumption there is a need to individualize the approach to the consumer in accordance with its characteristics (demographic, socio-cultural, psychographic), and on the basis of this personalized information to segment the market;
- product differentiation. The intensification of competition in the world markets of goods and services necessitates the expansion of enterprises product portfolios, expansion of the range with using of knowledge-intensive goods and services and the support of socio-ethical elements.

Therefore, the solution of mentioned issue for the effective enterprise development at the strategic level is the formation of integrated marketing activities and implementation marketing approach in the enterprise management system, taking into account the global nature of market segments.

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APPLICATION OF MEDIATION FOR SETTLEMENT OF ADMINISTRATIVE DISPUTES IN UKRAINE

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Abstract. The need to introduce the institution of mediation in the domestic legal system is based on the positive results of the practical application of the institution of reconciliation in many countries around the world, which indicates its effectiveness. The use of an alternative, non-judicial way of resolving disputes, particularly, mediation, will provide an opportunity to solve the problem of court congestion.

The article is devoted to the research of the introduction of the practice of settling administrative disputes through the mediation procedure in Ukraine.

The problematic issues that need to be regulated in the legislation have been identified, that are principles and procedure for conducting mediation: from its initiation to the moment of termination; the legal status of the mediator, particularly, the conditions for acquiring the status of a mediator; the content of his rights and obligations, liability for violation of the law on mediation, as well as the categories of disputes in which it can be used.

The feature of administrative proceedings is that one of the parties in the dispute is the subject of power. Thus, the feature of alternative dispute resolution, in particular mediation, in administrative proceedings is the peaceful settlement of relations between a state agency, on the one hand, and with a natural or legal person, on the other. There are several possibilities for legalization of the status of a mediator: the first is the implementation of mediation by professional independent mediators (for example, members of a professional association of mediators); the second is judicial mediation: or the settlement of a dispute with the participation of a judge. The issues of determining the categories of cases in which mediation can be used, in particular administrative disputes, remain unresolved. Resolving these issues will help expand the practice of mediation in the settlement of administrative disputes.

Keywords: mediation, administrative dispute, administrative court, conciliation, mediation agreement.
INTRODUCTION

Unlike many foreign countries, where the practice of mediation is more than a decade old and has been regulated, in Ukraine there is no special legal act that would define the concepts, principles, procedure for mediation, from its initiation to termination, legal status of a mediator (conditions for acquiring such a status, rights and responsibilities, liability for violation of the law on mediation), as well as the categories of disputes in which it can be used.

In today’s world, mediation is used mainly in resolving civil law and commercial law disputes.

After all, such disputes usually arise between equal subjects, who can choose different options for resolving the conflict. The questions of the possibility and expediency of introducing mediation in resolving administrative disputes are more debatable. This is due to the fact that one of the parties to the dispute is a public authority endowed with power, which should act only within the limits clearly defined by law. Therefore, finding a compromise between the conflicting parties is more difficult than in civil or commercial disputes. It should be noted that there is no consensus on the possibility of using mediation to resolve administrative disputes, neither among practitioners nor among scholars. At the same time, determining the possibility of using mediation in the administrative process is important not only theoretically but also practically, which determines the relevance of the search. The use of an alternative, non-judicial method of resolving disputes, including mediation, will provide an opportunity to solve the problem of court congestion.

MATERIALS AND METHODS


Problematic issues of introduction of mediation in resolving administrative disputes were investigated in the works: Sereda O.G. (Sereda, 2017), Panura U.V. and Yaroshuk Y.V. (Panura and Yaroshuk, 2018), Rostovskaya K.V. and Grishina N.V. (Rostovskaya and Grishina, 2020), Shinkar T.I. (Shinkar, 2018).

The purpose of the article is to summarize the scientific provisions and theoretical review of the legal regulation of the institution of mediation in the judiciary of Ukraine, particularly, the possibility of its application in resolving administrative disputes.

RESULTS AND DISCUSSION

In world practice, mediation is one of the most popular forms of alternative ways of reconciling conflicting parties. Unlike litigation, mediation is not limited to the subject matter of the dispute, but takes into account the underlying causes of the conflict. Mediation is
a type of alternative dispute resolution, a method of resolving disputes involving a mediator, who helps the parties to the conflict to establish a communication process and analyze the conflict situation so that they can choose the solution that would meet the interests and needs of all parties. It makes it possible to avoid wasting time in court proceedings and additional and unforeseen material costs.

At present, Ukraine is only at the stage of forming a model of mediation, but the need to introduce the institution of reconciliation (mediation) is supported by a wide range of specialists. Such support is based, first of all, on the positive results of the practice of applying the institution of reconciliation in many countries of the world, which testify to its effectiveness. In addition, it corresponds to the general position of Ukraine on the harmonization of national legislation with the legislation of the European Union. Thus, the use of mediation in administrative relations is expressed in Recommendation Rec (2001) 9 of the Committee of Ministers of the Council of Europe to member states on alternatives to litigation between administrative authorities and private parties.

On August 7, 2019, the Minister of Justice of Ukraine signed on behalf of Ukraine the United Nations Convention on International Agreements on the Settlement of Disputes on Mediation (Singapore Mediation Convention). In order to ratify and implement this Convention, Ukraine needs to adopt a special law that will define the main provisions, particularly, on the scope of mediation, the procedure for its conduct and the status of mediators.

Despite the fact that Ukraine has not yet adopted a separate law regulating legal relations in the sphere of mediation, the current legislation already has a basis for its introduction, particularly, it is the institution of conciliation in procedural law and dispute resolution with the participation of a judge – Art. Art. 201 – 208 of the Civil Procedure Code, Art. Art. 186 – 193 of the Commercial Procedure Code, Art. Art. 184 – 190 of the Code of Administrative Procedure of Ukraine. In addition, Art. Art. 45, 46 and 66 of the Criminal Code of Ukraine determine the grounds for release from criminal liability in connection with effective repentance and reconciliation of the perpetrator with the victim, as well as mitigation of punishment. St. Art. 468 – 476 of the Criminal Procedure Code of Ukraine provide for the implementation of criminal proceedings on the basis of agreements.

In addition, the Strategy for Reform of the Judiciary, Judiciary and Related Legal Institutions for 2015-2020, which was approved by the Decree of the President of Ukraine of May 20, 2015 № 276/2015, among the measures to increase the efficiency of the judiciary, proposes to introduce: “expanding ways alternative (out-of-court) settlement of disputes, in particular, through the practical introduction of the institution of mediation and mediation, expanding the list of categories of cases that can be decided by arbitrators or considered by courts in summary proceedings; introduction of effective procedural mechanisms to prevent the consideration of cases in the absence of a dispute between the parties; study of the expediency of the introduction of justices of the peace”.

Given the importance and practical necessity of the institute of mediation in Ukraine on February 15, 2020 in the first reading was adopted as a basis the bill „On Mediation” from 19.05.2020 № 3504. The draft provides the following definition of „mediation” – a voluntary, extrajudicial, confidential, structured procedure, during which the parties with the help of a mediator (mediators) try to resolve the conflict (dispute) through negotiations.
The bill proposes to determine the legal framework and procedure for mediation in Ukraine. Thus, the mediation procedure will be used in any conflicts (disputes) that arise, in particular, from civil, family, labor, economic, administrative relations, as well as in criminal proceedings when concluding reconciliation agreements between the victim and the suspect, accused and in other areas public relations.

It is envisaged that any natural and legal person will be able to apply to a mediator for mediation, both in court, arbitration, international commercial arbitration, and in court, arbitration or arbitration proceedings or in the execution of a court decision, arbitration court or international commercial arbitration.

But it is necessary to clearly define which administrative disputes can be resolved through mediation. Article 19 of the Code of Administrative Procedure of Ukraine defines cases in public law disputes covered by the jurisdiction of administrative courts.

Thus, mediation may not be used in disputes concerning legal relations related to the electoral process or the referendum process, as well as in disputes between subjects of power over the exercise of their competence in the sphere of governance, including delegated powers. In turn, the mediatable can include: disputes over the admission of citizens to public service, its passage, dismissal from public service; disputes of individuals or legal entities with the subject of authority to appeal its decisions (regulations or individual acts), actions or omissions, except when the law establishes a different procedure for consideration of such disputes.

The 3d Article of the bill stipulates that mediation will be conducted by mutual consent of the parties to the mediation, taking into account the principles of voluntariness, confidentiality, independence and neutrality of the mediator; impartiality of the mediator; self-determination and equality of rights of the parties.

The principle of voluntariness means that participation in mediation is a voluntary expression of the will of the parties to mediation.

The principle of confidentiality. Confidential is all information related to mediation, in particular about the proposal and readiness of the parties to the conflict (dispute) to participate in mediation, facts and circumstances that became known during mediation, judgments and proposals of the parties to mediation to resolve the conflict (dispute), the content of the agreement according to the results of mediation. None of the parties to mediation, the mediator, other participants in mediation, as well as the organization providing mediation, have the right to disclose information concerning mediation without the written consent of the parties to mediation. If the mediator has received information concerning mediation from one of the parties, he may disclose such information to the other party only with the consent of the party that provided such information. The parties to the mediation, the mediator; and other participants in the mediation shall be liable under the law or the mediation agreement for the disclosure of information concerning the mediation without the written consent of the parties to the mediation.

The principle of independence and neutrality. During mediation, the mediator as a neutral third party must be independent of the parties to the mediation, public authorities, local governments, their officials and officials, and other individuals and legal entities.
The principle of impartiality of the mediator. The mediator must be an impartial person who helps the parties to the conflict (dispute) to communicate, reach an understanding and negotiate. The mediator has no right to resolve the conflict (dispute) between the parties to the mediation or to encourage the parties to make a specific decision on the merits of the conflict (dispute).

The principle of self-determination and equality of rights of the parties to mediation. The parties to mediation independently choose a mediator (mediators) or an organization that provides mediation.

The parties to the mediation independently determine the list of issues under discussion, options for resolving the conflict (dispute), the content of the agreement based on the results of mediation, terms and methods of its implementation, other issues related to the conflict (dispute) and mediation. Other participants in mediation may provide advice and recommendations to the parties to the mediation, but the decision is made exclusively by the parties to the mediation. Mediation is carried out on the basis of equality of the parties. The parties to mediation should be treated equally, and each should be given equal opportunities to express their position. The mediator's obligations must be the same for all parties to the mediation.

The bill defines certain requirements for a person who has expressed a desire to be a mediator. Thus, a mediator can be an individual who has a higher education and has undergone basic training in the field of mediation in Ukraine or abroad.

Therefore, it should be a person who has a higher education, but does not specify the field of education (psychology, law, etc.) and the level of education (junior bachelor, bachelor, master). It is separately determined that a mediator cannot be a person who has an outstanding or outstanding criminal record, recognized by a court as having limited legal capacity or incapable. The parties to mediation, state bodies and local self-government bodies may set additional requirements for the mediators they involve or use, including their age, education and work experience. Associations of mediators and organizations that provide mediation may set additional requirements for mediators, which they include in their registers.

As rightly noted by Bogutskiy P.P., mediation is designed to promote justice and for this purpose contains all the possibilities of procedural and procedural nature. However, currently mediation contains many risks, among which corruption risks are almost the first. The successful solution of the issue of mediation in Ukraine should be facilitated by the figure of a mediator, which needs special attention, because the future of this legal institution in our society will depend on the training and selection of mediators (Bogutskiy, 2015).

It is noted that training in the sphere of mediation will be at least 90 hours of mediator training, including 45 hours of practical training, and will include theoretical knowledge and practical skills on the principles, procedures and methods of mediation, legal regulation of mediation, ethics of mediation, conduct negotiations and settlement of conflicts (disputes). Training in the sphere of mediation will be provided by educational institutions, as well as organizations providing mediation, associations of mediators, business entities of any form of ownership and organizational and legal form, which have the right to provide services in the sphere of mediation or organize their provision accordingly to the legislation.
Registers of mediators will be able to maintain associations of mediators, organizations that provide mediation, as well as public authorities and local governments that involve mediators or whose services they use. Thus, the bill does not provide for a single register of mediators.

The bill also proposes to define the rights and obligations of the mediator and the parties to mediation, the procedure for mediation, as well as the requirements for the mediation agreement and the agreement on the settlement of the conflict (dispute) based on the results of mediation.

Thus, the basic rights of a mediator are defined: 1) to determine the methodology of mediation independently with the requirements of the legislation on mediation, the rules of mediation and ethics of the mediator; 2) receive from the parties to the conflict (dispute) information about such conflict (dispute) to the extent necessary and sufficient for mediation; 3) conduct its activities on a paid or unpaid basis, individually or together with other mediators, form associations of mediators; 4) for reimbursement of expenses incurred for the preparation and conduct of mediation, as well as for remuneration in the amount and form provided for in the mediation agreement and / or the rules of mediation; 5) refuse to conduct mediation for ethical or personal reasons; 6) collect and disseminate depersonalized information on the number, duration and effectiveness of mediations conducted by him; 7) have other rights provided by law, the mediation agreement or the rules of mediation.

The main responsibilities of a mediator include: 1) performing their duties in accordance with the Law, adhering to the principles of mediation, the rules of mediation and the ethics of the mediator; 2) not to disclose information received by him in connection with the mediation; 3) inform the mediation parties before and during the mediation about the circumstances that may raise reasonable doubts about its independence and impartiality, conduct mediation only with the written consent of all parties to the mediation and in accordance with their internal conviction that they adhere to the principles of independence and impartiality; 4) terminate mediation in case of conflict between the personal interests of the mediator and his responsibilities, which may affect his impartiality and neutrality during mediation, as well as in the presence of other circumstances that prevent his participation or require termination of his participation in mediation; 5) inform the parties and other participants in mediation about their rights and responsibilities, principles and rules of mediation, the possibility of obtaining advice from relevant specialists (experts), the consequences of concluding an agreement on mediation and / or agreement on mediation in writing or orally, professional experience and competence of a mediator; 6) manage mediation; 7) constantly improve their professional level; 8) at least once a year on a free basis to provide mediation services, in which one of the parties is a person under the jurisdiction of Ukraine, if his average monthly income does not exceed two subsistence minimum, calculated and approved in accordance with the law for persons who belong to the main social and demographic groups of the population, or a person with a disability who receives a pension or assistance granted in lieu of a pension, in an amount not exceeding two subsistence minimums for disabled persons, in case such persons apply to a mediator; 9) perform other duties provided by law.
The feature of administrative proceedings is that one of the parties in the dispute is the subject of power. Thus, the feature of alternative dispute resolution, in particular mediation, in administrative proceedings is the peaceful settlement of relations between a state agency, on the one hand, and with a natural or legal person, on the other. There are several possibilities for legalization of the status of a mediator: the first is the implementation of mediation by professional independent mediators (for example, members of a professional association of mediators); the second is judicial mediation: or the settlement of a dispute with the participation of a judge.

According to Shinkar T.I. alternative ways of resolving a dispute, in particular in administrative proceedings, may be used in the following order: 1) settlement of a conflict (dispute) without recourse to an administrative court with a claim for resolution of a public law dispute; 2) settlement of the conflict (dispute) using alternative methods, including mandatory pre-trial participation of the parties in dispute settlement procedures; 3) after the beginning of the trial – until the court makes a decision in the case. Instead, if there are relevant provisions in the legislation, alternative procedures may also be used in the process of enforcing a court decision in a dispute. (Shinkar, 2018).

CONCLUSIONS

Thus, the study allows us to draw the following conclusions. The first steps towards the introduction of the practice of resolving administrative disputes through recourse to mediation in Ukraine have been taken. The provisions of the bill of Ukraine „On Mediation” dated 19.05.2020 № 3504 are analyzed confidential information that became known during the mediation. However, the issues of determining the categories of cases in which mediation can be used, in particular administrative disputes, remain unresolved. Resolving these issues will help expand the practice of mediation in the settlement of administrative disputes.

