EUROPEAN SOCIO-LEGAL AND HUMANITARIAN STUDIES

№ 1, 2022

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Journal indexed: «Academic Resource Index» (ResearchBib, Japan); «Polska Bibliografia Naukova» (Poland, PBN); «Directory of Research Journals Indexing» (DRJI, India); World Catalogue of Scientific Journals (WCOSJ, Poland); Scientific Journal Impact Factor (SJIF); Directory Indexing of International Research Journals (CiteFactor, USA).

ISSN 2734-8873
ISSN-L 2734-8873

Facultatea de Litere

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PROBLEMS AND WAYS TO IMPROVE LEGISLATIVE PROCESS AND LAW ENFORCEMENT IN THE REPUBLIC OF AZERBAIJAN: FOREIGN EXPERIENCE FOR UKRAINE

Furgan Abdullazada[1]

Annotation. The article is devoted to the problems and ways to improve legislative process and law enforcement in the Republic of Azerbaijan. Analyzing different practical aspects of legislative process and law enforcement in the Republic of Azerbaijan, the author tried to find positive foreign experience for Ukraine to borrow. The author deeply learnt the legislative regulation of the procedure for adopting laws and useful literary sources devoted to this question. As a result, there were defined certain problems in the legislative process and law enforcement in the Republic of Azerbaijan. These are, in particular: the development of normative legal acts in a narrow circle, the preparation of unqualified law drafting for the sake of external demonstration of one's diligence; haste to adopt laws; defects directly in the technique of preparing draft laws; the great number of laws on amendments and additions to current acts in a short period of time; defects of the legislation in terms of regulation of the legislative process at each stage separately, implementation of the right of legislative initiative; inadequacy of the principles of legislative technique and their non-observance. Also in the article it was recommended some ways to solve described problems and to improve the legislative process and law enforcement in Azerbaijan: introducing in the Constitution a mandatory requirement of education for members of the Milli Majlis; making appropriate changes to the normative legal acts that determine the principles of the legislative process in order to detail these principles; and supplementing the legislative base with an indication of the list of mandatory examinations of regulatory and legal acts and, accordingly, instructions; giving the judicial practice the status of an official source of law at the level of the constitution or special legislation etc.

Key words: legal science, legislative process, law, legal expertise, law enforcement.

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[1] Abdullazada Furgan, graduate, student of the Institute of Law Taras Shevchenko National University of Kyiv, ORCID : 0000-0002-3897-2927, e-mail furgan.a.t@gmail.com.

As in any law-governed, democratic state, in Azerbaijan the law has become the main regulator of most spheres of public life. The development of country, emergence of new legal relations, changes in government's policy requires adoption of a great amount of laws in a short period of time. Such intensive legislative process has as a consequence a reduction of main regulatory acts' quality, their abstract character, further collisions in law enforcement etc. Certaintly, the practice of public authorities in Azerbaijan is aimed at building the state, where the leader is a high-quality law, that is enforced by professionals in legal affairs in the conditions of publicity, transparency and in the spirit of the rule of law.

The analysis of literary sources shows that problems, as well as ways to improve the legislative and law enforcement processes in the Republic of Azerbaijan, have repeatedly attracted the attention of scientists. Among the, in particular, are T. Z. Aliev [1], U.Z. Guliev [2], I.Y. Diuriahyn [3], A. V. Kalmykova [4].

In order to define scientifically based recommendations for improving the legislative process and law enforcement in the Republic of Azerbaijan, as well as to borrow positive experience in Ukraine, let's start exploring the problems and ways of improving of legislative process and law enforcement in the Republic Azerbaijan.

The quality of legislation depends on the consistency of the procedure of legislative activity and the quality of organizational and legal support for the law-making subject's work. Despite the fairly clear regulation of the procedure for adopting laws, there are certain problems in the Republic of Azerbaijan. These are, in particular: the development of normative legal acts in a narrow circle, the preparation of unqualified law drafting for the sake of external demonstration of one's diligence; haste to adopt laws; defects directly in the technique of preparing draft laws; the great number of laws on amendments and additions to current acts in a short period of time [5, p. 77]; defects of the legislation in terms of regulation of the legislative process at each stage separately, implementation of the right of legislative initiative; inadequacy of the principles of legislative technique and their non-observance.

In our opinion, solution of the most listed problems in legislative process should take place at the stage of law drafting by means of compliance with the rules of legislative (legal) technique. These rules are connected with logical presentation of legal norms in the text of law, absence of internal contradictions in legal norms; clarity and accessibility of the language of regulatory acts; accuracy and certainty of terms used in the texts of laws, etc.

In addition, the problem of the low quality of adopted legislative acts in the Republic of Azerbaijan can be solved by introducing in the Constitution a mandatory requirement of education for members of the Milli Majlis. Moreover, such a requirement should apply both to the presence of a legal education and, additionally, another specialized education. In this way, the legislative body of the Republic of Azerbaijan should turn into a well-established mechanism consisting entirely of lawyers, who are further divided among themselves into military workers, doctors, political scientists, economists, etc. Each profile cell of law-makers will be responsible for draft laws in their area.

In addition, the disadvantage of the law-making process is the low level of its conceptuality, defective regulation of the basic principles of law-making activity and, as a result, the low level of their implementation. As rightly noted in the scientific literature, a number of important principles on which the legislative process should be based have not yet been reflected in the legislation in the Republic of Azerbaijan. These are, in particular: professionalism, scientific knowledge; efficiency and effectiveness in law-making activity; the principle of technical excellence; the principle of objective validity; principle of planning and software; the principle of using legal experience. [6. p. 35-36]. Supporting this position, we advice to make appropriate changes to the normative legal acts that determine the principles of the legislative process. After all, their application can be traced in practice.

Studying the problems and ways of improving the legislative process in the Republic of Azerbaijan, we cannot ignore the institute of linguistic expertise. The experience of the Republic of Azerbaijan in terms of establishing at the legislative level the obligation to carry out a linguistic examination of draft legal acts, in our opinion, can be quite justifiably recognized as an important step on the way to solving the problem of linguistic imperfection of laws. In particular, we mean Chapter 10 «Mandatory Linguistic Examination of the Draft Regulatory Legal Act» of the Constitutional Law of the Republic of Azerbaijan «On Regulatory Legal Acts» [7]. However, a systematic analysis of this chapter proved the existence of legislative gaps in this regard. So, in particular, there is no indication of the subject of the linguistic examination, the mechanism for ensuring compliance with the norms regarding the obligation of the linguistic examination in the form of responsibility for the violation of this legal requirement, the terms of such an examination. At the same time, there are no other lacts in the legislative base of the Republic of Azerbaijan that would regulate this issue in more detailed form and fill this legislative gap. A similar situation applies to other statutory examinations of normative legal acts.

In our opinion, this legislative gap can be eliminated in two ways:

1) supplement the Constitutional Law of the Republic of Azerbaijan «On Regulatory Legal Acts» with relevant norms;

2) to detail the relevant current norms by adopting nstructions for each of the examinations, while excluding Chapter 10 from the provisions of the Constitutional Law of the Republic of Azerbaijan «On Regulatory and Legal Acts» and supplementing its provisions with an indication of the list of mandatory examinations of regulatory and legal acts and, accordingly, instructions

Also the Law of the Republic of Azerbaijan «On the Procedure for Exercising the Right of Citizens of the Republic of Azerbaijan to Legislative Initiative» cannot be considered perfect. [8]. This normative legal act has a number of shortcomings that require a reaction from the subject of the legislative initiative in the form of appropriate changes. Thus, in accordance with Article 4.1 of the Law of the Republic of Azerbaijan «On the Procedure for Exercising the Right of Citizens of the Republic of Azerbaijan to Legislative Initiative», it is assumed that in order to implement the right of citizens to initiate a draft law, an Initiative Group is created from the number of at least 300 citizens of

the Republic of Azerbaijan, who have the right to contribute project to the Parliament. In addition, the members of the Initiative Group must collect the signatures of at least 40,000 eligible voters of the Republic of Azerbaijan, and the collection of signatures must cover at least 60 electoral districts and at least 500 signatures must be collected from each electoral district [8]. These provisions caused indignation among the public. In the opinion of the public of the Republic of Azerbaijan, the specified requirements set forth in the draft law create significant obstacles to the implementation of the right of legislative initiative and the participation of civil society in the decision-making process. [9] It is difficult not to agree with such an opinion. Although, in general, this law is undoubtedly a step forward on the way to improving the legal regulation of the implementation of the right of legislative initiative of citizens. After all, for quite a long time, its procedure, despite the legislative enshrinement in the provisions of the Constitution of the Republic of Azerbaijan for citizens of the right of legislative initiative, was not defined in detail.

No less significant is the problem of legal enforcement of the law already after its adoption and implementation, that is, in the process of law enforcement. Despite the fact that judicial practice occupies a special place in overcoming gaps in the law of the Republic of Azerbaijan, it has not yet acquired the status of an official source of law at the level of the constitution or special legislation.

The legislator is not an anticipator, so he cannot, unfortunately, foresee all the relations that may arise after the adoption of the law in advance. After all, social life, compared to the procedure of preparation and adoption of well-founded laws, changes much faster. The legislative process is, in a sense, a top-down process. In precedents, this process is reversed: from the bottom up. In other words, the individual activity of precedents is an activity carried out in the field of regulation, which arose in the practice of relations. In this regard, precedents stimulate the development of legislation and "give it a signal" [10, p. 24].