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Abstract. To be a designer means to create new things and new qualities of already existing things, determined by the current concepts. Information about the functions and emotional characteristics of the future product is initially reflected in the author’s concept, that is, in the text about the qualities of a specific but not yet produced thing. This concept is consumer-oriented but not intended for them. Nevertheless, it becomes the basis of communication between the designer, the product manufacturer, and the consumer. This study aims to determine how the process is organized, which ensures the transformation of the designer’s creative ideas into conceptual texts and then into real objects that can become productive means of socio-cultural communication. The study relies on methodological foundations of a general philosophical nature. Thus, the axiological approach, as a socially holistic complex of views, beliefs, and ideals, allows a designer to analyze the values of a modern person and consider them in the design process. The phenomenological method reveals the features of design objects involved in communication. The structural and functional approach reveals the diversity and complexity of the connections inherent in the representation practices as original forms of communication. As the mechanisms of the representative practices are constantly developing, they are one of the most effective means for creative communication. By the results obtained, we can conclude that representations designed as a self-sufficient design product denote not only an act of such communication but also protect the designer’s rights to express creativity at the interpersonal, professional, and social level of communication.

Keywords: design activities, forms of communication, the manifestation of creativity, representation.
beginning of the 21st century marked the reorientation of a design towards individualizing the external shape of objects, remaining their technical content almost unchanged (Lahoda, 2018: 115-121). T. Bystrova (2017) argues that all design forms are artificial, therefore, cannot develop or change independently. This statement finds confirmation in all areas of design activity (Pedgley, 2007). Meanwhile, many researchers believe the transformation of one or another design form is possible due to filling it with different meanings and concepts (Degen, 2008). For contemporaries, this idea has become the main principle of creating a “variety” of design forms and was fixed at the international level (ICSID Papers, 2002).

By the way, David Harrison, in his book “A Century of Color in Design” (2020), determines color as an efficient factor of such “diversity” as it allows to demonstrate individuality with a color scheme within one form. As an example, the author takes the multicolored chairs by Charles Eames, developed back in 1950. Bruno Munari (2008), an Italian designer, used similar examples in his book “Design as Art,” first published back in 1966. By analyzing his research and practical experience, the designer outlines the “boundaries” of design as the potential of a new field of artistic creation. With a similar argument, Vilém Flusser (2016) emphasizes that humans are “reflective and speculative beings.” Proceeding from above, humanity develops not only the culture but also its philosophy. Culture, in turn, appears before a person in the form of a constantly growing accumulation of things, in particular, design things. As Michael Press and Rachel Cooper (2008: 58-60) explain, designers are recognized as “cultural intermediaries” who create such qualities of design products that convey specific values, preferences, and consumption ideology to society. These qualities are due to the concepts of our time, for example, multifunctionality, environmental friendliness, or ergonomics. They determine the design forms that fill the human living environment and are a condition for their socio-cultural identification. The visual perception of separate objects and the environment, as the whole, along with the verbal message, makes this identification possible (Tomes et al., 1998). To put it differently, identification, in this case, is a consequence of verbal-visual communication (Lahoda, 2014).

Regarding the cultural self-definition in mass culture, one should remember that this culture transforms significantly in modern times (Baumeister, 1986). As Andrei Flier and Anna Kostina (2009) constitute, the mass culture of the late XX – early XXI century greatly differs from its form at the beginning of the XX century. On the one hand, modern mass culture retains the features of the early period but, on the other hand, transforms under the influence of changes manifested in cultural life (Krutous, 2005). The transformations affected such properties of mass culture, without which it was previously considered impossible to be described. Basic characteristics of mass culture do not longer involve the concepts of standardization, typification, unification, “indulging” low tastes, and opposition to the ideals of high culture. However, one of its determinative tendencies is the homogenization, i.e., homogeneity, which manifests itself, in particular, as a complex interaction, and sometimes a synthesis, of mass and elite cultures (Razlogov, 2005).

Naturally, all of the above influences design and its practices and determines the “coordinate system” of its development. Since the designers act consciously and understand what exactly they create and design, their subjective ideas and their creative world are subjects of scientific interests. Through the prism of this world, even the entire society becomes interested in
such ideas. The designer’s focus on the person, the pronounced anthropocentricity of his or her activities at all stages of the design process, without exception, oblige him or her to communicate. Thus, the ability to communicate with potential consumers stimulates the designer to explore their lifestyle, habits, standard behavior, significant emotional experiences, impressions, etc.

The consumption process becomes a way for most people to express their individuality, emotions, and hedonism since consumption can emphasize the differences from others and thus give a person pleasure. In addition, the determination and positioning of differences, in most cases, determine the status of an individual in society. Thus, a person can believe consumption to be a source of „freedom of choice” within the boundaries that regulate his or her life and fill it with meaning. Based on this choice, a culture of consumption is formed and developed. The researchers note that “consumer culture is a design impression that unites production with consumption, and a professional designer with a creative consumer” (Press and Cooper, 2008: 61). Creative consumption, like creative designing, provides conditions for meaning-making, stimulating creativity and its manifestations. In this context, the positioning of the design product, its presentation by the designer to potential consumers are of particular importance. This is a peculiar form of communication – a communicative act, defined by the author as representation. It is also a self-sufficient product of creativity, created and implemented by a designer while positioning the design product.

Language and communication play an important role in designing, first of all, as the design process is viewed as exclusively visual, creative thinking (Lahoda, 2018: 119). Press and Cooper (2008: 213) argue design is a negotiated social process that requires the same level of communication. That is the reason Halyna Lola (2011: 28) defines design as a communicative practice that creates an “impression situation.” But what is this practice? What is its specificity? How does it manifest itself? These questions remain without substantiated answers but are marked by the generalizing property of conceptualization.

Thus, the purpose of this study is due to the need to determine how the design process must be organized to ensure the implementation of the designer’s creative ideas through conceptual texts into real design objects. The study also aims to define the conditions under which such design objects can become means of socio-cultural communication and ensure its productivity.

**MATERIALS AND METHODS**

The study relies, first of all, on methodological foundations of a general philosophical nature. In particular, to analyze the person’s values, which are taken into account in the design process, we have used an axiological approach. This approach should be understood as a socially integral complex of significant views, beliefs, and ideals inherent in a society of mass culture. A phenomenological method allowed analyzing the features of design objects related directly to communication in the field of design. Diverse material on the practices of presentations and representations in design served the basis for distinguishing common and distinctive features of existing formats, their key functions, tasks, and expected results. The structural and functional approach, applied to various formats of representations, revealed
the diversity and complexity of the connections between them. The generalization of the results obtained allowed us to conclude that representative design practices are the original forms of communication between the designer, the manufacturer, and potential consumers. At the same time, they mean self-sufficient creative practices, which, like any other design product, are based on a creative idea, its conceptualization, and implementation by means of design.

Under the research, a descriptive method was also used as it met the set objectives. This method helped to reveal the consumers' attitude towards the concept of product design and its representations. The analysis of narratological strategies was correlated with consumers' awareness of how the practices of representation impact emotionally and psychologically on a particular consumer and consumer culture in general. The study aimed at examining the designer's creative potential, its protection in the socio-cultural environment, and its role in consumer preferences regarding representations as an act of communication.

The theoretical base and information support were the research of scientists and the practical work of designers who considered the problems of design theory, design processes, aesthetics, art, socio-cultural foundations for the formation of the representations, the spread of new products in the post-industrial consumer society. While analyzing, we determined the state of research and the scientific components of a material and cultural approach to the study of the trends in the development of the design. We characterized the research dedicated to design and carried out in the humanities, the key directions in recent decades, and how identification problems influence it. It has been established that an interdisciplinary approach plays an important role in the study of the practice of representations in design as systemic acts of creative communication. By main directions of research were substantiated: the chronology of the development of various formats of representations; basic prerequisites to form a system of representative practices in a society of mass culture and mass consumption.

The representative practices were explored using the example of fashion design in the fashion industry. However, we should note that with any other design product, they, in our opinion, would be identical, with a slight difference. Since the key functions of different representation formats are practically identical, it is possible to argue that their organization is the same. On this basis, sources for the study of representations were divided into several groups. The first group includes scientific developments in various humanitarian knowledge: philosophy, sociology, psychology, cultural studies, narratology, art history. The second comprises historical and up-to-day information about the designers' activities and fashion brands. It was obtained from official sources and the media: official websites, print publications, videos and Internet sources on professional guidance, Internet platforms for design project implementations, and designer brand formation in different segments of the fashion market. Of particular interest were the visual materials presented in exhibition catalogs, brochures, and other printed products of international projects and textile companies. Regarding socio-cultural identification, the functions of representation of fashionable suit design, the existing formats of such representations, we have analyzed several issues that require further in-depth research in the context of their importance for creative communication.
RESULTS AND DISCUSSION

The results obtained allow us to consider representative practices as a creative activity of a designer, which is based on various formats for presenting a design product (in this case, a suit). Set representative principles and narrative strategies determine the means of presentation and the content of what is presented. We do not regard presentation as an elementary demonstration of a certain sample or model. However, it implies a complex of sequential actions, aimed, in addition to the visual demonstration, to convey diverse information about the figurative, stylistic, formal-constructive, and other characteristics of the object. These characteristics can evoke associations, emotions and form an attitude towards the object itself.

It has been established that in the historical and cultural context, two methods to position a suit as an external form of an identity narrative have developed, which are primarily associated with the means of communication. Conventionally, they can be divided into an artistic and graphic fixation and volumetric-spatial, i.e., visual demonstration. Both methods are the result of the visualization process. Though, the first method involves such means as display, rendition, stylization, or interpretation that give the image an expressive metaphoricity as in a work of art. In the second method, the means can be considered the exposition of really created things (suit complexes) as a component of the visible (visual) image.

Common to both methods is a set of functions that they perform, namely: share fashion trends; spread aesthetic norms, tastes, ideals; regulate according to social stratification; educate, inform, advertise and popularize; provide communication and entertain. At different times and under different socio-cultural conditions, different functions dominated, but they were always solved in a comprehensive manner and interaction. That helped to implement certain communicative and manipulative narrative strategies.

The mentioned methods of representing the suit gradually form the basis for the types of representative practices, which we have united into the following groups: print-run; spectacular (performance), which, in turn, are divided into dynamic spectacular and static spectacular; virtual, which can include synthetic (hybrid) practices of representation (traditional media – audio, television, and visual communications) and directly virtual (new media – digital, network technologies and communication). Within each type of representative practice of suit design, separate formats of representation are distinguished. They differ, first of all, in the means of implementation and functioning.

The following formats are referred to the print-run practice of suit design representation: fashion illustration – its artistic and technical types; fashion photography (photo illustration) – studio-production type (thematic, portrait) and documentary type; artistic photographic illustration of fashion as a subject-thematic or narrative-conceptual. Performance practices of suit design representations involve dynamic and static formats. The dynamic format should include fashion shows, which can be divided primarily into haute couture and prêt-à-porter shows, as well as season, off-season, and thematic (or special) representations. All of them provide for the participation of models, who are suit demonstrators.

Representative practices of static performance format determine the use of mannequins as special demonstration equipment that imitates a person – the wearer of the suit and the
renderer of basic narrative. The static format implies, for example, a showcase (showcase as a modern design activity), within which product, subject, and product-subject, closed, open, and closed-open showcases are distinguished. Another static performance format for the suit representation is its exposition in the museum space. Depending on the curatorial strategy and type of a particular museum, a suit can be represented in a historical, artistic, memorial, special (thematic), or virtual format. The content of the exposition can be historical and cultural, personalistic, thematic, conceptual, and narrative.

Virtual practices for suit design representation developed later and absorbed other forms of representation thanks to new technologies. Among them, in our opinion, one should distinguish between synthetic representations (traditional media) and directly virtual formats of representative practices (new media). Synthetic representations include fashion TV shows, TV shows as thematic programs, video shows, video reports, video magazines, videos, teasers, etc. One should mean by the virtual formats of practices for suit design representation, first of all, websites: copyright (of a designer or a separate brand); of specialized publications; thematic; blogger websites. Virtual formats of presentations should also include online shops, online publications on style and fashion, etc. Virtual fashion museums constitute the distinctive format of suit design representations.

The interrelationships of various forms of representative practices with each other indicate synthesis in some cases and others – absorption as an interaction. Each of the studied formats as a narrative strategy for presenting a design product implements the set principles of representation. We conventionally denote these principles as “a suit,” “a suit on a person,” and “a person in a suit.” For example, the principles “a suit” and “a suit on a person” prevail in the fashion illustration. However, the principle “a person in a suit” has a priority in fashion photography. As visual narratives, various types and formats of representative practices have their inherent parameters and characteristics, determined, first of all, by such artistic design means as means of organizing the visual environment (genre-stylistic); means of enhancing emotional expressiveness (artistic and figurative); visual harmonization means (conceptual content). Their interaction can provide a single basic or metanarrative that a designer can implement, manifesting the image of a design product in any of the presentation formats. The narrative must be broader and more meaningful than the concept of product design; however, the narrative contains it. Therefore, we can interpret this concept in different contexts in terms of the meaning of representations.

For this research, it is essential to take into account that modern science of design considers it as a phenomenon, as a process, as a sphere of creative activity, and as its result – a design product. This allows studying design more broadly and gives multidimensional and interdisciplinary opportunities for its research. So the designer can get the information necessary for the work, the question of communication is present in each variant: surveys, testing, positioning, demonstration, etc. Such information is a priori objective-subjective, sufficient emotional, and always justified by one context or another – socio-cultural conditions, historical, political or economic events, a situation, social phenomena. In other words, information is always ambiguous, and the broader and fuller the communication, the more accurate and reliable the information received.
For communication, designers often use the presentation as direct action – to show, demonstrate, tell. But they use representation as a creative act more actively – performance, exposition, video, show. A designer uses both presentation and representation as a reference point while developing and manufacturing a design product as well as presenting it to potential consumers. Advertising design for a particular product is also used for this purpose. Moreover, self-presentation is particularly important for the consumer while consuming the design product, its advertising, as one of the representation tools. It is realized through the acquisition and ownership of a design product, its use, which gives a person a certain status, confirmed by identification. Accordingly, representation is a form of visual communication.

Human perception of visual information in the course of representations remains a rather individual ability to “see” the world in images, interpreting them in the context of perception and transformation of meanings. People commonly describe what they see in words, verbally formulating their emotional impressions. A designer can use completely different, unique tools of professional language for this. They constitute so-called design tools. In addition, the designer uses legitimate and generally understandable signs, symbols, and their meanings, which become the discourse of design practice. In general, to convey generally accepted aesthetic ideals, stereotypes, and norms of behavior that form a single information space, designers use a professional language of form and style formation, symbols, which can be brands, trends, as well as samples of mass culture or everyday phenomena. This determines the essence of the representation practice as one of the forms of creative communication.

Representation as an action or a sequence of actions is a special process. This process has an informational and narrative character that allows defining it as a narrativization. Its result is a narrative, a story, in our case, about a design product, its functions, quality, special properties, and creator. The narrativization is commensurate with the process of broadcasting information, i.e., it represents a communication process. Its participants are the one who broadcasts the information (designer) and the one who perceives it (the consumer). The process of narrativization takes place in certain conditions or situations, determined by time and place (location). There is the most important fact: a specific goal determines its course, in which a certain attitude towards this process is formed. As a result, various strategies of narrativization build a narrative that, in the design of the representations themselves, develops and formalizes the creative idea of the designer as a creator.

Products of design creativity predetermine conceptual transformations through narratives – stories, addresses, quotations that, in general, ensure continuity in culture. The dynamic of such transformations is due to the uniqueness of the connotations created by the designer. This provides a continuous process of „renewal” of actual images, stylistic techniques, forms of design objects, and their advertising. It is in this context that the fundamental category of creativity takes on exceptional significance. First of all, we speak about the ratio of creativity of both designers: the one, who creates a specific product, and the one who represents this product as an actual (often fashionable) sample. We also should consider potential consumers of a “fashionable” product capable of creative self-expression, that is, self-presentation through the use of a particular design product. Thus, we can say that three processes, namely communication, representation, and narrativization, constitute „a coordinate system” of design creativity. Being independent and, actually, self-sufficient,
these processes are at the same time closely interrelated, especially if one designer creates them.