The legislator of the Republic of Azerbaijan assigns the relevant duty in accordance with Article 130 of the Constitution of the Republic of Azerbaijan to the Constitutional Court [11]. Of course, the ideal option would be to enshrine the right to overcome conflicts for all courts directly in the process of their law enforcement activities. This, in particular, is evidenced by numerous court practice, which is forced to produce conflicting bindings that contribute to the resolution of the dispute in the presence of several legal norms regulating certain social relations. After all, the court must, having established factual relations, bring them to a specific legal norm [12]. However, for this, it is necessary for the courts to be truly independent, and not declaratively, and for the judicial system to turn into a judicial authority, which, unfortunately, is still too early to talk about. Therefore, it is correct to grant the Constitutional Court powers to overcome conflicts today [13].

So, summing up, we can conclude that currently, both legislative and law-enforcement processes of the Republic of Azerbaijan are not without problems that still need to be solved. These are, in particular, problems of

legal regulation and personnel support. So, in particular, many aspects of the legislative process of the Republic of Azerbaijan were left out of the attention of the legislator of this country: a number of important principles on which the legislative process should be based were not reflected; there are no requirements regarding the education of deputies of the Milli Majlis of the Republic of Azerbaijan; issues of implementing the right of legislative initiative of the Supreme Court of the Republic of Azerbaijan, the Prosecutor's Office of the Republic of Azerbaijan and the Ali Majlis of the Nakhichevan Autonomous Republic in the legislation of the Republic of Azerbaijan remain insufficiently regulated at the legislative level; there is no indication of the subject of the linguistic examination, the mechanism for ensuring compliance with the provisions regarding the obligation of the linguistic examination in the form of responsibility for the violation of this legal requirement, the terms of such an examination, etc.

As for the law enforcement process, it is important, first of all, to ensure the adoption of new high-quality legislation, which will be possible if the above problems are eliminated. The issue of the presence of numerous gaps and collisions between normative and legal acts needs to be resolved as quickly as possible. The need for official recognition as a source of law of judicial practice of the Republic of Azerbaijan is also ripe.

Despite this, the experience of the Republic of Azerbaijan, in view of the relatively better regulatory and legal support in the specified areas, has considerable value for Ukraine.

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CHINA AND THE RUSSIA-UKRAINE WAR: INTERESTS, POSITION, CONSEQUENCES

But Stanislav[1]

Annotation. The article analyzes the peculiarities of Beijing's positioning in the context of the Russian-Ukrainian war. The author examines Beijing's official rhetoric and actions regarding the war in the context of a number of key geopolitical and PRC goals – strengthening global influence by removing the US from leadership positions, taking control of Taiwan, turning Russia into a dependent country. Particular attention is paid to the internal determinants of Beijing's position, such as national-historical sentiments, problems of socio-economic development and the issues of further development of the political system. Currently, China's geostrategy is dominated by the negative consequences of the war, for example, the growth of the unity of the West and the role of the United States, the strengthening of anti-Chinese sentiments in the Asia-Pacific region, the aggravation of the Taiwan issue against the background of PRC's internal troubles.

Key words: China's interests and position, Russian-Ukrainian war, Taiwan problem, China-USA rivalry

Introduction. The international order is increasingly changing and one of the most important factors in its transformation is the strengthening of China's role. The international status of the People's Republic of China (PRC) has significantly increased due the tremendous success in economic and techologacal development added with a huge amount of population and military reinforcement. In enhancing its geopolitical position, Beijing's key goal is to weaken the position of the collective West and the United States in world politics. Taking control of Taiwan is one of the top priorities in this regard. In the context on this interests, the attempt to realize Russia's geopolitical ambitions towards Ukraine by military means is a kind of laboratory for future similar steps by Beijing concernig the island and at the same time a tool to distract resources of the USA. However, China's official position is indistinct because of the influence of other factors.

Purpose of the article is to analyze the interests, position and consequences for the PRC in the context of the Russian-Ukrainian war.

[1] But Stanislav, Ph.D sn Political Science, Assistant ORCID: https://orcid.org/0000-0002-6713-5837 email: but_stanislav@ukr.net.

Results and discussion. China, as a "high league country" of global geopolitics, has a wide range of foreign policy interests, in the context of which it should noted a number that are closely intertwined with the Russian-Ukrainian war. Global dominance in the system of international relations appears as a key strategic task, where Washington appears as the main obstacle. However, strategic thinking and the peculiarities of the Chinese foreign policy tradition dictate that Beijing seeks to implement this goal strategically, minimizing the power factor and using the tool of economic dependence. This approach is explained by the need to maintain China's economic progress with its gigantic population, which is accustomed to economic success and improving of living conditions. Therefore, one of the priority implementation tools is the New Silk Road (NSH) or the "One Belt, One Road" project, the sense of which is to form a network of countries economically tied to China through the expansion of geo-economic activity. This in a strategic perspective should flow into political influence and will allow force out geopolitical opponents from Eurasia and Africa. The Chinese authorities are allocating huge resources for the implementation of the project, especially forming a logistics network tied to China. As a resule we can underline that Beijing poses an economic superiority as a key instrument for the realizing the aim of the domination.

Meanwhile, the growth of complex power contributes to the increase of ambition and nationalism of the PRC, where the Taiwan question occupies a special place. The importance of establishing control over Taipei is determined by national-historical sentiments caused by the so-called "century of humiliation", the period of history (mid 19th century – 1949) when China was a semi-colony of Western powers and the Russian Empire. Focusing on this point, the Chinese leader Xi Jinping proclaimed the goal of the development of statehood as the "Chinese dream", where one of the main roles is played by the strengthening of Beijing's international status as a sign of inadmissibility of a humiliating position in the future. Within this purpose the regaining control of Taiwan is considered as the final moment. Regarding the ambition of Xi Jinping, especially the desire to become the third most important leader of the PRC after Mao Zedong and Deng Xiaoping, it can be confidently assumed that the incorporation of Taiwan is a determinant of his political career.

In addition to historical and political motives, the island has a number of other points of interest for Beijing. From an economic point of view, Taiwan plays a unique role in a global economy as a country with a share of 90–95% of the world production of semiconductors, which are critically important in high-tech products in various fields. Moreover, Taiwan has an extremely important geostrategic position for Beijing, as it is located closer to the center of the so-called "first island chain", which stretches from the west coast of the Japanese islands to the Strait of Malacca. The importance of this row is to contain China's geopolitical ambitions by the USA and its network of allies in the region of East and Southeast Asia. Therefore, control over the island will allow Beijing to strengthen its strategic and military positions, in particular, in matters of protection of the most economically important coastal part of its territory, to

undermine communications between the United States and other regional allies, as well as to enhence the security of its own maritime communications, and its control over the waters of the South-China Sea, through which most of the international trade of the PRC is realized.

Moving on to analysis the position of China towards the Russia-Ukraine war, it should be clearly understood that both in 2014 and in 2022 Moscow used the military force against Ukraine only by agreeing on such steps with Beijing. Notably, since 2014 China has been using an approach that can be described as "neutral, but with a pro-Russian accent" that means the absence of a criticism of an aggression and an increasing multifaceted cooperation with the Kremlin, but at the same time, the absence of an official political support for the annexation of Crimea and the actions of the Russian Federation (RF).

It should be emphasized that such positioning allows China to receive a number of different benefits, because Moscow, as it was typical for Volodymyr-Suzdal principality during the Golden Horde era, generously paid loyalty to the Eastern suzerain in the conditions of confrontation with the West. For example, in order to diversify export flows, the Kremlin built the Power of Siberia gas pipeline at its own expense and has been exporting energy carriers to the PRC for a long time at low prices. Moreover, Chinese companies bought 20% of Yamal LNG 2 and Arctic LNG 2 progects [1]. Thus, the barrier to access to energy projects from the Russian side was removed. In general, the turnover between the parties increased by 50% since 2014 and amounted to $146.9 billion by 2021 [2]. Meanwhile, the structure of trade turnover largely corresponds to the interests of China, which exports machine-building products, mobile phones, and other consumer goods, and imports raw materials from the RF: oil, gas, and agricultural products. In this way, the role of Russia as a raw material appendage for the PRC has been strengthened. In addition, Moscow has transferred a lot of areas of the Far East and Siberia to Chinese explotation.

In the military-technical dimension, Beijing was one of the first to get the opportunity to buy the Russian S-400 complex. This moment also serves as an illustration of the fact that the Kremlin, against the background of the confrontation with the West, removed the so-called problem of the "Chinese threat" from bilateral agenda.

As a result, in terms of bilateral relations, Russia's dependence on China has increased significantly. An interesting moment in this context was the Moscow's attempt to establish control in Kazakhstan in January 2022, where the leadership of the political elite was changing. However, according to analysts, the contingent quickly left the country at Beijing's request. This emphasizes that China's position has grown significantly in the Central Asian region, which the RF also considers as a part of its sphere of influence. Moreover, according to the proposal-order of the Chinese leader Xi Jinping, the Kremlin did not start a full-scale war while the Olympic Games were going on in the PRC [3].

As for the full-scale military invasion of Russia in 2022, Beijing initially chooses the already tested position of the "pro-Russian neutrality" with its characteristic rhetoric of the adherence to the principles of territorial integrity and the solving a problem through diplomatic means [4]. Meanwhile, such comments

clearly fit into China's declared principles of cooperation with the international community, particularly it concerns principles of respect for territorial integrity and non-interference in internal affairs. This official position of China is due to the desire to avoid growing fears about possible aggression by China against Taiwan or other neighboring countries. In addition, the support of the aggressor country will have a negative impact on the image of China in the eyes of other partner countries in Asia and Africa, which are increasingly dissatisfied with Beijing's policies. Additionally, such declarations were aimed at stay away from the problem and observe the course of the military confrontation. However, at the beginning of the war, Beijing refused to call the Russian invasion a war.

But the course of the military campaign and the negative consequences of has influenced on Beijing's rhetoric. Indeed, China has faced a number of economic problems. In particular, supplies of neon from Ukraine, a metal used in the production of semiconductors, were interrupted. In addition, there are problems in the field of food security, as Ukraine is a significant exporter of agricultural products to China – corn, wheat, sunflower oil, soybeans. There have also been arised problems with the logistics of the "One Belt, One Road" project that forced Beijing to look for alternative routes. For example, in April 2022 the PRC launched a railway route to Germany bypassing the territory of Russia – through the countries of the South Caucasus, the Balkans and Central and Eastern Europe [5]. It shoulded be added that this also brought significant losses, which in the conditions of the current financial unprofitability of the project look even more negative. Moreover, the economic problems of the Beijing were compounded by rising prices of raw materials necessary for the Chinese economy and the loss of foreign markets. In general, according to expert calculations, due to the waiver of sanctions against the RF as of the end of May 2022, the economy of the PRC has lost $9 billion of foreign capital [6].

Obviously, a quick victory of Moscow was in China's interest because it would set a great precedent for a future power option to take control over Taiwan. Another important interest in a full-scale war is the possibility of a careful analysis of the West's behavior in such situation and the development of countermeasures.

Nevertheless the failure of the Kremlin's blitzkrieg has caused considerable discontent because the protracted nature of the war means that any attempt by Beijing to realize its ambitions for Taiwan or other territorial claims will be harshly accepted by the international community.

Moscow's military failures largely affected the Chinese side's perception of the war. In particular, on March 8, 2022, during a video conference with the leaders of France and Germany, Xi Jinping called Russia's military aggression a "war" [4]. Futher on March 15, China's ambassador to the United States published a column calling Ukraine a sovereign state and vehemently denied reports of alleged government support for Russia [7].

In view of the above, is has been appeared a need for China to distance itself from Moscow's actions in order to avoid a negative imprint on its own image. Therefore, despite official criticism of the sanctions, in order to "save face" and unwillingness to fall under secondary sanctions, Chinese energy giant Sinopec

has suspended investment in Russia's gas chemical industry. Besides, the Asian Infrastructure Investment Bank has temporarily frozen some activities in Russia [7]. For the same reasons, the tech giants Lenovo and Xiaomi also refused to sell products to Russia [8]. Moreover, there were statements about the withdrawal of Chinese shareholders from the Arctic LNG 2 project.

Of course, given the weakness of its military-industrial complex, Moscow appealed to Beijing for military-technical support. In order to prevent this, Western actors have repeatedly stressed the inadmissibility of military-technical assistance to the Kremlin in bypassing international sanctions [9, 10]. And such statements had an effect. Thus, according to the American agency Reuters for two months of the war, American officials have not fixed the direct support of military-technical or economic nature from the PRC to the RF [11].

The explanation of China's approach is in economic terms, where the cooperation with the United States and the European Union is crucial to Beijing. For example, trade turnover with the EU is $828 billion, and with the USA – $755.6 billion [12]. Therefore, these figures demonstrate how important the US and the EU are for Beijing from an economic point of view compared to Russia. Thus, the emergence of crisis moments with major economic partners is an issue of higher priority than supporting the Kremlin's criminal war, especially considering that trade wars with the US have already brought losses of $550 billion [12]. This becomes clear if we recall that ensuring economic development is a key factor both in strengthening China's international position and at the same time fundamental as an element of the informal "social contract" according to which the Communist Party of China (CPC) maintains a monopoly on power but provides a gigantic population with decent socio-economic conditions. Moreover, given China's economic progress, which is facing challenges due to the crisis in a sphere of construction, the importance of economic contacts with the West has increased significantly. To this list, it is also important to add that inflation and unemployment have increased (to the level of 2020, exceeding 6%), which has been reinforced by the introduction of anti-covid quarantines by the authorities throughout China [12].

In addition, such economic difficulties have already begun to cause a social servitude, which is demonstrated by the tendency in the form of clashes between police officers and citizens. Also calls began to be made that the Russian-Ukrainian war was too expensive for the PRC.

Nevertheless, the factor that completes the motivation of China's behavior regarding sanctions appears to be the domestic political situation, where Chinese leader Xi Jinping seeks to hold office for the third time in November 2022. It should be taken into account that the Chinese political system has a rule that one person cannot hold the office of The President of the PRC more than two terms. However, Xi amended the Constitution in 2018 and is legally able to remain in office for an unlimited term. Under such circumstances, the economic crisis has a negative impact on the "social contract" and makes it difficult for Xi to realize his political ambitions. It should also be added that the Chinese leadership can use the attack on Taiwan as a factor to maintain positions of power.

It should be added to the economic dimension that it has been made a report to the Chinese leadership with noting the failure of Russia's adventure in the form of a large-scale war against Ukraine [13]. According to experts, such a report significantly influenced the vision of the Chinese leadership's position on the Russian-Ukrainian war. It is interesting that against this background, the Minister of Foreign Affairs of Ukraine was invited to give an interview to one of the leading Chinese mass media – the Xinhua agency. Such a step, with the coverage of Ukraine's official position, became an illustration of the Chinese elite's vision of war prospects.

Nevertheless, later Beijing's official rhetoric again took the Russian course, where the thesis that the culprit of the war is the USA [14]. This, in turn, emphasizes that, on the one hand, in the context of the war, relations with the USA play a key role for China, and on the other hand, it allows us to adhere to the already defined position of pro-Russian neutrality, which is characterized by the systematic rhetoric from Xi Jinping in defining the Russian invasion the term of "crisis", not war [15]. Moreover, in the Chinese mass media (it should be taken into account that they are under the control of the authorities) Russian narratives about the war clearly dominate, which accordingly forms a negative attitude towards Ukraine among the citizens of the PRC [16].

Notably, that this kind of official rhetoric, especially points of criticism of sanctions and accusations the USA's role in the war, fits into the peculiarities of Beijing's international positioning and domestic agenda. In this context, it should be underlined that PRC, like a number of other Asian countries, views Russia's war against Ukraine as Russia's war against the West. Accordingly, support for Western sanctions will be seen as support for "former exploiters", which is unacceptable both in terms of domestic aspirations (Chinese authorities systematically use the concept of "century of humiliation") and the international image, where Beijing seeks to position itself as a leader and defender of the interests of Third World countries.

It can be added that the large adherence to sanctions looks unacceptable, even in view of the global ambitions of a country that promotes itself as at least the second power in the world politics, which, together with the United States, manages global international processes.

Generally, the Chinese leadership does not stop trying to economically support Russia in the war against Ukraine. According to the American edition of The Washington Post, Xi Jinping instructed his closest advisers to find ways to provide financial assistance to Russia, but without violating sanctions [17]. One of the options is limited support, so as not to be compromised financially and to show the continuation of the line of neutrality. It follows from this that taking anti-American steps is one of the key principles of Beijing's international behavior, and the Russian-Ukrainian war is an opportunity for its implementation. In this regard, it should be noted that Beijing, despite official statements about not providing financial and military-technical support to the RF, has significantly increased the supply of microchips and other electronic components and raw materials, for example, aluminum oxide, which is used to manufacture metallic aluminum, an important material in arms production and aerospace industry [18].

This approach demonstrates that China is not currently interested in the complete defeat of Russia because Moscow can be used as an additional tool in the global confrontation with the West. For example, during J. Biden's visit to the Quad Leaders' Summit in late May 2022 and the proclamation of a new initiative, the the Indo-Pacific Economic Framework for Prosperity (IPEF), PRC and RF conducted the first joint naval exercises since the start of the war in Ukraine. The purpose was the demonstration of the strength and common position of the sides [19]. Moreover, China and Russia once again demonstrated an anti-Western coordination by a blocking at the end of May 2022 the UN resolution on North Korea due to the launch of ballistic missiles against the background of the already mentioned visit of the American president [20].

Meanwhile, the above-mentioned US initiative, which seeks to limit China's influence in Asia, has become one of the episodes of new challenges for China as a result of the Kremlin's military adventure. This initiative is a part of the chain of events that contributes to the consolidation of Western countries and the strengthening of US positions. To this can be added the consolidation of NATO, the continued strengthening of the AUKUS format, and the intensification of pro-American political circles in many countries. For example, the proChinese Prime Minister of Pakistan Imran Khan, who was in Moscow on a visit at the beginning of the attack on Ukraine, was removed from power [21]. It can also be added that during the mentioned visit of J. Biden to East Asia, the American president said that in the event of an attack by the PRC on Taiwan, the United States will help the island with military means [22].

In general, the actualization of the Taiwan issue became one of the defining consequences of the Russian-Ukrainian war for the PKC. For example, Washington showed support for Taipei in July 2022 by approving possible sale of military assistance estimaded $108 million [23]. However, the situation was most aggravated in connection with the program of visits of the Speaker of the US House of Representatives, Nancy Pelosi, to Asian countries, including Taiwan, at the end of July and the beginning of August 2022. This provoked an extremely harsh response from Beijing, even with hints of the possible physical elimination of a top American official and the start of war. This situation is due to the high status of N. Pelosi in the American state machine, her anti-Chinese position, but at the same time it overlapped with the already noted factor of Xi Jinping's desire to stay in power for a third term, in the face of growing socio-economic problems. As history shows, as well as the survival practice of V. Putin's regime, the external enemy and war are one of the options for diverting attention from internal problems of society and strengthening one's own positions of power. Nevertheless, the role of the Taiwan issue has significantly increased as an indicator of the dynamics of the geopolitical balance between the PRC and the USA and an international problem that, along with the Russian-Ukraine war, may become one of the triggers of the Third World War as many experts suppose.