Within such a coordinate system, design should be defined as a complex system where narratives appear, develop, interpret, transform, spread, are represent, and function. We can view their meaning from different perspectives. For example, we can consider them prosaically as a basic function of a thing, i.e., its immediate purpose. They can be regarded poetically through the prism of artistic and aesthetic qualities of a thing. They may be viewed from a journalistic perspective as an event report, documentation of a real-life moment. We can also consider the meaning of narratives from the following perspectives: fantastic (futuristic) – as a fictional idea of a design product, its possible or desired functions, attributing certain qualities; conceptual – by transforming the content of the narrative into things or phenomena that the design product is not (the laws of advertising apply here).

Since a specific design language allows the content (meaning) to be encoded/decoded, it is possible to speak about semiotics (sign, symbolism). The semiotic system of design is discursive, develops according to the context and communication, which determines the representation format. In this regard, content, a narrative, stands as a “living organism” capable of self-development and self-improvement. The system “communication – representation – narrativization” must complement the basic concepts of modern design development. It involves recipients, reflecting the anthropocentricity of the design. It bases on the conceptualization of problematic issues. Thus, the design is also conceptual, i.e., ecological, ethical, psychological, motivational, emotional design. The above system is characterized by virtualization as a key trend in modern life, which means the complete living of individual moments in the imagination, in other words, virtually.

Considering the perception of things that are represented, we, first of all, focus on the following: emotional perception and experience; the subjectivity and the plurality of interpretations that originate from the individual characteristics of a person or a particular social group. In this context, one should bear in mind that “artistic” and “aesthetic” perceptions are not identical. In other words, a design product may have pronounced artistic qualities (or not) but be perceived differently from an aesthetic point of view. This corresponds to the modern understanding of the category of “aesthetic.” It is believed that “beautiful” and “low” belong to “aesthetic.” During the postmodern era, one of the modern trends aimed to aestheticize the “ugly” and “low” is relevant for both contemporary art and design creativity. As a category, factor, and evaluation criterion, “aesthetic” allows you to analyze all other qualities and properties of the product. It is nevertheless closely connected with the “artistic” and, accordingly, with the “image-bearing.” Therefore, the image should be considered as a key moment that influences the formation of a narrative, its development within the framework of representations, and functioning in communicative practices. Halina Lola (2016), the modern Russian scientist, stated this provision in her methodology of semiotic discursive modeling of the design product.

A designer thinks in images and uses them as a guideline in the design process. Images are a means of conveying creative ideas in representation. Consumers perceive namely images that motivate them to buy and own a particular thing. Therefore, representations of all possible formats carry the greatest semantic, instrumental, procedural, and other meanings
for both the designers and the consumers of their product. Representation is the key to communication and creative expression. Thus, modern design is a holistic system consisting of the following subsystems: developing and creating a thing, the activities of a designer (or a team of specialists headed by a designer), products of design. All subsystems are closely linked by communication, in which representations, developed and implemented in the processes of narrativization, prevail.

CONCLUSIONS

We believe several important aspects actualize the problem of creativity in representative practices of design. First, various formats of representative practices coexist under modern conditions, which differ significantly. Their heterogeneity is determined by technical and technological differences while maintaining common functional tasks. Each participant of representative practices, a form of creative communication, has its own “degree” of individualized creative rethinking of the key idea. This not only adds “variety” but also provides individualization, and sometimes personalization of the design product, as an extreme form of its possible individualization.

The research results make it possible to formulate several practical recommendations for designers to use in their activities. In particular:

• in the form and style formation of the practical implementation of design projects and the representation of their results, it is necessary to be guided by the harmonization of the conceptual-figurative expressiveness and the suit functional practicability as an expression of a certain narrative;

• one should consider the narrative of the suit as a construct, allowing the image to identify and translate both simple and complex semantic formations. Conventionally: simple semantic formations mean a purpose, clothing style, target group; complex – lifestyle, social values, global problems, etc.;

• a designer should take into account that the narrative must be not only broader than the concept of the design product but also include it in the semantic field along with the theme – the function of the future design product.

This gives the possibility to present a design product in various representation formats, as narrative strategies, according to different principles and through various artistic, design, and technological means that determine the creativity of communication.

Representation as a specific communication system requires a designer to develop conceptual strategies for the integrated implementation of informative, commercial, and entertainment functions. It forms subject-object connections, activates the sociocode, in particular, vestimentary, as a marker of socially significant meanings. Visual communication act is based on figurative and informational transmission and is implemented at the conceptual and narrative level. Within the framework of representations, the visualized image does the following: transforms into a “representative” or “narrative” one, as a sign of content; transmits information about the functions and values of the design product to the consumer environment; visualizes the “cultural body” of the suit wearer, determining its representativeness as a quality. Being representative, the image of a suit is a social marker and
a means of identification. The links between the dominant characteristic of representations and the general trends in contemporary art, design, visual sphere are shown, first of all, at the artistic and technological level of their implementation.

Regarding the narrative strategy of individualization and personification, the mass broadcast of fashion suit images contributes to their independent reproduction by the consumer, allows to stylize the appearance, organizing self-presentation space of various aesthetic qualities. Virtual presentation formats are determined by the designer’s creative narrative, the cult of the lifestyle, and the suit style, whereas a suit reflects a wearer’s socio-cultural values and the external form of the identity narrative.

Based on this, a typology of representative suit design practices has been derived. Within its framework, suit design is a figurative and symbolic representation of socio-cultural changes in the visual narrative form.

Thus, having analyzed the state, development trends, and features of representative design practices in visual communication and information perception, we revealed new directions for scientific research. The suit and its artistic representation are a means of expressing the designer’s creativity. This means that representative practices transfer a recipient’s attention from one sphere to another, namely, from visual perception to conceptual-visual comprehension.

REFERENCES


THE ROLE OF METHODOLOGY IN PEDAGOGICAL RESEARCH IN TERMS OF IMPROVING SKILLS OF HIGH SCHOOL STUDENTS PROGRAMMING

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Abstract. This paper presents analysis of learning and programming skills of students in High School, course computer technician. Students from all grades participated in the research. In this research the attitudes of students were examined for subject “Algorithms and programming”. Also, research includes programming skills that were tested using specific test. Based on the obtained data, detailed analysis was performed. This analysis includes comparison of programming skills and knowledge between grades in school, comparison of attitudes related to subject and comparison of student’s average grade with results on the given test. Based on the results obtained, proposals for improving the skills of programming are given.

Keywords: programming, programming languages, algorithms and data structures, programming skills, computer technician.

INTRODUCTION

Programming is not just about writing program codes but it is a complex process that requires a number of skills. For the development of computer programs, the programmer must be able to solve problems, spot and eliminate errors, have developed abstract, logical and computer thinking and the ability to analyze. Teachers who teach programming try to
find the best methods to make it easier for students to master the material. They are often in a dilemma when choosing teaching methods and forms of teaching, since there is no single guide for teaching programming. In most schools, programming is taught in a traditional way consisting of lessons, homework and demonstration assignments. However, the teacher should strive to teach students how to combine parts of the program code into a meaningful whole. Research has shown that learning programming from an early age has positive effects on students’ day-to-day development. In this way, students develop logical thinking and reasoning that they can apply to all spheres of life. Students in the beginnings of learning programming most often use programming languages and tools that are visually reminiscent of a game or puzzle. Such languages are suitable for younger students because they do not give the impression of seriousness.

The aim of this research is to gain insight into the current state of programming skills of high school students, majoring in computer technician in order to improve the quality and more meaningful implementation of programming classes. In accordance with the set goal of the research and the Vocational Curriculum for the qualification of computer technician, the basic educational categories of programming skills are defined: basic data types, variables and constants, branching commands, program loops, one-dimensional fields, functions, sorting algorithms and data structures. The research sought an answer to the question of whether high school students, computer technicians, have developed programming skills in accordance with the set curriculum outcomes and whether there is a significant difference in knowledge and programming skills among lower and upper grade students. Given that programming is one of the key skills of the future, this topic is becoming increasingly relevant. Namely, the Ministry of Science and Education in cooperation with the Agency for Vocational Education and Training in 2019 conducted national exams in vocational education aimed at determining the level of knowledge and skills of students in vocational subjects, which speaks of the importance of this issue.

MATERIALS AND METHODS

The research on the topic “The role of pedagogical research methodology in order to increase the programming skills of high school students” was conducted in the period from 20 to 24 May 2019. This period was chosen because until then, first-graders had mostly processed all first-grade material, which is important for conducting testing because the research is based on programming knowledge, ie the subject “Algorithms and Data Structures”. The survey questionnaire consists of three parts. The first part refers to general data about the respondent, the second part about the attitudes of the respondents for the subject “Algorithms and Programming” and the third part in which the programming skills in the C++ programming language are assessed. The estimated time for solving the questionnaire was 40 minutes. Qualitative and quantitative data processing was performed on the collected data.

The following hypotheses are set:
H0: Developed programming skills of high school students, majoring in computer technician, are not in line with the set outcomes of the Vocational Curriculum for acquiring the qualification of computer technician for the subject “Algorithms and Programming”.

H1: There is no significant difference in programming knowledge and skills between lower (first, second, third grade) students and fourth grade high school students.

H2: Students with poorer general averages have less developed programming skills.

H3: Students who have a negative attitude about the subject “Algorithms and Programming” have less developed programming skills.

The study population consisted of 78 subjects (N = 78). In the first and second grade, 22 students were examined, in the third 18, and in the fourth 16 students. The distribution of respondents by grades is shown in Graph 1.

First grade and second grade accounted for 28.21% of the total number of respondents. The third grade accounted for 23.08% and the fourth for 20.51% of the total number of respondents. Out of a total of 78 respondents, 6 and 7.69% of girls and 72 and 92.31% of boys, respectively, participated in the research. This ratio of girls and boys is justified by the fact that in our society there is still a small representation of women in the technical sciences.

Based on the survey data, the average grade at the end of the previous grade for the first grade is 3.73, for the second 3.18, the average grade of the third grade is 3.50, and the fourth 3.44 as shown in Graph 2 (Croatian grading system).

Graph 1 shows the distribution of respondents by grades
Source: prepared by the author according to the conducted research

Graph 2 Average grade of students from each class in the previous class
Source: prepared by the author according to the conducted research
In the second part of the questionnaire, respondents were asked to state their position regarding the subject “Algorithms and Programming”.

For the first statement “At the beginning of classes, interest in the contents of the case was great” out of 78 respondents, 5 (6.41%) answered that they completely disagree, 9 respondents (11.54%) said that they did not agree with statement, 16 respondents (20.51%) neither agree nor disagree with the statement, 25 respondents (32.05%) agree with the statement, 20 respondents (25.64%) fully agree with the statement, while 3 respondents (3.85%) cannot give an estimate for the stated claim.

Figure 1 shows the statistical analysis of the 1st statement
Source: prepared by the author according to the conducted research

To the second statement “The goals and tasks of the case were clearly defined” out of 78 respondents, 2 of them (2.56%) answered that they completely disagree, 4 respondents (5.13%) said that they did not agree with the statement, 20 respondents (25.64%) neither agree nor disagree with the statement, 30 respondents (38.46%) agree with the statement, 21 respondents (26.92%) fully agree with the statement, while 1 respondent 1.28%) cannot give an estimate for the stated claim.

Figure 2 shows the statistical analysis of the 2nd statement
Source: prepared by the author according to the conducted research
For the third statement “Organization of teaching encouraged me to actively participate in teaching” out of 78 respondents 6 of them (7.69%) answered that they completely disagree, 3 respondents (3.85%) said that they do not agree with the statement, 31 respondents (39.74%) neither agree nor disagree with the statement, 25 respondents (32.05%) agree with the statement, 12 respondents (15.38%) fully agree with the statement, while 1 respondent (1.28%) cannot give an estimate for the stated claim.

### Statistics

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Figure 3 shows the statistical analysis of the 3rd statement
Source: prepared by the author according to the conducted research

To the fourth statement “Teaching materials were understandable and accessible” out of 78 respondents, none of the respondents answered that they completely agree, 6 respondents (7.69%) said that they did not agree with the statement, 17 respondents neither agree nor disagree with the statement, 25 respondents (32.05%) agree with the statement, 29 respondents (37.18%) fully agree with the statement, while 1 respondent (1.28%) cannot give an estimate for the above statement.

### Statistics

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Figure 4 shows the statistical analysis of the 4th statement
Source: prepared by the author according to the conducted research
For the fifth statement “I think that the teaching content enables the development of skills and practical application of knowledge” out of 78 respondents, none of the respondents answered that they completely disagree, 6 respondents (7.69%) said that they did not agree with the statement, 16 respondents (20.51%) neither agree nor disagree with the statement, 35 respondents (44.87%) agree with the statement, 19 respondents (24.36%) fully agree with the statement, while 2 respondents (2.56%) cannot give an estimate for the stated claim.

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Figure 5 shows the statistical analysis of the 5th statement
Source: prepared by the author according to the conducted research

To the sixth statement “Knowledge from this subject helped me to master other professional subjects” out of 78 respondents, 20 of them (25.64%) answered that they completely disagree, 10 respondents (12.82%) said that disagrees with the statement, 21 respondents (26.92%) neither agree nor disagree with the statement, 13 respondents (16.67%) agree with the statement, 10 respondents (12.82%) fully agree with the statement, while 4 respondents (5.13%) cannot give an estimate for the stated claim.

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Figure 6 shows the statistical analysis of the 6th statement
Source: prepared by the author according to the conducted research
For the seventh statement “The teacher presented the content in an understandable way and was available for additional questions and explanations” out of 78 respondents, 3 of them (3.85%) answered that they completely disagree, 4 respondents (5.13%) said they did not agree with the statement, 12 respondents (15.38%) neither agree nor disagree with the statement, 19 respondents (24.36%) agreed with the statement, 40 respondents (51.28%) fully agrees with the claim.

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</table>

Figure 7 shows the statistical analysis of the 7th statement
Source: prepared by the author according to the conducted research

To the eighth statement “The contents of this case increased my interest in programming” out of 78 respondents, 12 (15.38%) answered that they completely disagree, 15 respondents (19.23%) said they did not agree with, 19 respondents (24.36%) neither agree nor disagree with the statement, 18 respondents (23.08%) agree with the statement, 13 respondents (16.67%) fully agree with the statement, while 1 respondent (1.28%) cannot give an estimate for the stated claim.

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<td>Total</td>
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</table>

Figure 8 shows the statistical analysis of the 8th statement
Source: prepared by the author according to the conducted research

For the ninth statement “I mastered the teaching content with difficulty” out of 78 respondents, 15 (19.23%) answered that they completely disagree, 21 respondents
(26.92%) said that they did not agree with the statement, 15 respondents (19.23%) neither agree nor disagree with the statement, 13 respondents (16.67%) agree with the statement, 11 respondents (14.10%) fully agree with the statement, while 3 respondents (3.85%) cannot give an estimate for the stated claim.

Figure 9 shows the statistical analysis of the 9th statement
Source: prepared by the author according to the conducted research

In the last question, respondents were asked to rate the subject "Algorithms and Programming". None of the respondents gave an unsatisfactory grade, 8 respondents (10.25%) rated the subject as sufficient, 27 respondents (34.62%) gave a good grade, 32 respondents (41.03%) gave a very good grade, while 11 respondents (14.10%) rated the subject with an excellent grade.

Figure 10 shows the statistical analysis of the 10th statement
Source: prepared by the author according to the conducted research

In the last part of the questionnaire, the respondents were asked to solve a test that tested their programming skills. The test is structured according to the teaching units of the Vocational Curriculum for Acquiring the Qualification of Computer Technician from 2017. Respondents had to solve 11 tasks through the test. Each task had four answers offered, of which one or more answers were correct. Below are the test results according to each task.
The first question tested knowledge of variable terminology. Out of the total number of respondents, 13 respondents answered correctly (16.67%), while 65 respondents answered incorrectly (83.33%). According to the distribution of answers by grades, 10 respondents (45.45%) of the first grade answered the question correctly, while 12 respondents (54.54%) answered incorrectly. In the second grade, 3 respondents (13.64%) answered the question correctly, while the other 19 respondents (86.36%) gave an incorrect answer. In the third and fourth grades, none of the respondents answered the given question correctly.