Moreover, besides Taiwan, other countries such as Japan, South Korea, and Australia will increase military spending, which, in turn, will require Beijing to spend more on defense.

Obviously, the Chinese leadership understands that such changes require steps in response. Therefore, Chinese officials have launched campaigns to intensify anti-Western forces, in particular, the initiative to expand the BRICS format was announced by China, the international platform created to demonstrate the alternetive to the Western economic organizations [24]. Besides, China has announced a "Global Security Initiative" [25] to stay on track of the international agenda. Also the strengthening of anti-Chinese coalitions amid the background of the Russian invasion of Ukraine requires Beijing to invest additional resources to maintain friendly relations with loyal countries of the Indo-Pacific region.

It would also be logical to note some positive effects of the war for the PRC. In particular, it is obvious that Moscow's dependence on Beijing will continue to grow and RF will strengthen in the role a source of raw materials for Chinese plants selling oil and gas at low prices taking into account the prospect of an oil embargo from the EU [2]. Interestingly, the PRC even offered to buy the shares of the Russian giant Gazprom, however, Beijing decided not to expose itself to sanctions [1]. Also there have been arasen new opportunities for further displacement of Russian weapons from world markets in favor of Chinese counterparts.

The application of sanctions against the RF forced the Chinese leadership to carry out a "stress test" of its own financial system in case of the introduction of a rehabilitation package against it and the possibility of protecting assets abroad [12]. The tendency towards self-sufficiency, in particular, in the field of chip production, was also strengthened.

Generally, Russia's defeat could lead to its transformation into a zone of Chinese influence. However, it should be emphasized that in the case of Ukraine's defeat, China would also benefit from demonstrating the West's defeat and a favorable basis for invading Taiwan. As a result, it can be stated that in the strategic calculation, Beijing benefits from the implementation of any of the options. This, in turn, explains PRC's interest in launching a full-scale Russian war against Ukraine.

Conclusions. China's position on the Russian-Ukrainian war can be defined as "pro-Russian neutrality", which constitus in the absence of an official support for the military aggression with an emphasis on a diplomatic solution, but there is criticism of anti-Russian sanctions, accusations of the US, and the use of the term "crisis" rather than the "war". In practice, Beijing are realizing some steps to join the sanctions because of the dependence on economic contacts with the West. Meanwhile, there are an active purchase of Russian energy carriers and the supply of semiconductors to the Kremlin. Interestingly, "pro-Russian neutrality" is a modification of the use of the "monkey watching the battle of two tigers" strategy that was tested during the years of the bipolar confrontation between the USA and the USSR. Such geopolitical cunning allows Beijing to use the Russian-Ukrainian war to achieve geopolitical goals of strengthening its position in the rivalry with the United States and creating the favorable conditions for taking control of Taiwan by force, as well as turning Moscow into a dependent country. It should be added that in this way Beijing does not endanger its international image. Notably, that this approach has been successfully used by Beijing since

2014. Generally, the Chinese leadership understands that a full-scale Russian-Ukrainian war will in any case bring a strategic gain: if Ukraine wins, then the RF will become even more dependent on the PRC, and if the Kremlin does, it will become a powerful precedent for a military option to resolve the Taiwan issue. However, in practice, there was a rapid aggravation of the Taiwan issue, that turned into an indicator of the geopolitical rivalry between the PRC and the USA. Among other negative consequences of the war for Beijing – the strengthening of the unity of the West, the growth of the authority of the USA and the anti-Chinese coalition in the Asia-Pacific region, the increase in the prices of raw materials, problems with the supply of food and logistics of the NSS, preparing the steps taken by the West to deter aggression, demonstrating a certain level of weakness at the military and technical level of the Chinese arme that is based on Russian equipment. Among the positive consequences are the growing dependence of the Kremlin, gaining access to the resources of Siberia and low prices for Russian energy carriers, the opportunity to analyze and develop steps forward in the case of the seizure of Taiwan by force.

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LE PRINCIPE DE CARACTÈRE RAISONNABLE DES DÉCISIONS JUDICIAIRES COMME NORME D'UNE PROCEDURE JUDICIAIRE ÉQUITABLE

Bzova Laura[1]

Savka Oleksandre[2]

Annotation. La fonction d'argumentation dans le discours juridique est actuelle à la fois dans la recherche et dans la prise de décision, en raison de sa nature de justification du sens donné à un énoncé normatif et des conséquences juridiques qui peuvent en découler. L'essence de l'argumentation juridique consiste à fournir des arguments juridiques convaincants, des preuves concernant l'exactitude de la résolution d'un problème litigieux de la manière proposée, la compréhension du contenu d'une certaine norme, l'extension de son effet à des relations concrètes et la résolution d'une situation de vie spécifique basée sur celle-ci. L'argumentation dans une décision judiciaire nécessite un système qui vous permet de résoudre l'affaire en fonction des précédents de l'affaire et de son évolution. Sur la base de la logique déductive des juges et de leurs motivations à prendre des décisions, une évaluation doit être faite pour déterminer si cet argument correspond aux caractéristiques techniques nécessaires pour établir un jugement.

Mots clés: caractère raisonnable, motivation, décision de justice, argumentation judiciaire.

Formulation du problème. L'analyse argumentative ne peut plus se limiter à la logique et à la rhétorique. De plus, il faut prêter attention au contenu des arguments, qui doivent être considérés comme un processus de prise de décision avec un moyen d'atteindre l'objectif. Réfléchissant à une décision de justice, il est important de retenir le devoir constitutionnel du juge de le disculper sous peine de nullité. Mais, quel est le sens de justifier cela si un juge, s'appuyant sur ce qu'on appelle la «libre conviction motivée», sur son expérience et surtout «de la hauteur de son jugement et de son autorité»,

[1] Bzova Laura, PhD, assistant du département de droit procedural université nationale de Tchernivtsi nommé d'après Yury Fedkovich, ORCID: 0000-0003-3143-4904, e-mail: l.bzova@chnu.edu.ua.

[2] Savka Oleksandre, étudiant de la faculté de droit université nationale de Tchernivtsi nommé d'après Yury Fedkovich, e-mail: savka.oleksandr@chnu.edu.ua.

peut dire n'importe quoi pour justifier ses conclusions? En d'autres termes, si un juge peut juger selon sa volonté, et que cette décision sera valide, alors quel est le sens de parler de l'exigence constitutionnelle d'argumenter et de motiver une décision judiciaire ?

Analyse des dernières recherches. En Ukraine, T. Dudash, V.I. Kistyanyk, S.V. Riznyk, M.D. Savenko, M.V. Savchyn, T.M. Slinko et O.V. Chcherbanyuk étudient le problème de l'argumentation judiciaire dans leurs travaux. Le caractère complexe de la problématique étudiée nécessite une étude de l'expérience de la science étrangère. Une contribution significative à la recherche de ce problème ont fait aussi et les scientifiques: R. Alexi, M. Atienza, E. Wrublevsky, R. Dworkin, N. McCormick, H. Perelman, J. Tarello, M. Tarrufo, S. Toulmin, L. Ferrajolli, E. Feteris, J. Habermas et autres .

Le but de l'article est de déterminer le rôle du principe de raisonnabilité dans la formation de la décision de justice définitive, ainsi que d'analyser la pratique argumentative des tribunaux nationaux.

Texte principal. L'argumentation est une partie particulière du raisonnement juridique, les réponses proposées par le chercheur à une question juridique ne sont ni vraies ni fausses, elles ne peuvent être considérées que comme meilleures, correctes ou plus appropriées pour résoudre le problème. Le processus de différend peut être controversé pour d'autres raisons, appelées contre-arguments. La proposition de sens doit être étayée par des arguments crédibles qui rendent l'interprétation fiable. Plus il y a d'arguments, plus on donne de force à l'interprétation.

La justification juridique, tant du point de vue de l'interprétation doctrinale que de la décision judiciaire, est réalisée par étapes: sur le premier, connu sous le nom de contexte de découverte, s'effectue l'identification de la réponse; ensuite, la situation qui se présente est expliquée, et enfin, la conclusion tirée ou la proposition présentée est étayée par des arguments.

Les arguments sont les raisons fournies dans la justification de l'interprétation d'un texte juridique (doctrinal ou normatif), également connu sous le nom d'argumentation juridique. Dans un état de droit, ces raisons sont avant tout des sources de droit, qui peuvent inclure, pour les besoins de la recherche scientifique, sauf le droit positif, la doctrine. En général, l'interprétation juridique est basée sur la loi comme source, sur les instructions de l'argumentation juridique, sur les valeurs et les évaluations du système juridique et de l'interprète. Il faut remarquer que l'interprétation de la doctrine diffère de celle des textes normatifs et que l'argumentation dogmatique est caractérisée par l'obligation de la loi en vigueur.

L'argument est un processus rationnel qui se déroule dans un dialogue de justification. Le discours juridique est un dialogue ou une procédure discursive entre le traducteur et le destinataire (ou le public), et comme le choix décisif est souvent justifié par des valeurs, l'argumentation rationnelle est considérée comme le meilleur acquittement possible à offrir. Cependant, le discours juridique ne concerne pas seulement les questions relatives à la raison pratique, mais aussi à la science juridique. La déclaration de rectification du discours concerne le fait que, dans le contexte du système juridique actuel, il peut être

justifié rationnellement. La justification juridique doit être fondée sur les motifs qui sont rendus publics et sa force -sur son accusation.