Graph 3 Distribution of answers by grades for the 1st question
Source: prepared by the author according to the conducted research

In the second question, respondents were asked to recognize what would be printed on the computer screen after the program code was executed. Out of the total number of respondents, 31 (39.74%) gave the correct answer; while 47 respondents (60.26%) answered the question incorrectly. To the second question in the first and second grade, 8 respondents (36.36%) answered the question correctly, and 14 students (63.64%) offered the wrong answer. In the third grade, 7 students (38.89%) knew the answer, while 11 of them (38.89%) answered the task incorrectly. In fourth grade, the ratio of correct and incorrect answers was equal.

Graph 4 Division of answers by grades for the 2nd question
Source: prepared by the author according to the conducted research

In the third question, the respondents had to identify which program code, out of the four offered, represents the default function. This task tested the knowledge of using branching commands. Out of a total of 78 respondents, 46 (58.97%) answered correctly, while 32
respondents (41.03%) answered the question incorrectly. According to the distribution of answers by grades in the first grade, 15 students answered the question correctly (68.18%), while 7 students (31.82%) answered incorrectly. In the second grade, 10 respondents gave the correct answer (45.45%), and 12 respondents gave the incorrect answer (54.55%). 12 respondents (66.67%) of the third grade answered the question correctly, while 6 respondents (33.33%) gave an incorrect answer. In the fourth grade, 9 respondents (56.25%) answered the question correctly, and 7 of them (43.75%) had an incorrect answer.

The fourth question checked the respondents’ understanding of the for loop. Of the total number of respondents, 55 (70.51%) answered the question correctly, while 23 (29.49%) gave the wrong answer. The distribution of answers by grades shows that in the first grade 19 students (86.36%) knew the answer to the question, while 3 students (13.64%) answered incorrectly. In the second grade, 13 students (59.09%) answered correctly, and 9 of them (40.91%) did not know the answer to the question. 15 students (83.33%) in the third grade answered the fourth question correctly, while 3 students (16.67%) answered incorrectly. In fourth grade, the ratio of students with correct and incorrect answers was equal.

The fifth question checked the respondents’ understanding of the program code in which the program loop and the branch command are used. Out of the total number of respondents, 43 (55.13%) gave the correct answer, while 35 (44.87%) answered the task incorrectly. To
the fifth question, 15 students (68.18%) of the first grade gave the correct answer, while 7 of them (31.82%) answered incorrectly. In the second grade, there was an equal ratio of correct and incorrect answers. 7 students (38.89%) of the third grade answered the fifth question correctly, and 11 of them (61.11%) gave an incorrect answer. In the fourth grade, 10 students (62.50%) knew the answer to the question, while 6 of them (37.50%) answered incorrectly.

Graph 7 Division of answers by grades for the 5th question
Source: prepared by the author according to the conducted research

In the sixth question, the respondents’ understanding of the do-while program loop was checked. Of the total number of respondents, 31 (39.74%) showed that they understood the do-while loop, while 47 (60.26%) did not answer the question correctly. In the first grade, 6 students (27.27%) gave the correct answer to the sixth question, while 16 students (72.73%) answered incorrectly. In the second grade, the ratio of correct and incorrect answers was almost the same, ie 12 students (54.55%) answered correctly, while 10 of them (45.45%) gave the wrong answer. 8 students (44.44%) in the third grade answered the question correctly, and 10 of them (55.56%) answered incorrectly. In the fourth grade, only 5 students (31.25%) gave the correct answer, while 11 students (68.75%) gave the wrong answer.

Graph 8 Division of answers by grades for the 6th question
Source: prepared by the author according to the conducted research

In the seventh question, students were tested on their knowledge and understanding of the nested program loop. Out of the total number of respondents, 14 (17.95%) answered
the question correctly, while 64 (82.05%) answered the question incorrectly. In the first grade, only 1 student (4.55%) answered the seventh question correctly, while 21 of them (95.45%) answered incorrectly. In the second grade, 5 students (22.73%) gave the correct answer, and 17 of them (77.27%) answered incorrectly. 3 students (16.67%) in the third grade answered the question correctly, while 15 of them (83.33%) gave an incorrect answer. In the fourth grade, 5 students (31.25%) knew the answer to the question, and 11 of them (68.75%) answered incorrectly.

Graph 9 Division of answers by grades for the 7th question
Source: prepared by the author according to the conducted research

In the eighth question, the students’ understanding of the program structure of the field was checked. It is important to mention here that the first graders did not process this part of the material because it is being processed in the second grade of high school. Out of the total number of respondents, 16 (20.51%) answered the question correctly, while 62 (79.49%) gave an incorrect answer. The eighth question was answered correctly by 2 students (9.09%), while the other 20 students (90.91%) gave an incorrect answer. In the second grade, 10 students (45.45%) answered correctly, and 12 of them incorrectly (54.55%). 2 students (11.11%) of the third grade gave the correct answer, while 16 of them (88.89%) answered the task incorrectly. In the fourth grade, also only 2 students (12.50%) answered correctly, and 14 students answered incorrectly (87.50%).

Graph 10 Division of answers by grades for the 8th question
Source: prepared by the author according to the conducted research
The ninth question checked the respondents’ knowledge of functions and recursion. Of the total number, none of the respondents answered the question correctly.

In the tenth question, knowledge of sorting algorithms was tested. Out of the total number of respondents, only 1 respondent (1.28%), a second grade student, gave the correct answer, while all the others, 77 of them (98.72%), answered the question incorrectly.

The last question checked the knowledge of the data structures, in this case the structure therefore. Out of the total number of respondents, 17 (21.79%) answered correctly, while 61 respondents (78.21%) answered incorrectly. In the first grade, 2 students gave the correct answer (9.09%) and 20 students gave the incorrect answer (90.91%). This result was expected given that they had not yet processed the said material. In the second grade, 10 students (45.45%) answered the question correctly, while 12 (54.55%) gave the wrong answer. Only 2 students (11.11%) of the third grade answered the question correctly, and 16 (88.89%) answered incorrectly. In the fourth grade, 3 students (18.75%) knew the correct answer, while 13 students (81.25%) answered the given question incorrectly.
RESULTS AND DISCUSSION

H0: Developed programming skills of High School students, majoring in Computer Science Technician are not in line with the set outcomes of the Vocational Curriculum for acquiring the qualification of Computer Science Technician for the subject “Algorithms and Programming”.

The third part of the questionnaire “Assessment of programming skills (C++ programming language)” based its questions on how to cover the basic educational categories of programming skills in accordance with the Vocational Curriculum for the acquisition of the qualification of computer technician. Therefore, for the processing of this hypothesis, the results of all students achieved in the third part of the questionnaire were taken into account as input parameters. In order to be able to assess whether the students have acquired sufficient knowledge in the subject “Algorithms and Programming”, the results were processed separately for each class. For the students to pass the questionnaire, it was necessary to achieve 6 or more points out of a total of 11.

Graph 13 Total pass rate by grades
Source: prepared by the author according to the conducted research

Graph 13 shows that in the first grade only 3 students (13.63%) achieved passing, i.e. that 19 students (86.37%) did not pass. In the second grade, 4 students (18.18%) achieved transit, i.e. 18 students (81.82%) did not pass. In the third grade, only 1 student (5.55%) achieved a pass rate, while 17 of them (94.45%) did not achieve a pass rate. In the fourth grade, only 1 student (6.25%) achieved a pass rate, while 15 (93.75%) did not pass it.
Graph 14 shows that the total student pass rate is 11.54% (9 students), or 88.46% (69 students). Accordingly, it can be said that the development of programming skills of high school students, the direction of computer technician is not in line with the set outcomes for the subject “Algorithms and Programming” of the Vocational Curriculum for the qualification of computer technician. The reason for these results certainly lies in the fact that students do not have properly prescribed or binding literature for learning and practicing programming. In addition, the working conditions of students and teachers are not appropriate (lack of necessary equipment, outdated technology, etc.) and sometimes the teaching is reduced to improvisation of teachers, their personal attitude to the importance of certain teaching materials and individual commitment to the curriculum. Such conditions certainly affect the commitment of the students themselves. Improving conditions in vocational schools can certainly lead to greater motivation among students, and thus to better results.

H1: There is no significant difference in programming knowledge and skills between lower (first, second, third grade) students and fourth grade high school students.

Auxiliary hypothesis H1 was tested using the chi-square test. The first input parameter is the sum of correct and incorrect answers for first, second and third grade students, and the second parameter is the sum of correct and incorrect answers of fourth grade students from the third part of the questionnaire “Assessment of programming skills (c ++ programming language”). Students were able to achieve one point for each correct answer, which together, first, second and third grade students could achieve 682 points, while fourth grade students could achieve a total of 176 points. According to statistical tables, the parameter according to which the decision was made was 3.841 (p <.05), which means that if $X^2$ (chi-square) is greater than 3.841, the auxiliary hypothesis is rejected. The obtained test results are shown in Figure 11.

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The chi-square statistic is 0.7585. The p-value is .383794. The result is not significant at $p < .05$.

Figure 11 shows the result of the Hi-square test for H1.

Source: prepared by the author according to the conducted research.
The obtained result $X^2 = 0.7585$ (value less than 3.841) indicated that there is no significant difference in programming knowledge and skills between lower (first, second, third grade) students and fourth grade high school students which means that hypothesis H1 is accepted.

H2: Students with poorer general averages have less developed programming skills.

Spearman’s rho correlation test was used for the auxiliary hypothesis H2, which states that students with poorer general averages have less developed programming skills. The test was performed by using the ranked results for the general average of students from the first part of the questionnaire “General data on the respondent” and the ranked results of the sum of correct answers from the third part of the questionnaire “Assessment of programming skills (C++ programming language)”. For each respondent. The general average of students was taken as a variable that was directly ranked depending on its value (1-5), while the ranked score of correct answers was based on the sum of correct answers, i.e. the maximum number that the respondent could achieve was 11 points and minimum 0 points. In the test, the data of all 78 subjects were taken and the following results were obtained:

![Figure 12](image)

Figure 12 shows the results of Spearman’s rho correlation test for hypothesis H2

Source: prepared by the author according to the conducted research
By checking the significance of the results, the obtained r / rho value (rs = 0.11899, p < 0.05) is less than the reference value (rs = 0.223, p < 0.05) according to the statistical table for critical Spearman’s rho values, which means that no significant correlation was found between students with a poorer general average have less developed programming skills, so there are no arguments to confirm the hypothesis and reject it. The results of this test can be confirmed by the fact that the general average of students does not depend directly on one subject in which students may be more or less interested, given that students majoring in computer science have other general subjects that affect the average. evaluation.

H3: Students who have a negative attitude about the subject “Algorithms and Programming” have less developed programming skills.

Spearman’s rho correlation test was also used for the auxiliary hypothesis H3, which states that students who have a negative attitude towards the subject “Algorithms and Programming” have less developed programming skills. During the test, the results obtained for the general position on the case were ranked by adding up the total score on the attitudes of each respondent. If the respondent answered all the questions in the second part of the questionnaire “I completely agree”, then he awarded the maximum number of points (55 points) and stated that he has an extremely positive attitude about the subject. Analogously, if the respondent answered all the questions “I completely disagree”, then he awarded the case a minimum number of points (11 points) and stated that he has an extremely negative attitude. The second parameter for conducting this test was the sum of correct answers in the third part of the questionnaire “Assessment of programming skills (C ++ programming language)” for each respondent. The respondent could achieve a maximum of 11 points and a minimum of 0 points. These results are also ranked. In the test, the data of all 78 subjects were taken and the following results were obtained:
Figure 13 shows the results of Spearman’s rho correlation test. By checking the significance of the results, the obtained r / rho value (rs = 0.00931, p <0.05) is lower than the reference value (rs = 0.223, p <0.05) according to the statistical table for critical Spearman’s rho values, which means that no significant correlation was found between the subjects’ attitudes and his programming skills thus there are no arguments to confirm the set hypothesis and it is rejected.

CONCLUSIONS

The analysis of the obtained results established that the students of the Secondary School Zvana Črnje Rovinj do not have developed programming skills according to the outcomes of the Vocational Curriculum for acquiring the qualification of computer technician for the subject “Algorithms and Programming”. It was also found that there is no significant correlation between the respondents’ attitudes about the subject and their programming skills, as well as that there is no significant correlation between the average grade, i.e. general success and programming skills. In addition, the research found that there are no significant
differences in the knowledge of lower and final grade high school students, which can be justified by the fact that students have the subject ‘Algorithms and Programming’ in the first two grades on programming.

In conclusion, the research indicated that there are a number of omissions and shortcomings in teaching programming and that it is necessary to introduce new methods and forms of working with students. Develop effective teaching models and conduct continuous research to reach new insights and conclusions.

REFERENCES


THE IMPORTANCE OF KNOWLEDGE GENERATION AND DISSEMINATION IN THE NATIONAL INNOVATIVE SYSTEM OF UKRAINE

Abstract. The article deals with the structure and conditions of national innovation system of Ukraine, trends and conditions of generation of knowledge. In Ukraine, the potential of the subsystem for generating and disseminating knowledge is not used effectively enough, although there are significant prerequisites for its development. The sub-index of education of the Index of Knowledge Economy in Ukraine is quite high compared to the sub-index of information and communication technologies development. Analysis of the sub-indexes of the Global Competitiveness Index shows that Ukraine consistently occupies a fairly high position in terms of human development, but the value of the sub-index of macroeconomic stability in the country is unsatisfactory. Ukraine faced obstacles to the formation of a third-generation national innovation system, some of which it inherited from the Soviet Union.

The national innovation system can become a field for the development of stable economic growth of the country. Therefore, by 2025 it is planned to implement the Concept of development of the national innovation system, which includes a subsystem of knowledge generation and dissemination. The article analyzes the purpose and objectives of the Concept, presents the possible consequences of implementation in three scenarios. Since the implementation of the Concept is only partial, the article considers the factors that hinder it.

The structure of the national innovation system, which consists of two subsystems, is considered. One of them is the subsystem of knowledge generation and dissemination. It is represented in Ukraine by the National Academy of Sciences of Ukraine, universities, and research centers.

The structure of the National Academy of Sciences is considered separately in the article. More attention is paid to the activities of higher education institutions, which today not only involves the dissemination of knowledge, but also the generation of new business ideas and innovative solutions. The article substantiates that at the regional level, local governments need to adopt international experience in solving socio-economic problems.
with the assistance of academic entrepreneurship. It is noted that among the important areas of development of the regions of Ukraine is smart specialization and increasing the digitalization of education and other spheres of public activity.

Consolidation of efforts of local self-government bodies, state authorities, business structures, educational and scientific institutions should be the key to success.

**Keywords:** National innovation system, knowledge generation, knowledge dissemination, academic entrepreneurship, innovation, National Academy of Sciences of Ukraine, smart education, digitalization.

**INTRODUCTION**

Post-industrial society is formed using an innovative type of production, the development of national innovation systems (NIS). The knowledge generation and dissemination subsystem brings together interconnected institutions designed to create, store and transfer knowledge, skills and inventions that define new technologies. Therefore, this subsystem is an integral part of scientific and technological potential and is economically significant for socio-economic growth. In Ukraine, the potential of this subsystem is not used effectively enough, although there are significant prerequisites for its development.

**MATERIALS AND METHODS**

Dialectical method – for substantiate the importance of the subsystem of generation and dissemination of knowledge for the development of the national innovation system; methods of analysis and synthesis – for the study of academic entrepreneurship and the structure of the national innovation system; methods of theoretical generalization and formal logic – for study the obstacles to the effective formation of the national innovation system in Ukraine.