H. Perelman distingue trois types d'arguments : les quasi-logiques, basés sur la structure de la réalité, et les méthodes de dissociation. Les arguments quasi-logiques sont structurellement démonstratifs et développés à la manière d'un schéma formel. Sur cela, ils fondent leur force d'argumentation. Dans ce type d'argumentation, il est nécessaire de recourir à des techniques qui évitent les incompatibilités, comme la logique (Perelman, Ch., 1988). On dira donc qu'un argument est incompatible lorsque deux thèses s'excluent mutuellement, mais elles deviennent compatibles si une division dans le temps ou une division par rapport à l'objet évite le conflit. Dans ce type de discours, il est nécessaire de capter des éléments qui ne sont pas son objet, ce qui est réalisé par des définitions qui ont un caractère argumentatif, parmi lesquelles, sur la base de la thèse, le plus important doit être choisi.

Le deuxième type d'arguments présentés par H. Perelman sont des arguments basés sur la structure de la réalité, qui, contrairement aux arguments quasi-logiques, sont basés sur des arguments rationnels, c'est-à-dire qu'ils utilisent des formules logiques ou mathématiques pour exprimer la solidarité entre les jugements. Les autres sont aussi admis qui sont en cours d'acceptation. On trouve ici des liens de succession, dans lesquels le plus important sera le lien causal entre les phénomènes et , d'autre part, des arguments pragmatiques, dans lesquels l'acte est évalué selon ses conséquences négatives ou positives. Dans le cas du lien «fait-conséquence», qui a la plus grande valeur selon l'argument pragmatique, c'est le fait qu'il permet de passer d'un ordre de valeurs à l'autre et qu'il peut considérer les bons résultats de la thèse comme une preuve de vérité (Perelman, Ch., 1988).

Un autre rôle important est joué par les données fournies par les parties qui seront présentées au public, la manière dont elles sont présentées est fondamentale, qui doit être efficace et impressionner le public. Il faut donc que chaque élément soit intégré au discours de manière à ce qu'il soit signifiant, c'est-à-dire que le discours soit structuré sur la base d'une argumentation efficace. Les données de discours, on peut modifier selon l'ordre des pensées et des formes d'expression de l'orateur.

Pour N. Maccormick, l'argumentation pratique relative à la raison pratique en général et l'argumentation juridique en particulier exerce une fonction de justification. Justifier une décision de justice, déclare-t-il , signifie donner des arguments indiquant que les décisions correspondantes garantissent la justice conformément à la loi. Cet auteur propose une théorie intégrative de l'argumentation dans la mesure où il est possible de résoudre les controverses tant dans leurs aspects logiques-formels qu'argumentatifs (N. MacCormick, 1978).

A. Aarnio considère également la justification des décisions de justice comme un élément clé de l'argumentation. Il affirme que dans la société moderne, les gens exigent non seulement des décisions autoritaires, mais aussi les justifient. Il prétend que la base de la réalisation du pouvoir est l'acceptabilité des décisions de l'autorité, et non le pouvoir formel qu'il peut avoir (Aarnio A., 1990). La tesis

de la única respuesta correcta y el principio regulativo del razonamiento jurídico, Revista DOXA-8. 25.). La présentation d'une justification est un moyen d'assurer la sécurité juridique dans la société et, par conséquent, le contrôle public de la décision est maximal. Pour Aarnio, il est important que l'argumentation de la décision de justice soit justifiée, car elle confirme la validité des affirmations qui la composent.

Bien que l'argumentation juridique ait souligné la décision de justice; c'est-à-dire une proposition, une structure de justification proposée pour énoncer clairement les raisons qui soutiennent la décision des autorités qui, en plus d'être juridictionnelle, peut être administrative, elle est également utile pour justifier une interprétation juridique d'un caractère scientifique.

Quand nous parlons d'argumentation, nous pouvons constater qu'il existe deux groupes pour cela, c'est l'argumentation logique ou rhétorique, car la différence entre eux est que la première argumentation mentionnée est présentée par deux affirmations et une conclusion, et la seconde n'est pas fondée sur la validité de ses références, mais sur la forme ou la capacité de convaincre avec sa méthode de persuasion celui qui applique la loi, mais «il est pratiquement impossible de proposer une seule caractéristique du concept d'interprétation juridique».

Que signifie «argumentation» appliquée à l'argumentation juridique? On utilise ici la définition proposée par Stefan Holzberg dans son livre L'argumentation juridique, qui souligne qu'« il n'y a pas d'argument juridique sans interprétation juridique ». «Mais, souligne cet auteur, l'argumentation juridique traite aussi de l'organisation et de l'articulation des arguments. Si l'interprétation traite de la sémantique, du sens des lois (Friedman), alors l'argumentation juridique traite de la syntaxe du droit, c'est-à-dire de la formulation des arguments. L'argumentation juridique utilise l'interprétation juridique comme l'un de ses éléments pour construire une déclaration visant à conquérir le soutien du public.»

E. Vrublevsky remarque que dans la théorie de l'argumentation judiciaire, le concept de «validité» est basé sur la distinction bien connue entre le soi-disant «acquittement interne» et «l'acquittement externe». Une des premières formulations de cette distinction : «La justification interne concerne la validité des conclusions de cette hypothèse à la décision juridique prise en tant que conclusion. La décision correspondante est justifiée en interne si les conclusions sont valables et que la fiabilité des locaux n'est pas vérifiée... La justification externe des décisions juridiques vérifie non seulement la validité des conclusions, mais aussi la fiabilité des locaux. Un large spectre de justification externe est exigé par une décision judiciaire particulièrement paradigmatique en raison des normes les plus élevées qui lui sont imposées» (J. Wróblewski, 1988.).

Dans l'Avis № 11 (2008) du Conseil consultatif de juges européens à l'attention du Comité des Ministres du Conseil de l'Europe concernant la qualité des décisions judiciaires, entre autres, l'attention est attirée sur le fait que « toutes les décisions judiciaires doit être justifié; dans l'exposé des motifs d'une décision, il est nécessaire de répondre aux arguments des parties et aux arguments pertinents, susceptibles d'influencer la résolution du litige; l'exposé des motifs d'une décision ne doit pas nécessairement être long, car il faut trouver un équilibre correspondant entre brièveté et compréhension correcte de la décision

prise; le devoir des juges de donner des motifs à leurs décisions, ne signifie pas la nécessité de répondre à chaque argument du demandeur à l'appui de chaque motif de défense; l'étendue de cette obligation du tribunal peut varier selon le caractère de la décision1». Une justification et une analyse claires sont des exigences fondamentales pour les décisions judiciaires et un aspect important du droit à un tribunal équitable. Le devoir des juges de donner des motifs à leurs décisions, ne signifie pas la nécessité de répondre à chaque argument de défense à l'appui de chaque motif de défense. L'étendue de cette obligation du tribunal peut varier selon le caractère de la décision. Pour suivre le principe d'un tribunal équitable, la justification de la décision doit attester que le juge a effectivement examiné toutes les questions fondamentales qui lui ont été soumises. La qualité d'une décision de justice dépend principalement de la qualité de sa justification. Une justification appropriée est un impératif qui ne doit pas être négligé dans l'intérêt de la rapidité de la procédure. Une justification correspondante exige que les juges aient assez de temps pour préparer leurs décisions.

La justification doit attester que le juge respecte les principes énoncés par le tribunal Européen des droits de l'homme (à savoir, le respect des droits de la partie de la défense et le droit à un tribunal équitable). Quand les décisions intermédiaires concernent sur des libertés individuelles (par exemple, une autorisation d'arrestation) ou peuvent influencer sur les droits ou les biens des personnes (par exemple, la garde provisoire d'un enfant ou l'arrestation de biens immobiliers ou de comptes bancaires), il est nécessaire une explication correspondante des motifs de cette décision1.

On va analyser les décisions de justice pour leur argumentation. Dans une opinion individuelle O.O. Pervomayskyi dans l'affaire basée sur la soumission constitutionnelle de 47 députés du peuple ukrainien concernant le respect de la Constitution de l'Ukraine (constitutionnalité) de certaines dispositions de la Loi ukrainienne «sur la prévention de la corruption», du Code pénal de l'Ukraine concernant la motivation dans la décision de l'inconstitutionnalité de certaines dispositions de la loi, a-t-il noté, dans la partie de motivation de la Décision il y a une argumentation de définition comme objet de contrôle constitutionnel des dispositions de la Loi, qui n'ont pas été mis en doute la constitutionnalité dans la soumission constitutionnelle, en référence au fait que:« ... Le Tribunal Constitutionnelle traite le paragraphe 8 de la première partie de l'article 11 de la Loi №1700 comme une norme cohérente, car la sélection de l'une quelconque disposition est impossible en raison de la menace de déformer la volonté du législateur. Le paragraphe 8 de la première partie de l'article 11 de la Loi №1700 est la base et la raison de l'institutionnalisation de toutes les normes de la Loi №1700 concernant les pouvoirs de contrôle de l'Agence nationale pour la prévention de la corruption en tant qu'autorité exécutive, en notamment, le paragraphe 6 de la première partie de l'article 11, les paragraphes 1, 2, 6–101, 12, 121 de la première partie: les parties de la deuxième – du cinquième article 12, la deuxième partie des articles 13 et 131 , l'article 35, les paragraphes deux et trois de la première partie de l'article 47, les articles 48–51, les parties deux et trois de la première partie de l'article 52, article 65 de la Loi №1700...» (paragraphe 9, première phrase du paragraphe 10 de la partie motivationnelle de la décision).

Dans la décision du tribunal administratif régional de la ville de Kyiv, il indique que dans la considération de cette affaire, le tribunal prend en compte les positions suivantes de la cour Européenne des droits de l'homme. Ainsi, la décision de la CEDH du 19.04.1993 dans l'affaire «Kraska contre Suisse» a déterminé que l'efficacité d'un procès équitable est atteinte lorsque les parties au procès ont le droit de présenter au tribunal les arguments qu'elles considèrent importante pour l'affaire. Dans le même temps, ces arguments doivent être entendus, c'est-à-dire soigneusement examinés par le tribunal. En d'autres mots, le tribunal a l'obligation d'examiner attentivement les soumissions, les arguments et les preuves présentés par les parties.

En évaluant chaque argument spécifique individuel de tous les participants à l'affaire, qui sont importants pour la décision correcte de l'affaire administrative, le tribunal applique la position de la CEDH (en ce qui concerne l'évaluation des arguments des participants à la procédure de cassation), formé au paragraphe 58 de la décision en l'affaire « Seryavin et autres contre Ukraine » (№ 4909/04): conformément à sa pratique constante, qui reflète le principe lié à l'exécution correspondante de la justice, dans les décisions des tribunaux et autres organes de règlement des différends doivent être remarqués de manière appropriée les motifs sur lesquels ils se fondent; bien que le paragraphe 1 de l'article 6 de la Convention oblige les tribunaux à argumenter leurs décisions, il ne peut pas être interprété comme exigeant une réponse détaillée à chaque argument; la mesure à laquelle le tribunal doit s'acquitter de l'obligation de justifier la décision peut être différente en fonction de la nature de la décision (la décision dans l'affaire «Ruiz Torija contre Espagne» (Ruiz Torija v. Spain) № 303-A, le paragraphe 29).

L'argumentation dans une décision judiciaire nécessite un système permettant de résoudre l'affaire conformément aux précédents de l'affaire et de son évolution. Sur la base de la logique déductive des juges et de leurs motivations pour la prise de décision, il faut faire une évaluation pour déterminer si cet argument répond aux technicités nécessaires pour établir un jugement. Dans le domaine juridique, l'établissement de la logique peut sommer des embarras, car il remettra en cause la vérité ou la fausseté des institutions juridiques qui sont simplement une conséquence de l'interaction humaine, mais pas de la logique elle-même.

On souligne la différence entre la justification d'un argument et la justification d'une décision de justice: le fait d'appliquer les règlements interprétés par le juge est une base simple. Au lieu de cela, motiver une décision est d'attribuer le caractère raisonnable à une décision judiciaire. Pour cette raison, il existe des jugements motivés et d'autres motivés, mais avec l'aide de la motivation, chaque incohérence que peut présenter une décision judiciaire, peut être analysée de sorte que dans une situation où l'affaire est rétablie, les juges ont des erreurs comme point de départ pour motivation ou une petite influence sur elle pour une décision antérieure.

Conformément au paragraphe 2 du règlement du Plénum de la Cour Suprême du 18 décembre 2009: «Une décision prise sur la base de circonstances complètement élucidées, auxquelles les parties se réfèrent comme fondement de leurs exigences et objections, confirmées par des preuves qui ont été

examinées lors de l'audience et qui répondent aux exigences de la loi sur leur régularité et leur recevabilité, ou des circonstances, qui ne sont pas soumises à preuve, également si la décision contient des conclusions exténuées du tribunal qui correspondent aux circonstances établies sur la base de preuves fiables, qui sont importantes pour la décision de l'affaire2».

Par conséquent, les situations de prise de décision qui nécessitent des arguments juridiques plus techniques, qui sont de plus en plus courantes dans les réalités juridiques marquées par l'existence de Constitutions dotées de ces caractéristiques (les démocraties constitutionnelles sont également caractérisées par un pluralisme politique, social, ethnique et culturel), imposent aux participants au processus de prise de décision d'un point de vue interne pour une bonne compréhension du droit en tant que pratique sociale (interprétative et argumentative), et, par conséquent, on souligne l'irremplaçabilité (mais non l'exclusivité) de l'approche argumentative dans l'analyse du phénomène juridique.

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THE PRINCIPLE OF HUMANISM AND ITS CONTENT IN THE CONDITIONS OF THE FORMATION OF THE NEWEST SOCIAL PARADIGM

Byelova Myroslava[1]

Farcash Ioan-Mircea[2]

Byelov Dmytro[3]

Annotation. It is determined that human and civil rights are the most important institution, which has been developed not only in constitutional law, but also in the theory of law and in other sectoral legislation. In the second half of the XX century, this institution came to the fore, both domestically and internationally. The Institute of Human and Civil Rights and Freedoms is one of the most significant results of the legal development of society, from ancient times to the present day, when human rights have become an essential attribute of a democratic state governed by the rule of law. The modern approach with the declared principles of democracy is somewhat outdated and the whole world needs to rethink the acquired and find new approaches to understanding equality, justice, protection, etc.

The necessary stability of the concept of protection of human and civil rights and freedoms is achieved by relying on a system of principles tested by science and practice. The viability and progressiveness of this concept is formed through a combination of legal, moral, traditional, and other socio-regulatory norms. Taking into account such an approach will prevent legal negativity from becoming a dominant phenomenon of the legal system, restrain the onslaught of legal nihilism and indifference.

It is indicated that the principles are a kind of indicators that demonstrate the degree of development of the law itself, starting points that show the vector of legal regulation. Of course, the principles of law should reflect and express the basic values on which the law is focused, to carry the basis of

[1] Byelova Myroslava, Doctor of Law, Associate Professor, Department of Constitutional Law and comparative jurisprudence “Uzhgorod National University”, Ukraine.
[2] Farcash Ioan-Mircea, Conf. univ. dr., North University Center of Baia Mare, Romania.
[3] Byelov Dmytro, Doctor of Law, Professor, Honored lawyer of Ukraine, Department of Constitutional Law and comparative jurisprudence, “Uzhgorod National University”, Ukraine.

"ideal" law. The purpose of legal principles is to ensure the ideological unity of lawmaking, law enforcement and law and order in general. They permeate the entire legal system of society, focusing its development on universal, most valuable ideals: democracy, justice, equality, humanism, individual freedom, etc.

Definitely, humanism, as a legal category, is a worldview that considers man as a higher, self-sufficient and self-aware value. Humanism expresses the attitude to man in at least two ways: Thus, humanism is a certain moral requirement for human behavior, is a certain category of moral awareness of man of the highest social value in the state.

Key words: human rights, constitutional principles, constitutionalism, humanism.

Humanism is a philosophical and ethical-sociological principle of treating a person as a higher value. As a spiritual and cultural phenomenon, humanism is the main content of the civilizational process, during which it manifests itself in various qualities: ethical norm, social ideal, spiritual value, freedom of will, mutual help and cooperation, respect for the rights and dignity of the individual, equality and equity, justice, protection from evil and violence [1]. The modern approach with the declared principles of democracy is somewhat outdated and the whole world needs to rethink the acquired and search for new approaches to understanding equality, justice, protection, etc. The necessary stability of the concept of protection of human and citizen rights and freedoms is achieved by relying on a system of principles tested by science and practice. The viability and progressiveness of this concept consists of a combination of legal, moral, traditional, and other social and regulatory norms. Taking such an approach into account will prevent legal negativity from becoming a dominant phenomenon of the legal system, restrain the onslaught of legal nihilism and indifference [37, s. 55].

Human and citizen rights are the most important institution that has been developed not only in constitutional law, but also in legal theory and other branch legislation. In the second half of the 20th century, this institute came to the fore, both domestically and internationally. The Institute of Human and Citizen Rights and Freedoms represents one of the most significant summaries of the legal development of society, starting from the most ancient times and up to the present day, when human rights have become an indispensable attribute of a democratic legal state. Adhering to the legal concept of human rights in its modern meaning, writes T.Zhivulina, the Constitution declared a person, his rights and freedoms as the highest value. In modern states, the rights and freedoms of a person and a citizen are guaranteed not only by the Constitution and other national legislation, but also in accordance with generally recognized norms and principles of international law. This is an extremely important provision, since generally recognized norms and principles of international law, international treaties of the respective state are declared as part of its national legal system [2, s. 12].

Today, law, as a system of rules of conduct, acts as a regulator of all social processes in the state. The law allows and forbids, protects and punishes. In other words, law directly affects human life. The formula that constitutes the essence of legal regulation contains three elements — rights, duties, and responsibilities. The law sets the limits of what is possible and obliges all participants in certain legal relations not to violate the established rules, otherwise violators will be held responsible [3, s. 24].

In the system of values of the Ukrainian democratic society, the person is in the first place (Article 3 of the Constitution of Ukraine). However, the interrelationships between society and the individual, citizen and the state continue to become more complicated, their interests and problems are becoming more interdependent, and their mutual responsibility is increasing. All these phenomena and processes require deep understanding, generalization and reflection in legislation. At the same time, an important place is occupied by the problem of the constitutional and legal status of a person and a citizen. The central element of which is the rights and freedoms of a person and a citizen. The system of which, according to the correct statement of O. Starobor, cannot exist without certain ideas that are laid in their basis. They are the principles of the constitutional and legal status of a person and a citizen [4, s. 22].