**ANALYSIS OF RECENT RESEARCH AND PUBLICATIONS**

Historically, the concept of the national innovation system is quite new, dating back to the 80s of the twentieth century. Its appearance is associated with the names of B. Lundvall, K. Freeman and R. Nelson (Nelson, 1993), (Lundvall, 1992), (Freeman, 1987). The components of NIS are studied by Ukrainian economists L. Smolyar, O. Dudchenko, T. Lomakina (Smoliar et al., 2017), N. Kraus (Kraus, 2019), I. Yanenkova, V. Sumarskaya, A. Alferova (Yanenkova et al., 2016). Specialists of the Institute for Research of Scientific and Technical Potential and History of Science named after AHEM. Dobrova is working on an analysis of the importance of the development of knowledge-intensive production for the transition to an innovative direction of economic development.
THE PURPOSE OF THE STUDY

To consider the general characteristics of the subsystem of knowledge generation and dissemination as a component of NIS of Ukraine.

RESULTS AND DISCUSSION

The direction, sources and methods of state regulation of innovative development depend on the path of transition to scientific and innovative development:

1. the way of rapid spread of promising innovations: dissemination and clustering of innovations, creation of favorable scientific and technical environment for enterprises, encouragement through financial and credit mechanisms of risky projects, general high taxation and preferential treatment for innovative projects (Sweden, Switzerland, Germany);

2. the path of scientific and technical leadership: large-scale innovative projects, low levels of corporate taxation (USA, France, UK);

3. way of comprehensive innovative development: realization of modern achievements of world STP, absence of tax privileges, creation of conditions of active creative activity of citizens in the scientific and technical sphere, realization of state educational programs (South Korea, Japan) (Kraus, 2019).

Ukraine faced obstacles to the formation of a third-generation national innovation system, some of which it inherited from the Soviet Union:

- technical and technological lag behind the developed countries of the world;
- high material and energy consumption of production;
- relative isolation in scientific, technical and technological exchange;
- high level of production costs;
- low level of intensification of production, labor productivity;
- decline in production and economic crisis;
- weak coordination of NIS participants in the development, financial support and implementation of innovation;
- low level of protection of intellectual property rights;
- insufficient budget funding for innovation and inefficient definition of funding areas;
- negative trends in the increase and renewal of fixed capital;
- negative trends in the development of scientific and technical potential.

According to the Knowledge Economy Index, which determines the effectiveness of the external environment for the dissemination and use of knowledge to promote economic development, Ukraine occupied 52nd, 55th, 51st, 55th positions from 140 countries in 1995, 2000, 2009, 2012, respectively, the index itself was equal to 5.97, 5.63, 6.00 and 5.73. In 2019, the education sub-index was 7.97 (46th position among 189 countries). According to the sub-index of innovations, Ukraine ranked 47th among 129 countries. In terms of the development of information and communication technologies, Ukraine ranked 79th out of 175 countries.
According to the methodology of the World Economic Forum, the analysis of the national economy is conducted according to GCI – Global Competitiveness Index (Table 1).

Table 1. Global Competitiveness Index of Ukraine for 2007–2018

<table>
<thead>
<tr>
<th>Years</th>
<th>Position</th>
<th>The value of the index</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-2008</td>
<td>73</td>
<td>–</td>
</tr>
<tr>
<td>2008-2009</td>
<td>72</td>
<td>4.09</td>
</tr>
<tr>
<td>2009-2010</td>
<td>82</td>
<td>3.95</td>
</tr>
<tr>
<td>2010-2011</td>
<td>89</td>
<td>3.9</td>
</tr>
<tr>
<td>2011-2012</td>
<td>82</td>
<td>4.0</td>
</tr>
<tr>
<td>2012-2013</td>
<td>73</td>
<td>4.14</td>
</tr>
<tr>
<td>2013-2014</td>
<td>84</td>
<td>4.05</td>
</tr>
<tr>
<td>2014-2015</td>
<td>76</td>
<td>4.14</td>
</tr>
<tr>
<td>2015-2016</td>
<td>76</td>
<td>4.03</td>
</tr>
<tr>
<td>2016-2017</td>
<td>79</td>
<td>4.0</td>
</tr>
<tr>
<td>2017-2018</td>
<td>85</td>
<td>4.11</td>
</tr>
</tbody>
</table>

(Global Competitiveness Index, 2021)

Analysis of the sub-indices of the Global Competitiveness Index shows that Ukraine consistently occupies a fairly high position in terms of human development, but the value of the sub-index of macroeconomic stability in the country is unsatisfactory (The World Bank, 2021). We have a significant loss of Ukraine’s position – by 12 points. This indicates inefficient use of its own innovation potential, the predominance of exports of raw materials with a small share of value added, and threats to economic security. Thus, the NIS of our country is at the initial stage of formation, as participants in the innovation process interact rather weakly, the use of information and communication technologies is insufficient, the institutional conditions for innovation are unfavorable. This state of affairs prevents significant scientific potential from being fully realized and qualitatively generating and disseminating knowledge.

The national innovation system can become a field for the development of stable economic growth of the country. This belief is confirmed by the fact that effective NIS affects all types of productive forces: increasing the competitiveness of labor resources by increasing the intellectualization of labor, careful treatment of land resources through the introduction of energy and resource-saving technologies, modernization of capital resources through restructuring of production on a technologically new basis, for the new requirements of the socio-economic environment, transformation of entrepreneurship for the new requirements of the socio-economic environment. In the process of such transformation, a favorable field is formed for the development of science-intensive industry of the country, which, of course, in the XXI century is a determining factor in macroeconomic dynamic.

By 2025, it is planned to implement the Concept of development of the national innovation system, which includes a subsystem for knowledge generation and dissemination, approved by the order of the Cabinet of Ministers of Ukraine of June 17, 2009 №680-r (Cabinet of Ministers, 2009).

The Concept assumes that the combination of state regulation, education, knowledge generation, innovation infrastructure and production form the basis of the national
innovation system. The purpose of the implementation of this Concept is to determine the basic principles of formation and implementation of a balanced state policy to ensure the development of the national innovation system aimed at increasing the competitiveness of the national economy.

Among the main tasks are the following:

- Ensuring the innovative orientation of the education system.
- Improving the effectiveness of the research and development sector.
- Ensuring expanded reproduction of knowledge based on the integration of universities, academic and industry research institutions.
- Ensuring the development of a system of financial and credit support for the implementation of competitive scientific, technical and innovative programs and projects.
- Ensuring the development of production and technological innovation infrastructure.
- Ensuring the development of effective information-analytical and expert-consulting infrastructure of innovation activity.
- Creating conditions for technology transfer and improving the protection of intellectual property rights.
- Introduction of an effective mechanism of public-private partnership aimed at achieving a high level of competitiveness of domestic products on the world market in certain sectors of science-intensive production, mainly based on the introduction of domestic technologies.
- Providing support and protection of the national producer.
- Formation of a positive attitude to innovation in society.
- Development of human resources in the field of innovation.

The expected results depend on the good faith implementation of the Concept and are divided into three scenarios (according to the conclusions of scientific institutions of the NAS of Ukraine) (Table 2):
Table 2. Options for implementing the Concept of development of the national innovation system and possible consequences

<table>
<thead>
<tr>
<th>Options</th>
<th>Consequences until 2015</th>
<th>The value of forecast indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full realization of the goal</td>
<td>inclusion of Ukraine in the global scientific and technological development, which will contribute to the large-scale involvement of financial and human resources in the technological development of the economy, increase foreign trade in high-tech products and technologies</td>
<td>• the share of innovative products in the volume of industrial production must be at least 50%; • the level of innovative activity of enterprises in industry will reach 60%; • the level of the high-tech manufacturing sector in the structure of the manufacturing industry will exceed 30%; • the volume of exports of high-tech products and technologies will increase 5-7 times</td>
</tr>
<tr>
<td>Partial realization of the goal</td>
<td>meeting only the needs of the domestic market in manufacturing products</td>
<td>• the share of high-tech sector products will grow to 25%; • increasing the level of knowledge intensity of manufacturing products to 2-2.5%; • reduction of the share of low-tech sector products in the structure of industrial production to 50%</td>
</tr>
<tr>
<td>Uncontrolled development</td>
<td>continuation of deformation of the structure of production, decline of scientific and technical potential and scientific and technical base of branch and factory sectors of science, gradual decrease of quality of education. The high level of resource and energy consumption of the final product will cause the loss of technological niches in world markets</td>
<td>• further reduction to 2-3% of the share of innovative products in industrial production; • the level of science-intensive products will be less than 1%; • the share of the knowledge-intensive products sector in the structure of the manufacturing industry will not exceed 10%; • in the structure of the total volume of investments in fixed capital, the share of innovative investments will decrease to 10%</td>
</tr>
</tbody>
</table>

Unfortunately, as of 2021, we can observe only a partial implementation of the objectives of the Concept for the development of the national innovation system. At present, the effectiveness of the formation of the national innovation system in Ukraine is hampered by the following main factors:

- separation of science from economic practice;
- lack of a long-term development program at the state and regional levels;
- lack of mechanisms for evaluating the effectiveness of state and regional scientific and technical programs;
- imperfection of the legal framework in terms of stimulating innovation, material and moral stimulation of intelligence, especially higher education institutions;
• spontaneous initiation of innovations; lack of appropriate innovation infrastructure and mechanisms for commercialization of scientific and technical developments;
• inconsistency, inconsistency and to some extent chaotic implementation of public policy, etc. (Yanenkova et al., 2016)

Achieving the main goals of NIS requires the definition of its structural elements. There are several approaches to determining the structure of the national innovation system. Consider the structure proposed in the Concept of development of the national innovation system.

The analysis of the innovation system is based primarily on the analysis of scientific and technological potential, which combines the capabilities and resources of the national economy to ensure scientific and technological development. Ukraine’s scientific and technical potential is high and is provided by world-famous scientific schools, unique achievements in many industrial and social spheres (new materials, radio electronics, biotechnology, low temperature physics, electric welding, nuclear physics, computer science).

The national innovation system is formed during the coordinated interaction of the state, business, science and education. Such cooperation of entities of the national economy provides the most benefits from innovation.

The external structure of NIS consists of two subsystems:
1. innovation infrastructure subsystem (required totality of public and private institutions and organizations that provide development and support of all stages of the innovation cycle). Thanks to the innovative infrastructure, coordination is carried out between the state, enterprises, research results and the market. The level of development of innovation infrastructure affects the implementation and effectiveness of innovative projects, the speed of innovative transformations of the economy;
2. subsystem of knowledge generation and dissemination (a set of institutions performing basic research and development, as well as applied research). It is the foundation of the national innovation system and is closely linked to the innovation infrastructure. It includes the National Academy of Sciences of Ukraine, universities, research centers, which perform the functions: basic and applied research, development, training of scientific personnel.

The subsystem of knowledge generation and dissemination in Ukraine is mostly represented by the National Academy of Sciences of Ukraine, universities, research centers. Their main functions are to conduct basic and applied research, development, training of scientific personnel.

In total, the National Academy of Sciences of Ukraine has 38 organizations and enterprises of research and production base and 160 scientific institutions, 43066 people work here (as of 01.01.2020): 14828 researchers (10 years ago – 19782) (2386 doctors and 6732 candidates of sciences), there are 170 full members (academicians), 364 corresponding members and 83 foreign members. 5 regional research centers of double subordination with the Ministry of Education and Science of Ukraine: Donetsk; Western; Southern; Northeastern; Prydniprovs'ky.

Sections and branches of the National Academy of Sciences of Ukraine:
1. Section of Physical, Technical and Mathematical Sciences: Department of Mathematics; computer science department; Department of Mechanics; Department of Physics and
Astronomy; Department of Earth Sciences; Department of Physical and Technical Problems of Materials Science; Department of Physical and Technical Problems of Energy; Department of Nuclear Physics and Energy.

2. Section of Chemical and Biological Sciences: Department of Chemistry; Department of Biochemistry, Physiology and Molecular Biology; Department of General Biology.

3. Section of Social Sciences and Humanities: Department of Economics; Department of History, Philosophy and Law; Department of Literature, Language and Art History (National Academy of Sciences of Ukraine, 2021) (Smoliar et al., 2017).

The activities of higher education institutions today not only involve the dissemination of knowledge, but also the generation of new business ideas and innovative solutions. In September 2020, the Ministry of Digital Transformation of Ukraine together with the Ministry of Education and Science of Ukraine, the Ukrainian Startup Foundation and YEP with the support of the USAID „Competitive Economy of Ukraine” Program launched the „Entrepreneurship University” initiative. This initiative aims to create business universities in Ukraine with a strong business culture and startup infrastructure (Ministry of Digital Transformation of Ukraine, 2020).

At the regional level, local governments need to adopt international experience in solving socio-economic problems with the assistance of academic entrepreneurship:

• Academic entrepreneurship promotes the influx of staff. In the regions, young professionals with high potential are involved not only in startups, but also in all areas of real production.
• Bilateral transfer between science and the small and medium business sector is provided by startups based on the use of the results of scientific and technical developments.
• The development of high-tech clusters and innovation environment is facilitated by the dynamics of knowledge and specialists between business, higher education and public research institutes.
• Academic entrepreneurship helps to stop the migration of personnel from the regions.
• Therefore, in the field of higher education in Ukraine it is necessary to form an innovative infrastructure, in particular, to create small enterprises, business incubators, etc. at higher education institutions. Academic entrepreneurship will eventually allow:
  • develop and implement methods, technologies, techniques of innovative development at all levels;
  • generate and use new knowledge;
  • wide dissemination (transfer) of new knowledge and advanced technologies;
  • ensure the growth of the country’s real GDP
  • intensify the innovative activities of higher education institutions;
  • help increase the competitiveness of the country’s economy;
  • disseminate knowledge in the field of entrepreneurship;
  • increase the financial independence of higher education institutions (Zhukov, 2017).

Among the important areas of development of the regions of Ukraine is smart specialization. However, there are a number of obstacles: low financial literacy, innovation activity, awareness of smart specialization, low level of entrepreneurship among young people, ignorance of the population about the priority areas of regional development, the separation of theoretical
knowledge from their practical application, difficulties in commercializing business ideas. low level of smart education.

The subsystem of generation and dissemination of knowledge of the national innovation system can ensure the implementation of this task. It is important now to develop regional programs for the development of smart education for a period of 5 years. Their content should include the acquisition of knowledge about: rational consumption, financial literacy, business planning, smart technologies, priority areas of development of the regions of Ukraine. Consolidation of efforts of local self-government bodies, state authorities, business structures, educational and scientific institutions should be the key to success.

Innovative activity of developed countries is a priority for state support. But, as practice shows, the legislation of Ukraine on innovation does not yet provide full-scale regulation of social relations that arise in the process of development, creation and distribution of innovative products, its introduction as innovation and subsequent commercialization. Our legislation in the field of innovation is not systemic in nature, it is dominated by numerous separate bylaws. The organization of innovation activity in Ukraine today is regulated by more than 400 normative-legal acts of various branch affiliation. The legislation in force in Ukraine has not yet become a proper legal basis for the state’s transition to an innovative model of economic development. In Ukraine, the systematization of the existing innovation legislation, its replenishment and further development should be carried out.

The order of the Cabinet of Ministers of Ukraine of September 10, 2012 №691-р approved the „Concept of reforming public policy in the field of innovation” (Cabinet of Ministers of Ukraine, 2012). Achieving the goals is ensured in the areas of: defining the tasks and functions of executive authorities and local governments in the innovation sphere, reforming the system of state procurement for research and development, creating favorable conditions for innovation, innovation infrastructure, market of innovations and technologies, introduction of results of scientific researches, inventions and technologies, maintenance of realization of the rights to objects of intellectual property, formation of innovative culture.

At the same time, the ways of realization of the specified directions are widely described and as a result it is planned to achieve by means of: to increase the efficiency of realization of the state innovation policy; reforming the system of state regulation in the innovation sphere; increasing the level of competitiveness of the national economy; creation of the market of innovations and technologies; ensuring the realization of scientific potential.