A person in a democratic, legal state is the highest social value, which plays a decisive role in all spheres of material, political, social, spiritual and cultural life. At the same time, each person is individual, original, unique, unique. Its participation in the activities of the legal state depends on the material and spiritual capabilities in the use of its subjective rights and the voluntary performance of its legal obligations. The legal status of a person consists in his rights, freedoms, and obligations established by legislation, which represent possibilities that turn into reality according to their practical implementation [5, s. 73].

The possibilities of rights and freedoms turn into reality not only thanks to their use by citizens, but also, as noted by E. Lukasheva and V. Kudryavtsev, due to the provision by the state of all necessary material, social, and spiritual means, protection and protection of these rights and freedoms by appropriate bodies [6, s. 3].

In the "Declaration of Democratic Values", which was signed by the leaders of the seven leading world states, the first point states: "We believe in the rule of law, which respects and protects without fear and prejudice the rights and freedoms of every person and provides conditions in which the potential and spirit each person develops freely and versatile, thereby providing the opportunity for self-realization of each individual" [7].

E. Brahms notes as follows: "If an idea such as "human rights" is to be significant throughout the world, it must take into account the heterogeneity of people in the world", must contain a certain degree of correctness, specificity and consideration of peculiarities, be aimed not at abstract, and on real people [8, p. 167]. Related to this opinion is the warning of the well-known specialist in the field of human rights J. Donnelly that the cultural variability of human nature not only allows, but also requires a significant correction for the variability of human rights depending on culture. But if all rights are based only on culturally

determined social rules (as radical cultural relativism claims), no one has any rights just because he is a human being, warns the author. Given that culture can and does influence the presence and expression of many aspects of human nature, one cannot deny the existence of a social aspect of human nature that is expressed as a range of possibilities within certain limits. Assuming the possibility of the existence of universal moral rules or values, the author is convinced that "human rights in a clear and obvious sense (an inalienable right that belongs equally to all and on which the most weighty claims that can be made against the state and society are based) are only one from the mechanisms of protection of human dignity, which in any case is a concept largely determined by culture" [9, s. 131-132, 133].

All this leads to the opinion that the modern approach with the declared principles of democracy is somewhat outdated and the whole world needs to rethink the acquired and find new approaches to understanding equality, justice, protection, etc.

The necessary stability of the concept of protection of human and citizen rights and freedoms is achieved by relying on a system of principles tested by science and practice. The viability and progressiveness of this concept consists of a combination of legal, moral, traditional, and other social and regulatory norms. Taking such an approach into account will prevent legal negativity from becoming a dominant phenomenon of the legal system, will restrain the onslaught of legal nihilism and indifference [10, s. 55].

It cannot but be noted that the constitutional registration of the state's duty to protect the rights and freedoms of man and citizen is an indicator of democratic state building. This duty is functionally determined through the activity of power structures of all branches. According to A. Voronov, the state's protection of the constitutional rights and freedoms of a person and a citizen from illegal encroachments and direct violations is an additional stage in the process of their implementation, arising in connection with certain legal facts. Scientists associate such protection with the special activity of the state. It can receive serious development and the expected effectiveness in satisfying the human rights claims of people only with independent system-activity design [11, s. 74].

Political and economic transformations in our country led to a reassessment of former social ideas and attitudes. The steps taken to significantly reduce the social burden of society and the state are not perceived by the population unambiguously and entail negative consequences. Such a situation indicates that social problems have deep institutional roots and, according to T. Mironova, "separate recipes for neutralizing conflicts in society cannot be dispensed with here" [12, s. 3]. At the same time, E. Lukasheva on this occasion rightly notes that "human rights are designed to contribute to solving one of the most important tasks – ensuring the sustainable development of the modern world" [13, s. 89], and V. Gurlev and A.Gurlev clarify that "the real scope of individual rights and freedoms is always some kind of compromise that can be achieved in a given society" [14, s. 84].

Human rights, notes I. Zagorui, are considered: as a fundamental idea (phenomenon) that reflects the human dignity inherent in every person, exists at a

universal level outside the boundaries of legislation and is considered as a moral and social right and at the same time as a subjective right established by law ; determining principles of a person's legal status; the concept that characterizes the legal status of a person in relation to the state, his opportunities and harassment in certain spheres of social life; as values protected on the basis of the principle of equality and without discrimination; the most important component of the socio-cultural system of civilization, the style of civilization, the foundations of society and the state itself, and its constitutional system. Considering these circumstances, the scientist points out, it is obvious that one could talk about human rights as an evaluative indicator that combines socio-legal and moral imperatives as well-founded, original, fundamental and inalienable belonging to every person, as well as a kind of criterion for the degree of human development and, accordingly, the state and society [15, s. 69].

In the legal literature, opposing points of view regarding the implementation of certain stable standards in the field of human rights are often expressed. Some authors believe that the possibility of their implementation is determined, first of all, by the level of socio-economic development of the state (in particular, V. Bukach [16, s. 28], P. Rabinovych [17, s. 84], etc.). Others express the opinion that human rights and freedoms enshrined in universally recognized principles and norms should be guaranteed to everyone, guaranteed by the country's constitution and its national legislation (in particular, T. Myronova [18, s. 3], V. Tymoshenko [19, s. 2] etc.).

At the current stage of development, our state, having gone through a serious path of reforms and transformations in various spheres of social relations, in accordance with the principles of building a democratic, social and legal state, declared the highest value of a person, his rights and freedom, and also imposed an obligation to protect these rights to the state The change of the positivist understanding of law to natural law, and, accordingly, the change of the legislation gave rise to the need to revise some fundamentally significant provisions for national science concerning the protection of citizens' rights [20, s. 89].

The natural law approach recognizes the most important element of legal matter as its spiritual, ideological, moral principle, that is, legal ideas, people's ideas about law. Legal norms and legal relations only reflect and embody these ideas. Such an idea was expressed in various legal concepts and was labeled differently: as natural law, jusnaturalism, formal or philosophical law. Laws, according to V. Bukach's correct statement, adopted by state bodies can express the natural rights of a person, but they can also disagree with them. In the latter case, the law will not be recognized as justified and legal. However, the content of natural human rights is not determined by the state, since the state is called only to consolidate the rights that belong to man by nature [21, s. 28].

I. Ilyin wrote: "The main task of positive law is to accept the content of natural law, to develop it in the form of a number of rules of external behavior adapted to the conditions of a given life and to the needs of a given time, to give these rules a meaningful form and verbal consolidation and further penetrate into the consciousness and will of people as a priority unified command. Positive law is an appropriate form of support for natural law" [22, s. 58]. However, one cannot

disagree with this point of view. Of course, the categories of law and law do not coincide, since law is one of the most civilized and perfect forms of expression of law. But excessive opposition of these two concepts will not lead to the achievement of positive goals either. Modern legal thought has come to the understanding that law is perceived, first of all, as human rights, and the latter cannot exist without their enshrining in legislation. The interpenetration and consolidation of natural law in the norms of a positive relationship in both content and form is one of the priority tasks to be solved on the way to building a legal state [23].

Human rights arise and exist as a multifaceted, complex phenomenon that relies on the entire spectrum of social factors that condition their existence. Therefore, the problem of human rights has multivariate dimensions ("sounding"), penetrating deeply into morality, philosophy, ideology, religion, law, etc. Therefore, human rights can and do find their expression and direct support in the morality, ideology and psychology of people, in their worldview as a whole, in the practice of socio-political and non-political movements and organizations, in the requirements and features of the economic life of modern society, in laws [24 , s. 69]. In view of this, in the philosophical and legal literature, the main principle of justifying human rights from an anthropological point of view is expressed in the fact that "a person as a person should have a right" [25, s. 152]. Russian scientists (A.V. Polyakov, I.L.Chestnov) widely defend the anthropological justification of human rights. According to A.V. Polyakova, "Human rights are a unity of legitimate legal texts, which include the normative behavior of subjects acting in their own interests, and ensured by the fulfillment of duties by other subjects" [26, s. 32].

In the process of development of provisions on the legal status of a person, enshrined in the US Declaration of Independence, as well as the French Declaration of the Rights of Man and Citizen (XVIII century), the institution of rights and freedoms became central to constitutional law and the core of the constitutional system [27, s. 164]. Recently, the question arises quite often: what is the point of dealing with human rights, if democracy has already won in our country? [28, s. 45], at the same time identifying democracy with the rule of the majority. However, as history shows, majority rule can be very cruel to individuals or various minorities (it was the majority that sentenced Socrates to death, and it can hardly be argued that this is a good indication of the political system of Athens).

Researching diverse aspects of human rights and freedoms is not an easy task. The Protagorian maxim "man is the measure of all things" in the gradual historical development found a modern sound – "human dimension", so the participants of the OSCE (OSCE) called the set of questions in the field of relations related to human rights [29].

Thus, the recognition of a person as a "standard" is connected with the identification of system-forming links that provide a mechanism for protecting this status. In our opinion, a comprehensive solution to the task is related to consideration of the constitutional system of protection of the rights and freedoms of man and citizen in an independent format. It should be noted that the theory of human rights and freedoms has been developed more deeply and consistently in constitutional science [30; 31; 32; 33; 34; 35; 36]. The conclusions made by scien-

tists in this field, the systematization of scientific knowledge about their nature and essence, about the principles of determining legal status, the classification of human rights, create, according to M. Marnheim, an impetus for improving human rights mechanisms for the realization of such rights, the search for adequate and accessible procedures, resorting to which, a person can really feel himself, according to the constitutional definition, "the highest social value".