UNRESOLVED ASPECTS OF THE OVERALL PROBLEM

Support and development of research organizations and institutions of higher education as generators of knowledge; formation of regional partnership; raising the level of digital education of the population for public authorities should become a priority in public administration. Therefore, a promising area of further research is the analysis of the effectiveness of innovative development in higher education, as well as the study of opportunities, ways and principles of university (academic) entrepreneurship in Ukraine as a prerequisite for regional development.
CONCLUSIONS

The study showed that under today’s conditions to increase the level of knowledge intensity of the national economy of Ukraine is possible primarily by increasing the amount of R&D funding from the state budget and increasing funding for innovation. This will create favorable conditions for the maximum realization of the human potential of Ukrainian science.

The subsystem of knowledge generation and dissemination is an integral part of the national innovation system. It has a significant potential in Ukraine, for the full use of which proper conditions have not been created. In general, the staff and all the scientific and technical potential of Ukraine is able to determine the quality generation and dissemination of knowledge. However, inefficient interaction of this subsystem with other components of the national innovation system, funding of academic science mainly in the amount that provides only the replenishment of the payroll, and a number of other problems are the reasons for inefficient use of all accumulated and preserved scientific and technical potential.

The level of education of the population, in particular, digital literacy, which increases the role of the educational component of NIS in Ukraine, also has a positive impact on innovative development. The development of smart education in the regions of Ukraine and the increase in the level of digitalization in all spheres of public life is especially timely.

Therefore, the formation of the national innovation system of Ukraine should be based on a cluster approach, which provides for close continuous interaction of all participants in innovation. It is necessary to create conditions for effective interaction of state power at the national and regional levels, scientific, educational spheres and the real sector of the economy.

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UNIVERSITY EDUCATION AS A MODERN EUROPEAN TRENDS OF INITIAL POLICE TRAINING

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Abstract. The article is devoted to the issues of police education reform. Modern countries have different models of initial police training, based on their historical traditions and modern conditions of functioning of states. The author explored the current situation of police training in England, focusing on the Initial Police Learning and Development Program (IPLDP), because this program was the main among all other police training programs, but now this program is outdated. The author revealed that the current trend in the world is to increase the role of higher education institutions in the education system for training police officers. The example of England and Wales shows that the system of initial training, which is based on short-term training at the level of the police academy with subsequent service in practical units, does not meet the needs of the time and is outdated.

The global trend is to reorient police training from specific practical knowledge, skills and abilities to higher education and the formation of a person with critical thinking and analytical skills, which meets the current challenges facing the police in the fight against crime. The author argues that such training can be carried out only with the involvement of higher education institutions. As examples, some empirical studies confirm this fact. It is pointed out that it is very important for a modern police officer to perform not only a profession, but also an education in this field in order to perform his / her duties.

The author analyzes the opinions of foreign researchers on the advantages of university education over training in police academies. The author touches on the issue of reforming police education in Ukraine in terms of introducing a three-level model of police training and proposes to conduct additional research on both modern foreign experience and the advantages, disadvantages and prospects of the proposed model.

Keywords: police, training, education, foreign experience, higher education institutions, police training reform.
PROBLEM STATEMENT IN GENERAL AND ITS CONNECTION WITH IMPORTANT SCIENTIFIC AND PRACTICAL TASKS

The main slogan of the reform of the Ukrainian police in 2015 was the creation of a new police force, which would be focused primarily on the protection of human rights and freedoms. The reorientation of the police from a law enforcement, punitive task, the key task of which is to fight against crime, to a service body that provides services to the population to maintain public order and security, requires a revision of the very concept of policing. The new ideology of policing is partnership with the population, the unconditional prerequisite of which is, first of all, the people’s trust in the police. Gaining trust, as it turned out in practice, is not so simple. A study conducted in 2020 by the Kharkiv Institute for Social Research showed that only 24.5% of respondents called policing effective in 2020 (Kobzin, Chernousov & Shherban, 2020). The level of public confidence is influenced by many factors, but this level can be slightly raised by the professional actions of appropriately trained police officers. What training system best meets this need? The law provides for different ways to train people who want to become police officers. The main form today is education in higher educational institutions of the Ministry of Internal Affairs with specific conditions of study, whose graduates, having received education for three (in some cases four) years, receive a bachelor’s degree. However, currently, in accordance with the Concept for the Introduction of a Three-Level Model of Police Training approved in 2018, it is planned that the initial professional training will last for six months and, accordingly, does not provide for higher education. On this occasion, a discussion broke out in the scientific community about the best training model for Ukrainian police.

ANALYSIS OF RECENT PUBLICATIONS ON THE ISSUE AND HIGHLIGHTING PREVIOUSLY UNRESOLVED PARTS OF THE OVERALL PROBLEM

Police training has been studied in the works of many scientists. Researchers have studied various administrative, legal and psychological aspects of training future police officers, including the role of higher education institutions in the Ministry of Internal Affairs in such training. In particular, V. Abroskin (Abroskin, 2020), A. Andreiev (Andreiev, 2017), V. Beschastnyi (Beschastnyi, 2010), S. Mandryk (Mandryk, 2010), A. Movchan (Movchan, 2020), N. Kolomoiets (Kolomoiets, 2011), I. Savelieva (Savelieva, 2019), D. Shvets (Shvets, 2019) paid attention to these issues. In their publications, the researchers proved their views on police education, the location of universities with specific training conditions in this process, as well as other debatable issues regarding the training of future law enforcement officers. However, some aspects have been overlooked.

The purpose of the article is to analyze successful models of initial police training in the world, in particular in England and Wales, and the prospects for the use of positive practices in Ukrainian legislation.
PRESENTATION OF THE MAIN RESULTS AND THEIR SUBSTANTIATION

First of all, it should be noted that police training is carried out in two ways: initial training and postgraduate education. Initial training involves training civilians who have expressed a desire to work in the police. Postgraduate education is provided to existing police officers who have decided to improve their level of education. In this article we will talk about the initial training, i.e. the initial training of civilians.

Today in the countries of the world there is no single universal model of police training. This is understandable, because even modern globalization requires consideration of national characteristics. Educational institutions that provide basic knowledge of policing are very different in nature and learning conditions. When writing this article, the idea was to make at least a general classification and identify the main models of initial training in the world, but, having studied a significant amount of literature, the author failed to find universal criteria for a clear separation of such models. Each country in the world has its own specific model of learning, even if they belong to the same region.

The most common option is to undergo initial training in police academies / schools / colleges. The duration of such training varies, but is usually six months to a year, but can be longer. The duration of initial training ranges from 6 months (Houston Police Academy in the USA, CCP Academy Training Center in Canada and Police High School in Poland) to 30 months (German Police High School in Germany) and approximately 18 months at the Estonian Academy of Security Sciences and the Police Academies in Croatia (Dekanoidze, Khelashvili, 2018). Such academies have different status in different countries. In some, the police academy is not only the main in a single national system of police training at various levels, but also the main center of research and development in the field of law enforcement ((Shvets, 2019).

But gradually the countries of the world are moving away from this model. In recent years, foreign scholars have conducted numerous studies on the best approach to police training. Modern crime proves that obtaining knowledge at the level of police academies, where recruits receive a set of minimum necessary knowledge, and this is not enough. Therefore, most countries in the world are reconsidering their views on the police training system and are gradually creating the conditions for police officers to receive higher education. Indeed, the modern police force in any country in the world needs to effectively combat crime. Modern crime has a transnational character, numerous corrupt connections, high digitalization, so to counteract these phenomena, the police need to have a sharp mind and diverse development, which can only be achieved by mastering a large number of disciplines.

Not to mention the opponents of higher education as an allegedly unnecessary basis for modern man, still obtaining such an education significantly distinguishes a person from other people who do not have such education. And here it is not only the level of knowledge, which, of course, is much higher than the holder of a bachelor’s degree, but also in worldview. Distinguishing between training and education, Professor M. Haberfeld emphasizes that the purpose of training is to teach a specific method of performing a task or responding to a proposed situation. The discipline is usually narrow in content. Education involves the study of general concepts, ideas, policies, practices and theories (Haberfeld, 2002). That is, in the training that is offered at the level of police academies, they teach,
in fact, the algorithm of response to various events. But this is not a profession where you can learn certain "formulas" of behavior and that will be enough. Policing involves many situations that are simply unpredictable. And memorized algorithms, of course, will help to solve some problems, but not all. Higher education creates a versatile person who not only has certain knowledge, but first of all is able to see the problem from different angles. The more different knowledge a person has, the more factors he takes into account when making a decision. Such a person is able to anticipate possible difficulties and find a way out of a difficult situation. Also, given that this profession is social, i.e. is built in the plane of man-man, police officers need some knowledge in psychology, because the nature of their activities involves responding to many unusual situations in which they must navigate both within the law and taking into account human psychology. The success of the tasks assigned to them depends on the correct interaction with individuals. For example, Karpechenkova G.V. emphasizes, speaking about the inspector of juvenile prevention, that the acquisition of the necessary skills goes far beyond the legal sciences, involves the use of methods of child psychologist, educator, and sometimes even a facilitator, who initiates and organizes the provision of comprehensive services to children (Karpechenkova, 2019).

One example of how higher education is better than training in police academies is the following. An interesting study was conducted in the United States on the connection between the education received by police officers and the level of force they use in arrest. The study involved 425 police officers from 146 police stations in six states (New York, Arizona, California, Connecticut, New Jersey, and Washington). The researchers concluded that the level of education is directly proportional to the level of use of more nonviolent methods in arrest. Moreover, the higher the education, the less violent measures of influence they used (Vespucci, 2019).

The world's leading countries have long understood the benefits of higher education for practical activities. After analyzing the results of reforming the police education system in Europe and Asia, I. V. Klimenko concluded that, despite different approaches to police training, most European and American researchers have convincingly questioned the need for at least four years of police training, arguing that, compared to their less educated colleagues, police officers with higher education are less authoritarian and dogmatic, more cautious, have better communication skills and are characterized by a more positive attitude to the problems of cooperation with the community (Klimenko, 2016).

In the last few years in England, there has been a reform in the field of police education with a gradual transition to training, which involves a symbiosis of knowledge acquired in universities and practical training in the service of police units. There are several police training programs in England and Wales, depending on their level of education. The Initial Police Learning and Development Program (IPLDP) has been operating since 2006. It is also called traditional, because until 2020 it was the main form of initial training of police officers. The training is based on a two-year program that combines classroom training based on a national policing program with hands-on training (IPLDP, 2020).

This program provides about 35 weeks of study (but this figure is not fixed, as it depends on the curriculum developed in each educational institution separately) in a specific educational institution, followed by a two-year probationary period. This probationary period includes
actual service in the police under the „supervision” of an experienced officer. Such a service consistently consists of community placement, supervised patrolling, and independent patrolling. As a rule, recruits are assigned to the police department, which is located next to the university. Since 2010, after the successful completion of this program, recruits have been awarded the „Diploma in Policing” (which refers to the 3rd educational level in England (for understanding, the bachelor is equal to the 6th educational level in England, Wales and Northern Ireland). Only then they become skilled police officers. (Shohel, Uddin, Parker-McLeod & Silverstone, 2020). But today this training system is considered obsolete, almost non-existent, and only suitable for use in some police departments. For example, the last graduation of police students under this program in Derbyshire took place on October 23, 2020 («It’s over», 2020).

IPLD training no longer meets the needs of the police in practice. A newly elected constable must acquire and apply a high level of professional knowledge in a range of complex situations in increasingly complex and diverse communities. But in practice, the IPLDP does not cover all the knowledge and skills needed by new officers. Other public sector organizations, with which the police often work, are moving to a professional basis, with curricula and admission requirements that reflect the level at which their graduates must work.

The IPLDP training program has not kept pace with the demands of frontline policing. A newly-recruited constable must acquire and apply high levels of professional knowledge to a range of challenging situations, across increasingly complex and diverse communities. The service has expressed concern that IPLDP does not cover all the knowledge and skills that new officers need. Other public sector organizations, that policing often works alongside, are moving to a professional footing, with learning programs and entry requirements that reflect the level at which their personnel are required to operate («Policing Education Qualifications» 2020).

So now European countries are moving to the university level of training police officers and getting them not just a profession, but education. This implies close cooperation in higher education institutions. University training programs are the best mechanism for providing systematic professional knowledge, as well as testing applicants in order to verify the acquired knowledge that corresponds to their profession (Clark, Livingstone, Smaller, editors, 2012).

University training programs have been the most pertinent vehicles for providing codified professional knowledge and of testing potential entrants to verify if they have obtained a basic grasp of the body of knowledge of the respective professional discipline.

New approaches to training include broader and deeper training and education for police officers. The new programs are designed to enhance a police officer’s ability to adapt to change throughout his or her service. This was achieved by including in such a program the development of problem-solving skills, critical thinking and analysis, reflection, independent decision-making and the implementation of effective practices. It is clear that this program goes far beyond the skills that can be acquired while studying at the Police Academy and corresponds to educational level 6 (i.e. bachelor). Those who have reached this level are well prepared to apply the acquired skills, apply problem-solving strategies and personal judgment in different contexts («Policing Education Qualifications» 2020). It was important
to ensure that the new programs were designed to enhance a police officer’s ability to adapt to change throughout their service. We did this by including the development of skills in problem solving, critical thinking and analysis, reflection, independent decision making and deploying effective evidence-based practice. The resulting curriculum was set at Level 6 of learning. Individuals educated to this level are well equipped to apply transferable skills, problem-solving strategies and personal judgment in various contexts.

It should be noted that while some countries are only moving towards this, in Ukraine police officers have long received legal education and a bachelor’s or master’s degree. Today, the initial training of police officers in Ukraine is carried out on the basis of higher educational institutions of the Ministry of Internal Affairs with specific training conditions and institutions (institutions) of the National Police operating to ensure the organization of appropriate special training of police officers hired for the first time, as well as advanced training and retraining of junior police, conducting certain types of police training. And it is very unfortunate that there are trends in the opposite direction – the transition from university education to education at the level of police academies. While the world’s leading nations are moving forward and seeking to raise the level of police education, some forces in Ukraine see a minimum level of knowledge as sufficient.

One of the arguments of the supporters of this opinion is the insufficient, in their opinion, practical component of training. Sometimes there are situations when, after being hired in a practical unit, a newly appointed police officer may get the impression that the theoretical knowledge obtained in a higher education institution does not correspond to how it is done in practice. But for some reason the fact that the information received by cadets at training is based on the current legislation is not considered. And the fact that sometimes “in practice” is done differently, it may not indicate that graduates have „wrong” knowledge, but that the current employees for various reasons (including due to lack of relevant knowledge), may act in violation of legal norms. Similar situations are typical for other countries, especially those that undermine the value of higher education. As we noted above, the process of transition to higher education in England is in its infancy. And, of course, like everything new, has some resistance. This is clearly illustrated in a scientific study conducted in England and Wales in 2017. Researchers cited numerous facts, constructed and interviewed with graduates, about the attitude of colleagues and managers. Scientists have concluded that the most common reaction was either indifference and, in some cases, outright hostility. And just in the framework of this study, the following dialogue of the officer, who received a higher education, with his colleagues was given: „- Listen, I’m not kidding, but I conducted a study on this. – Not interesting. – But you are doing it wrong. – We are not interested in it. We do it this way” (Hallenberg, Cockcroft, 2017). It happened in England. But the same dialogue, unfortunately, can be heard in Ukraine, when practical workers say the same to a graduate of a higher education institution. This is an extremely negative situation, which in turn leads to legal nihilism and professional distortion.
CONCLUSIONS AND PROSPECTS FOR FURTHER RESEARCH

After analyzing foreign publications over the past few years, we came to the conclusion that there is no single unified system of police training, and each country focuses on its national traditions, needs and challenges. A significant number of countries in the world go from training in police academies to obtaining higher education by police officers. One of the successful practices is the reform of police training in England and Wales. In the last few years, there has been a transition from an outdated training system, which provides for short-term training and a two-year probationary period as a police officer, to new forms of training. Today, for some police services, such training is still appropriate, but schools are already ceasing to teach according to this model. New approaches to police training involve working closely with higher education institutions that provide educational services. According to the English reformers, and with which we fully agree, the future of the police lies in the acquisition of university knowledge.

We also agree with scientists that the experience of other countries is very important and should be taken into account. However, excessive attention to the implementation of the experience of foreign systems of training and education of police officers in Ukraine is not justified, as usually our national characteristics, educational traditions and positive results in this area are ignored. Therefore, it is important to combine the standards established in the legal systems of other countries with the proven practice of domestic developments in the educational process (Pavlenko, Sevruk, Kobko, 2017). Therefore, we consider it is necessary to carry out further research in the field of research of positive practices of foreign countries in police education. In this regard, it should be noted that it is important to refer to modern experience, as reforms in this area have been taking place over the past few years, so it is appropriate to use the most up-to-date information describing such reforms, in our opinion, no later than from 2016, but better from 2019.

With regard to the reform of departmental education in Ukraine, we consider it is necessary to study this issue further in terms of advantages and disadvantages. In our opinion, in this regard it is necessary to make an informed decision on the best model of education, which corresponds not only to European trends, but also to Ukrainian traditions and realities. To this end, it is necessary to conduct thorough research on the prospects of the chosen model of learning and prepare an appropriate framework. Unbalanced decisions can lead to the destruction of police education, which in the short term may lead to a decrease in the level of professionalism of police officers and other negative phenomena both in the system of the Ministry of Internal Affairs of Ukraine and in society as a whole.

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YOUNG WRITER’S CORNER
Abstract. The article analyses the potential influence of language education on legal communication. This work is divided into subsections, each devoted to a specific aspect of the matter. First of all, the paper discusses various features of language used in legal discourse. Also, it provides the reader with examples of mistakes that could be avoided by changing the vocabulary and sentence structures. Furthermore, the work discusses the obstacles that the migrants encounter due to the lack of suitable terminology used in legislation. The paper aims to offer solutions which linguists may introduce to improve the transparency of legal communication.

Keywords: language education, legal communication, language transparency, terminology errors, legal texts.

INTRODUCTION

The today’s society is provided with extraordinary access to information. Based on the above, it could be expected that both individuals and the whole communities would be well-educated, at least regarding matters which significantly affect their everyday life. Unfortunately, nothing could be further from the truth. The increased availability of information often results in unwillingness or simply not feeling the need to gain new knowledge. Of course, not every human being has to be an expert in a variety of fields; nonetheless, as far as basic legal aspects are concerned, it is highly recommended to be aware of the rights and obligations to which every citizen is entitled. To quote the old adages: *Ignorantia legis neminem excusat* and *Ignorantia iuris nocet* (Eng. *ignorance of law excuses no one* and *not knowing the law is harmful*, respectively).

However, it should be also taken into account that the society’s unwillingness is not the most substantial issue in this context. Particular attention should be paid to the language used by jurists, as their vocabulary is usually noticeably formal. Furthermore, they often employ convoluted sentence structures. For this reason, most of the phrases might not be fully understandable to an average person without any legal background. When certain
matters are beyond the comprehension of a human being, loss of interest is a normal reaction, yet in terms of legislation it can have severe consequences for the individual.

In order to encourage the public to acquaint themselves with basic legal aspects, the problem connected with their lack of interest should be addressed at the source. Therefore, it is imperative that lawyers be taught about the significance of conveying clear messages in their statements.

MATERIALS AND METHODS

The method we have applied in this work is the content analysis method of diverse Polish and foreign authors' articles, of the reference sources and of the examples used to illustrate the differences between individual words and phrases.

The primary objective was to reiterate the necessity and the usefulness of educating lawyers in the matter of using lucid language. We also wanted to demonstrate the main possible risks generated by using immensely sophisticated vocabulary that might be misleading to people without legal training.

RESULTS AND DISCUSSION

The specific character of legal language and difficulties related to it

In order to better comprehend the key analysis of this paper, one should focus on the language per se beforehand. As a law theorist, Bronisław Wróblewski claims there is a distinction between the legal language and the lawyer’s language (1948). The former term refers to the language that is used for creating legislation, e.g. regulations or statutes, whereas the latter concept encompasses communication among lawyers – applying and interpreting law. Interestingly enough, such a distinction is merely observable within the Polish culture (Bukowska-Pelc, 2017).

In legal language, similarly to any other professional language, precision constitutes a feature of utmost importance. Therefore, legal texts are constructed based on formal logic. In other words, they need to be as provable as mathematical theorems. This condition, however, is not always obeyed, which generates misunderstandings due to increased ambiguity. It may result from the fact that among all the professional languages, legal language is considered to be the one with the greatest polysemy (Pieńkos, 1999). Another feature that does not help while interpreting legal texts is the high level of abstractness of legal norms (Bukowska-Pelc, 2017).

Urszula Bukowska-Pelc in her article “Precyzja języka prawnego jako przykład precyzji języka fachowego” enumerates difficulties that arise in legal texts, which highly disturb the perception. She mentions that within one legal order a given term may appear with various meanings, depending on an area of law (Bukowska-Pelc, 2017). This, in turn, severely affects the interpretation. Moreover, one can often observe borrowings and technical terms, which should not be a part of a good text of this kind (Wronowska & Zieliński, 2012). As Urszula Bukowska-Pelc notices, much of ambiguity may stem from an “incorrect way of
constructing legal definitions, i.e. vicious circle of definition, defining the unknown by the unknown, or definition irrelevance” (2017). The above-mentioned errors severely disrupt the transparency of the language.

2. The role of linguists in language education

These difficulties, however, could be significantly lessened through the contribution of linguistics to legal communication. Joanna Osiejewicz names a couple of improvements which this dynamically developing field may introduce (2021).

To begin with, linguists have peculiar language skills that enable them to construct explicit statements effortlessly. Due to this fact, they can help lawyers to create transparent messages. Jurists often use complicated constructions unknowingly, which may appear unintelligible for the majority of society. This, in turn, causes difficulties in the communication between lawyers and people lacking legal education.

Furthermore, attention must be given to shaping communication awareness among the public; they should know that it is their right to demand articulate statements from lawyers. It may be challenging to convince a person with legal education that they speak a language that is ambiguous to non-professionals. Also, the lawyers are often convinced that their statements cannot be constructed in any other way since that is what they were taught. In other words, they do not realize that it is possible to communicate in a less convoluted manner. However, if linguists make efforts to create this kind of awareness among society, it may translate into significant improvement in the communication between these groups.

Another relevant aspect in the role of linguists is conducting research that would show the significance of legal communication. Unfortunately, this field still remains unexamined. Moreover, both scientific studies and empirical research, which focuses on effective legal communication, may play an essential role. These empirical studies would help with gathering information in the field of judicial proceedings, as well as of witnesses’ behaviour in a courtroom, i.e. in-depth analysis of specific conventions.

Also, linguists may work on theoretical research and terminology applied in the legal profession. It is known that terms used by lawyers exhibit universality. On the one hand, this is why legislation does not require constant changes, as the terms remain valid. On the other hand, this could e.g. confuse judges who may find certain terms misleading. Therefore, the involvement of linguists in legal communication is of utmost importance, as they could help in framing terminological knowledge.

Additionally, legal education, which is primarily based on substantive issues, should be extended by linguistic research. It would undoubtedly make the work of lawyers more efficient. The inherent component of legal education is the matter of communication, thus teaching within this sphere should be assigned to linguists.

3. Remarks on education with regard to intergenerational communication

In order to communicate effectively with clients, lawyers should be taught by linguists to consider differences between age groups and adjust their language to various generations: Generation of the economic crisis of the 1930s, Baby Boomers, Generation X, Generation Y and Generation Z. If the distinguishing characteristics of different generations are disregarded, lawyers and their clients may misunderstand each other. There is a chance that the client’s
competences are inadequate and therefore they might not be able to understand the lawyer (Osiejewicz, 2021). Also, generations vary in terms of the preferred communication style, key technology, hobbies, and digital proficiency. Members of each generation require a different message form (Osiejewicz, 2020).

According to Joanna Osiejewicz, during conversations with the Generation of the economic crisis of the 1930s, lawyers should use such terms as *we*, *us* in order to gain their trust. Questions concerning their needs and statements such as *I respect your experience* may also be appreciated. Regarding Baby Boomers, lawyers have to provide them with simple facts and options that will help them make decisions. Their questions should be answered both precisely and by the use of positive wording. Short stories and appreciative phrases as *we need you* might be helpful. With regard to Generation X, again, simple facts are useful. Lawyers should also use direct, unthreatening language, e.g. *you are different, we respect that*. Generation Y requires using dynamic verbs and nouns that may help them imagine certain circumstances. For instance, in place of *defendant*, lawyers could say *Kowalski*. Finally, while talking with Generation Z, lawyers should use visualisation. Instead of explaining complicated processes, it would be beneficial to show simple schemes. Generation Z wants their needs to be met instantaneously, therefore phrases such as *as soon as possible* might be useful (Osiejewicz, 2020). In order to better illustrate the need to adjust language to a particular age group, here is an example of article 42 from Convention on the Rights of the Child in original (1989): “States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike” and in Child Friendly Language: “You have the right to know your rights! Adults should know about these rights and help you learn about them, too” (Osiejewicz, 2021)

4. **The significance of terminological education**

The equitable use of language plays a crucial role not only in a lawyer-client relationship, but it also affects daily lives of whole communities. Unfortunately, the world is still missing proper language education in foreigners’ affairs. In practice, it is still challenging to differentiate between the terms *immigrant in an irregular situation* and *refugee*, although it is legally recognised that these two expressions do not apply to each other.

Joanna Markiewicz-Stanny in her article “Language of normative acts and social exclusion of immigrants in irregular situation” portrays the severe position of immigrants in the modern world which is significantly influenced by terminology. As the author states, “Terms such as *prohibited*, *illegal* and *deportable* give an extremely wide scope for imagining what serious violations of the law a foreigner has committed” (2017, p. 98). This demonstrates that the use of such words often leads to biased perceptions and unfair judgements. It shall be required to use words like *irregular* or *non-documented*. The lack of education in this area harms multiple communities by shaping their negative attitudes towards immigrants. They instantly and undoubtedly associate such a person with potential risk or danger. Nonetheless, thanks to much research and many observations made on this subject the situation in the European Union has improved. Presently, more neutral words are used since language should not violate human dignity.

However, not only stigmatisation is a problem among immigrants and refugees. Another severe educational deficiency in foreign affairs concerns euphemisation. An alarming
amount of it is present i.e. in the terminology used by states to describe places of detention of migrants in order to fulfil migration procedures. In such facilities, migrants are isolated from the rest of society. They are under surveillance and the buildings themselves do not differ in appearance from prisons, as they consist of many cells and high walls ended with barbed wire. “During migration procedures in some countries, e.g. in Japan and the USA, measures such as those applied to persons guilty of criminal offences are used, i.e. isolation rooms, strong restraints, handcuffs” (Markiewicz-Stanny, 2017, p.101). Due to lack of education concerning terminology related to migrant facilities, human rights of many people are violated. They experience inhumane conditions. More to it, the nation is not aware of their position. According to Flynn:

Many of these facilities’ names reveal contradictory official attitudes: Turkey has called its migrant detention centres guesthouses; Mexico uses migratory stations (estaciones migratorias) for the temporary housing (alojamiento temporal) of migrants; Hungary has guarded shelters, Italy has welcome centres (centri di accoglienza), and France has centres of administrative retention (centres de rétention administrative) (Flynn, 2013, p.7).

Adequate education in terminology plays an essential role in this case since the incorrect use of even one word can spread harm, as shown in the examples above.

5. Methods for avoiding textual inaccuracies

Richard C. Wydick in his book “Plain English for Lawyers” describes in detail various types of mistakes made by lawyers in their unintelligible statements. He introduces solutions that may help them avoid sophisticated vocabulary and convoluted sentence structures. Wydick distinguishes and delineates rules which lawyers should follow in order to keep their language coherent.

The first guideline concerns omitting surplus words (Wydick, 2005). In general, there are two types of words: working and glue ones. “(...) [The former] carry the meaning of the sentence. (...) [The latter] hold the working words together to form a proper, grammatical sentence” (Wydick, 2005 p.7). Sentences should be short, contain the minimum amount of glue words and be abundant in working words. For instance, the sentence The ruling by the trial judge was prejudicial error for the reason that it cut off cross-examination with respect to issues that were vital can be changed to The trial judge’s ruling was prejudicial error because it cut off cross-examination on vital issues (Wydick, 2005, p.8–9). Additionally, compound constructions, word-wasting idioms and supervacaneous legal expressions should be avoided. For example, prior to may be replaced by before; he was aware of the fact by he knew that and alter or change by last will and testament (Wydick, 2005, p.11–18). Nominalizations, which are common among lawyers and bureaucrats, are also redundant. Instead of saying make assumptions, it is recommended to use a base verb and say assume.

Moreover, it may be helpful to apply active voice rather than passive voice, and thus shorten the sentences to avoid ambiguity. The next rule concerns arranging words carefully. Lawyers have to remember that in order to make their writing clear, they should not apply wide gaps between the subject, the verb and the object. For example, the sentence This agreement, unless revocation has occurred at an earlier date, shall expire on November 1, 2012 is less understandable than Unless sooner revoked, this agreement expires on November
1, 2012 (Wydick, 2005, p.42). Also, a valuable practice would be creating a list in place of a lengthy paragraph.

Furthermore, it is worth noting that sentences are often problematic to understand as they contain multiple modifiers. Instead, some of the information could be put in a separate sentence. Modifiers may also cause ambiguity, thus they should be used reasonably. For instance, the sentence *endangered frogs and salamanders* may be confusing, because the reader does not know if both frogs and salamanders are endangered. Therefore, it can be replaced by *endangered frogs and endangered salamanders* (Wydick, 2005, p.52).

Additionally, a proper choice of vocabulary items is crucial. Clients may prefer concrete words rather than abstract ones. It is also advised to express thoughts in simple terms, without using lawyerisms such as *aforementioned* (Wydick, 2005, p.58). The next step includes avoiding enumeration of similar words which could be replaced by just one. For example, in the sentence *Every person who...overdrives, overloads, drives when overloaded, overworks, tortures (...) is guilty of a crime...* (Wydick, 2005 p.61) the verbs may be replaced by *abuse*. Another guideline suggests not using language quirks that can easily distract the client.

Last but not least, lawyers must not forget about the proper punctuation. Otherwise the interlocutor might misunderstand them, which can lead to severe consequences (Wydick, 2005).

CONCLUSION

Thanks to the analysis we have accomplished, the following conclusions can be drawn:

- language education in legal communication is indispensable, both concerning lawyers and individuals without any legal background;
- lawyers should be familiarised with various ways of conveying their messages in an understandable way;
- ordinary people should be taught that they have the right to demand clear statements and precise explanations of legislation.

The proper communication concerning legal matters requires language education among the society. This can only be achieved by way of linguists who would raise awareness in terms of the importance of unambiguous communication.

Legal speech is inherently complex, thus it is natural that the average person might not be familiar with it. Therefore, lawyers should be aware of this fact and attempt to decrease language barriers between them and their clients. Simultaneously, linguists should teach people without any legal background that they do not have to fear asking questions and demanding clear explanations regarding legal matters. Applying all of these recommendations might significantly improve communication and protect innocent people from harm caused by inconsistencies in the terminology of legislation.
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MISTAKES IN SPECIALIST TRANSLATIONS AND THEIR POSSIBLE CONSEQUENCES IN THE LEGAL COMMUNICATION

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Abstract. Nowadays, in the age of globalisation and the worldwide flow of information, translator’s work becomes more and more demanding as well as indispensable. International legal communication and functioning of multinational institutions and organisations require an effective work of professional legal translators. The legal translation remains a challenge even for the most experienced and knowledgeable translators. The purpose of this paper is to prove the difficulty of legal translator’s work that may result in various mistakes in the legal specialist translations. Based on researches on translation mistakes, the paper points out types of potential mistakes in translation, the most common translation mistakes and their possible consequences in the legal communication. It also suggests what should be perceived as essential regarding translator’s knowledge and competence and proposes what should be seen as important while trying to avoid some legal translation mistakes.

Keywords: legal translation, legal communication, mistakes and difficulties in translation, legal translator’s challenges

INTRODUCTION

The legal translation is a challenge, not only because nearly a perfect knowledge of two language systems is required from a translator, but also because a translator needs to be familiar with two, often highly different from each other, legal systems. The difference between them results in a fact that some specialist terminology that may initially seem to mean the same in both languages, can’t be in reality treated as equivalents. As a consequence, it turns out that some terms remain untranslatable and it also means that there occur mistakes in the specialist translation that may not only have serious repercussions for a translator themselves, but also for the course of legal communication, the functioning of various organizations and even for a life of an individual client, being a real person with some vital problems. It’s important to know what sort of specific mistakes may occur in the process of
specialist translation regarding legal communication, their possible consequences and the potential ways of avoiding them.

Materials and Methods

The main method used to achieve the objectives of this paper was analysing various Polish and foreign authors’ works on the theory of translation, characteristics and consequences of globalisation, the functioning of specialist translation in such international organisations as the European Union, the challenges that the legal translators face in their work, the translation mistakes and difficulties that appear in translating legal texts.

Results and Discussion

Translation has been defined in a plethora of ways over the years by different scholars. One of the most renowned Polish linguists and translators, Olgierd Wojtasiewicz, included in the book entitled *Wstęp do teorii tłumaczenia* (An introduction to the theory of translation) his scientific point of view on the concept of translation: „Text b in language B is an equivalent of text a in language A if text b causes the same reaction (a set of associations) as text a does.” (Wojtasiewicz 1957: 23) He was also one of the linguists to emphasise the importance of the differences in the cultural traditions in the process of the effective translation, pointing them out as more important and causing more problems for translators than different languages’ structures. (Wojtasiewicz 1957: 94–95). Such a point of view on the notion of translation is beyond important for the reflections on the specialist translation in the legal communication. A translator who undertakes translating a text produced in a legal language and therefore containing a variety of legal terminology, needs to create a text that will be understood in a nearly entirely the same way as a source text written in a source language. Without it, it’s not possible to perform successful acts of legal communication as if two bodies that use different languages to communicate (e.g. a lawyer and his/her client), want to achieve something together; they need to be given the same set of information to be able to reflect on it with the same chances. The legal terminology relates to various legal systems that are relevant to different countries and hence cultures existing in these countries. Every country and every culture is different in its own way and so are also the legal systems as well as legal terminology systems. That’s why the specialist translation is such a challenge and can’t be named mechanical, easy and restorative. A legal translator is a person who not only should, but actually must be familiar with two law systems existing in two different cultures of the source language speaking and the translation’s language speaking country. It therefore requires enormous competencies. (Ciesielczyk 2009: 108–109).

In the age of globalisation, named sometimes a worldwide revolution (Łemańska-Majdzik, Sobiegraj 2013: 124), there has been formed a whole new space for the work of translators that is indispensable to let two main globalisation’s features – the overcoming of spatial obstacles and the central role of access to information, knowledge and science (Bielsa 2005: 131) – exist and develop. The role of translators often tends to be made irrelevant and invisible as it’s widely assumed that different sorts of information can circulate all over the world between various countries, cultures and linguistic systems in their original form, remaining unaltered that makes people treat the access to information as something obvious and possible to be achieved effortlessly. (Bielsa 2005: 143) Without the work of the translators and
interpreters, though, it all won’t be possible. The biggest “multicultural, multilingual democracy” (Apostolou 2011: 99), i.e. the European Union, faces such challenges as the coexistence of a wide array of spoken languages and different cultures on daily basis. The cultural and linguistic diversity are its two core components which need to be taken into consideration and dealt with in its daily functioning that actually poses an enormous challenge for the EU. The equality of the languages of the EU was promoted from its very beginning that results in the fact that this international organisation currently employs 500 permanent interpreters, 2700 accredited interpreters and 300–400 independent interpreters per day, making European Union the biggest employer of the interpreters in the world. The age of globalisation and the more and more new needs of different institutions and organisations not only create an enormous space for the translators’ and interpreters’ work, but also put a great responsibility on them as even a small mistake in the specialist translation may cause serious problems in communication between different bodies, even on a level of state institutions. (Apostolou 2011: 95–106).

The difficulty of the specialist translation may result in a wide array of various mistakes made by translators, often even well-respected and highly competent ones. They might be of a different character and can be divided into two types: translation mistakes and linguistic mistakes. The linguistic mistakes appear regardless of the languages in which the source and translated text are written, whereas the translation mistakes can be defined as more complicated and regarding more commonly the specialist translations as they often occur in the texts that concern the specific disciplines and fields of studies. The translation mistakes can be then a result of a lack of translator’s complete understanding of an original text or of their missing knowledge on the linguistic level or on the level of familiarity with a source text’s field. They may also be caused by a lack of knowledge about the rules governing translation, a lack of a proper translation method, a wrong use of translation techniques, a translator’s misinterpretation of the source text or an interpretation that differs too much from an original text and also by too close contacts between two languages (false friends, language interferences, anglicisms, etc.). (Pisarska, Tomaszkiewicz, 1996: 144–154).

In the case of legal translations it often comes out that it’s extremely difficult or even impossible to find proper equivalents in a translated text’s language to terms functioning in a source text’s language. The equivalents that may be found in the dictionaries often turn out to be unsatisfactory as they are too generic, too narrow, too precise or that they can’t be treated as equivalents to terms in a source text’s language at all as their meaning expresses and names something that differs too much from a meaning of a term in the original text. (Gościński 2015: 94) It results in many difficulties in legal translations as well as the legal communication and may lead to translation mistakes.

As Prieto Ramos’s work on translation mistakes in the international organisations and his study of corrigenda reveal, there really appear the translation mistakes in legal translations, even in cases of experienced translators’ performances for the biggest and most important organisations in the world (such as the European Union, the United Nations, the World Trade Organisation). In all the institutions he investigated, the most frequent were the meaning-distorting content reformulation corrections and the number of them is on increase. The amount of formal mistakes remains stable and the gravity of their semantic impact is usually
similar to mistakes concerning content reformulation. There appear, though, spelling mistakes, too, such as problems regarding grammar concordance and cohesion problems. (Prieto Ramos 2020: 98) The conclusions of his work show that not only the content reformulation mistakes may have serious repercussions for the legal communication, but also the minor formal mistakes. (Prieto Ramos 2020: 129)

It turns out too that the biggest challenge for a legal translator is not a result of a necessity of using various terms and phrases that are found in specialized dictionaries, but of a need of using all of them properly in a cultural context and in connection with cultural aspects widely common in legal texts. (Chirilă 2014: 492) That’s why in the case of legal translations it’s extremely important to analyze both an exact meaning of a term in a language of an original text and the meaning of a proposed equivalent in the translated text’s language. (Gościński 2015: 94). As a consequence, translators of legal texts need to be prepared for a variety of challenges that not only consist of finding the right equivalent of a term from an original text’s language in the translated text’s language, but also force them to deal with the untranslatability of certain terms that is a result of the unique character of different legal systems and, therefore, legal terminology used to describe and communicate within their fields. In such cases translators must show their skill at deciding whether a particular term can or cannot be translated directly, and if it cannot be, they need to competently make use of compensatory techniques, such as forming a descriptive translation, using language calques or borrowing source terms from an original text that may require an additional information in a form of a definition in a translator’s note. (Chirilă 2014: 488) If a translator doesn’t do it properly which means that s/he translates some terms or whole phrases in a wrong way as well as chooses an inappropriate translation technique if a perfect equivalent doesn’t exist, it may have serious consequences for the smoothness and comfort of legal communication, both on a lower level of e.g. a lawyer–client communication and on some higher, international ones, in different organisations and institutions and it may result in lawsuits and loss of money, too. (Chirilă 2014: 487).

To avoid a great number of mistakes in specialist translation, it’s beyond important to give more focus on the education of translators which is a challenge for the academic community. Without a progress in the improvement of education methods, it won’t be possible to perform better translations and develop in this field of study. (Chirilă 2014: 487) It’s also of a great importance for a translator to be given a sufficient amount of time for the process of translation and to be aware that the lack of sleep and rest don’t have a desired effect on translator’s performance. Fatigue, being a result of either a depravation of sleep or long working hours, boredom and monotonous, intense cognitive activities may result in deterioration of person’s alertness, reduced decision-making ability, reduced attention, productivity and performance as well as in errors in judgement. (Caldwell et al., 2019: 272–274) A legal translator needs to be both professional in his/her discipline and possess a profound knowledge of two language systems as well as be perfectly familiar with legal systems of the source text’s language and the translated text’s language and be able to compare them, but also be aware of their own imperfection. (Gościński 2015: 94) Consequently, it’s good for a legal translator to be open and willing to consult their uncertainties regarding the original text with their clients as well as possible translation
techniques and translation decisions with the other legal translators and scholars who specialize in law and in legal science, whose specialistic knowledge on the topic may turn out to be beyond helpful, improve the process of translation and make a positive impact on the quality of a final translation.

CONCLUSIONS

The field of legal translation is a highly specialized one which results in a fact that there are knowledgeable and professional legal translators needed worldwide. As a consequence of difficulty and complexity of a legal translator’s work, there arise many different challenges that a translator needs to face in their everyday work. The case study reveals that there are some specific competencies awaited from a legal translator that can let them perform satisfactory acts of specialist legal translations. It’s not only crucial for a legal translator to be perfectly familiar with two different language systems, but also to possess the specialist knowledge of two individual and unique legal systems and legal terminology themselves that function in a source text’s language and a translated text’s language and, therefore, in different cultures. What is important is the interdisciplinary approach and the knowledge of the cultural context. Without it, it’s not possible for a legal translator to understand satisfyingly and fully the context and meaning of an original text and consequently produce a proper translation. A translator needs to be aware of what to do and what kind of translation techniques to use when an adequate equivalent of a term from an original text doesn’t exist. It’s not favourable to focus only on finding an equivalent as it’s not always possible and may turn out to be misleading. A translator must remember the possible compensatory techniques – such as a descriptive translation, language calques, an act of borrowing source terms from an original text – and know how to make use of them properly. All these demands and competencies awaited from a legal translator prove together that a legal translator’s work is highly challenging and can’t be named mechanical and easy.

As it was reveled in the researches chosen, there really occur mistakes in cases of legal translation, even in performances of most experienced and knowledgeable translators that may work for the most important international organisations, such as the European Union, the United Nations or the World Trade Organisation. Based on the analysed texts on mistakes in the legal translation, the most common and serious mistakes in case of biggest international organisations turn out to be the meaning-distorting content reformulation mistakes and formal mistakes. The biggest amount of mistakes is caused by the difficulty in not only being familiar with two different languages systems, but also the legal systems functioning in different cultures that may result in the lack of proper and exact understanding of an original text and, therefore, in an inaccurate translation. All the mistakes that appear in the legal translation might have serious repercussions for the legal communication and may result in a lack of understanding between different parties taking part in acts of legal communication, parties concerned by the translated legal texts, lawsuits and losses of money.

Since a legal translator’s work is so demanding and challenging, it’s indispensable to place emphasis on professional, interdisciplinary and efficient education. A legal translator
should be aware of the value of the interdisciplinary cooperation between them and the specialist in the field of law and law science. Such a specialist may help a legal translator by sparing his/her knowledge on the characteristics of various legal systems that can improve the translator’s work and result in better legal translations as well as in more efficient acts of legal communication.

REFERENCES


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Substantive qualifications are currently not sufficient to be a successful lawyer. Lawyers need communication, rhetorical skills, negotiation and mediation qualifications. They should be able to flexibly and effectively shape legal relations, modify existing ones and eliminate unfavorable ones - by seeking an agreement between the parties. Special communication skills are increasingly needed in out-of-court discourse, in settling legal disputes, in relieving tensions resulting from conflicts of interest in the free market, in the economy and in political discussions, in workplaces, in family relations, etc. Videoconferences, teleconferences and international negotiations form a new work environment. They create new, complex persuasive contexts with the problems of choosing the language of conversation, and the limited time of the Internet and telephone contact.

However, lawyers not only “serve” the judiciary by performing classic legal professions (judge, prosecutor, attorney-at-law, notary, bailiff, court referendary), but also provide legal advice in the economic sphere, work in consulting companies and perform other professions, in which legal education is very important, such as: tax advisor, mediator, broker, legislator, civil servant, translator. A lawyer with poor communication skills, not doing well in dealing with others, has little chance of lasting professional success, building his charisma, credibility and authority, even if he knows the law very well.

Although communication skills are related to our personality traits and are improved over the years of experience, the chances of success increase when the basis is specific knowledge. A very good lawyer knows the law, but they also know how to inform about it, persuade to the proposed solutions and negotiate for the benefit of the client. The results of a lawyer’s work depend not only on his/her knowledge of the law, but also on skills that cannot be nowadays learned in law studies: a sense of how the client will react to the problem and proposals for its solution, predicting what decision the judge will make and assessing how clients, judges, witnesses and opponents as well as their lawyers will respond to actions taken. Reasoning based on the assumptions of formal logic is undoubtedly necessary in the work of a lawyer. No less valuable and needed, however, is emotional intelligence and competences based on it, especially an empathic understanding of human nature.

The Internship Program on International Legal Communication, conducted jointly by the University of Warsaw and the National Aviation University in Kiev March-June 2021 (45h online), sought to provide the answer to these needs. The research-based educational program was conducted by several academics from the above universities in form of workshops, lectures, discussions and timetables. It reflected a variety of scientific schools and topics concerning an interdisciplinary approach to legal communication, including law, linguistics, foreign languages and literature, education, sociology, psychology, political studies, business management, administrative services and economics. A further goal of the
joint program was to define the ways and directions of shaping an effective communication system in Ukraine, taking into account European experiences and national priorities. Ukrainian researchers concentrated on the intensification of the cooperation between the educational community of Ukraine and the Member States of the European Union, examining the best European practices in the development of modern communication. The program was developed by Joanna Osiejewicz (University of Warsaw), Iryna Sopilko and Maryna Dei (National Aviation University in Kiev). More than 30 academicians from various universities in Ukraine participated in the Internship. It was already the second international internship program in the field of legal communication conducted as part of cooperation between the University of Warsaw and National Aviation University in Kiev.
WILL THE LEGAL COMMUNITY BECOME THE DIGITAL ONE?
REPORT OF ELSA ZIELONA GÓRA SEMINAR PROCEEDINGS

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On the 10th of June 2021 European Law Students’ Association, Branch of Zielona Góra provided the online seminar with the meaningful question nowadays “Will the legal community became the digital one?”. The seminar was another one in the cycle of seminars dedicated to the legal problems appeared during Covid-19 pandemic.

Ideas and concepts of what modern state supposed to be change all the time, sometimes in calm evolutionary way, sometimes in the form of revolution. State is a highly complex system with its various types of communities. There is no doubt, that Covid-19 pandemic transformed the whole legal society with special regard to its ways of communication and its ultimate essence: legal information. However it depends on us always to make it better and more efficient.

The first speaker Hubert Kocur, ML, the assistant and the researcher at the University of Zielona Góra, presented some selected problems of e-defense in the criminal procedure with special regard to the newest changes in Polish domestic law collectively called “Shield”. The speaker focused his attention on some aspects the right of the defense and its possible violation during the online hearings.

The second speaker, Izabela Gawłowicz, PhD, assistant professor and researcher in the Institute of Legal Studies University of Zielona Góra highlighted some problems connected with the longtime attempts to create international criminal court (or at least such a bench) for the crimes in the cyberspace.

The last (but not least😊) speaker, Michał Zieliński, also assistant professor and researcher in the Institute of Legal Studies University of Zielona Góra, formulated some interesting remarks according to the challenges that come with the progress of digitalization in legal procedures and education.

The scale of legal problems that come along with such challenges like the world Covid-19 pandemic and the necessity to transfer some of the lawyer’s (as well as the students) activity to the network is huge. More seminars like the one described above should be strongly welcomed – also when “everything will come back to normal” in the courts and at the universities, like we all wish. It should form the early warning system in case of any emergency in the field.