In accordance with Part 2 of Art. 3 of the Constitution of Ukraine, human rights and freedoms and their guarantees determine the content and direction of state activity. The state is responsible to the people for its activities. Affirmation and provision of human rights and freedoms is the main duty of the state [37]. At the same time, the constitutional use of the word "obligation" in the singular with the actual extension of it (obligation) to recognition, compliance and protection orients to their threefold perception and research. This approach dominated the study of problems reflected in the relationship between the state and the individual regarding the realization of the latter's rights and freedoms.

The analysis of domestic law enforcement practice gives reasons to claim that almost twenty years of experience in the study and practical application of Art. 3 of the Constitution of Ukraine in the traditional format showed that there have been no significant positive changes in the field of human and citizen rights and freedoms. They are still violated by representatives of the authorities, as a result of which individuals distrust the state, the initiatives of its authorities, including law enforcement, are rejected. This development of events increasingly distances our state from the quality of the rule of law and weakens it; prevents people from realizing themselves as significant figures of civil society and defending their rights and legally protected interests; creates a threat of a serious, even dramatic, confrontation between Ukraine and its citizens [31, s. 26].

Based on the subject of our research, special attention should be paid to the principles of law.

Article 3 of the Constitution of Ukraine establishes that a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of state activity. Thus, the activity of the state should be aimed at ensuring compliance with all established human rights and freedoms. So it is quite obvious that all these legal axioms are designed to ensure individual rights and civil liberties. According to E. Trukhanov, the fundamental principle of law should be recognized as the principle of humanism, which is a social ideal, according to which a person is the key value of a democratic society, and the leitmotif and goal of the entire legal system is to ensure his rights and freedoms. Humanism is a comprehensive and most fundamental principle of law, which means recognizing the value of a person, respecting his dignity, ensuring the necessary conditions and the possibility of observing his rights and freedoms, striving for his welfare as the goal of social progress. The further development of law and all of humanity as a whole depends on the extent to which this principle is implemented in law, how deeply its meaning is understood by public consciousness [38, s. 27].

Thus, in modern philosophical literature, humanism (from the Latin humanus – human) is understood as a system of worldview guidelines, the center of which is a person, his personality, high purpose and the right to free self-realization. Humanism defines the release of human potential, its good as a criterion for evaluating social institutions, and humanity as a norm of relations between individuals, ethnic and social groups, and states [39, s. 134]. Humanism as a feature of world culture has enriched ethical thought by recognizing the self-worth of human and earthly life. From here, the idea of happiness, justice and equality of people gradually developed [40, s. 6].

There are quite a few philosophical definitions of the concept of humanism. One of them defines humanism as the recognition of the value of the human personality, its right to free development and manifestation of its abilities, the right to freedom and happiness, the affirmation of the good of a person as a criterion for evaluating social relations [41, s. 14].

Without setting the goal of researching the history of the development of this phenomenon, we will only note that the most successful attempt to penetrate into its essence is a dialectical confrontation with its antipode – antihumanism. Anti-humanism is, first of all, restrictions that prevent the growth of creativity above the level that is considered normal in culture and society. It acts in the form of a ban on innovation, in declaring the value and inviolability of certain dogmas. The specific content of human history constantly contains different directions of people. The history of humanity can be considered as the history of the struggle between freedom and unfreedom, slavery, creativity – with its historical limitations. And the most important element of the content of the historical process is precisely the struggle between humanism and anti-humanism [40, s. 6].

By its essence, writes S. Pogrebnyak, humanism is a worldview, at the center of which is the idea of a person as the highest value, an ideology that focuses primarily on the positive of a person while recognizing his negativity, which needs control and limitations. In the most generalized form, humanism is a philosophical, ethical and natural-legal principle that gives a person the status of absolute value [42, s. 33]. At the same time, the scientist quoted by us rightly observes, the highest humanitarian principles determined by the essence of society and a person's desire for a high, dignified position are realized primarily in the values of natural law. However, the researcher notes, humanism, along with freedom, justice and equality, is undoubtedly one of the main principles of positive law. This must be taken into account during the creation, implementation, application and interpretation of legal norms [42, s. 34-35].

The native scientist M. Kostytskyi believes that humanism affirms the value of the human personality, human existence, dignity, rights, and freedom of every person [41, s. 13]. At the same time, the well-known constitutionalist A. Kolodiy attributes the principle of humanism primarily to the general social principles of law, which accumulate within themselves the origins of the spiritual life of society, and the principle of humanism of law to the actual principles of (subjective) law. As noted by the scientist quoted by us, the latter directly mediate and include a certain part of the content of general social principles that are crucial for the legal system [43, s. 38].

At the same time, writes G. Kalinicheva, humanism as a noble idea could not fail to find its embodiment in law. It is one of the most essential, organically inherent qualities of law, with which the so-called second dimension of law as a spiritual phenomenon is connected. The law seems to translate humanistic ideals and principles from the socio-ethical plane into the legal one, as a result of which humanity acquires the status of a legal concept. For these reasons, modern law is sometimes aphoristically defined as a promise of humanity, given by one part of people to another and guaranteed by law [44, s. 2].

According to other considerations, the tendency to strengthen the humanistic component in modern law is associated with the recognition of the special importance of the idea of human dignity, which legitimizes such standards as freedom, equality, justice, fundamental human rights, and determines their content. It is based on the widespread assertion in moral philosophy that the principle of justice alone is no longer sufficient for the existence of a human community. It is very important that this type of social relations is respected, which elevates individuals by distinguishing their features, which makes them important to others, which are considered in the group, which are worthy of attention [42, s. 35].

The principle of humanism, writes M. Momot, resolves the paradox of "proportionality" in such a way that while protecting the interests of the injured party (for example, the victim), the guilty party, having experienced suffering (primarily of a moral nature), can make amends and become a law-abiding member of society [48, s. 25].

The humanism of legal prescriptions is also expressed, writes S. Chebotaryov, in the fact that they guarantee the inviolability of the person: no one can be subjected to torture, cruel, inhuman or degrading treatment or punishment; all persons deprived of liberty have the right to humane treatment and respect for their dignity, etc. Thus, in its best examples, law concentrates around a person, his values and interests, ensures their protection, creates conditions for the realization of a person's potential, although it does not guarantee the result of this realization without his own efforts. In general, humanization, the scientist notes, is one of the main modern trends in the development of human and citizen rights and freedoms. This trend is associated with the recognition of the special importance of the idea of human dignity, which legitimizes and defines the legal content of such standards as freedom, equality and justice, constitutional human rights. Human dignity, according to the scientist, is considered as a leading humanistic concept, as the "Archimedean fulcrum" of modern Western law and the modern constitutional state, which is based on the Kantian doctrine of the moral autonomy of the individual. This was embodied in the Universal Declaration of Human Rights. This idea is embodied in the general principles declared in the Constitution of Ukraine (according to Article 3, a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine). It is this constitutional norm that is rightly considered as the legal foundation of the humanistic direction of the development of public and state life in Ukraine [49, s. 79].

The fundamentality and general recognition of the principle of humanism is determined by the system of its imperatives and sub-imperatives, its structural components. When considering the formal and practical aspects of the implementation of the principle of humanism, we inevitably face the problem of its

polystructurality, because the implementation of this principle affects the need to implement its components [50, s. 25].

One of the components, in our opinion, is the state of the moral level of society, the achievement of the highest development of society is directly related to the level of development of a member of such society, a citizen, an official, etc. In a society with a high level of morality and ethics, it does not matter whether these rights are formalized or not, because the realization of human rights in such a society is natural.

Thus, according to Ch. Kuli, a person does not exist outside the social order, and only on its basis can he improve his personality, and only to the extent that this order itself is perfect. The author further notes that any person in any period of his life is free or unfree depending on whether or not he finds himself in conditions that contribute to the full and harmonious development of his personality [51, s. 75].

P. Novgorodtsev, in his turn, noted that the new tasks of the legal state more than any others require strengthening and support from moral factors, means of education and all kinds of public influence on the minds and characters of people, who must, by the free efforts of society, create more perfect society [52, s. 25]. B. Chicherin in his works writes that any action takes place under the influence of a known internal or external motivation or through the achievement of a certain goal. The author further emphasizes that when, according to the legal law, the action is not caused by the fear of external punishment, but by the awareness of duty, it acquires a moral character [53, s. 12].

The reforming of the constitutional system taking place in our country determines the new meaning of the principle of humanism, as a fundamental principle of law, which allows to specify and define its content in a new way. The stated circumstances are confirmed by the fact that many modern leading jurists, standing on different positions, at the same time, single out the principle of humanism as an integral principle of law and legislation. At the same time, to date there is no clear legally established term "humanism", practically no new concepts about the content of this principle are being developed in legal science. At the same time, according to the correct statement of E. Trukhanov, the issue of humanism in the context of modernity was and remains key in the science of constitutional law, theory of the state and law, philosophy of law, in understanding the essence of rights and freedoms in various spheres of human life [38, s. 28].

Thus, humanism, in our opinion, as a legal category, represents a worldview that considers a person as a higher, self-sufficient and self-aware value. Humanism expresses an attitude towards a person from at least two sides: it recognizes the social value of the human personality and rejects everything that is incompatible with this is her assessment. Therefore, humanism is a certain moral requirement for people's behavior, that is, a certain category of moral awareness of a person with the highest social value in the state.

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THE EVOLUTION OF ENERGY WEAPONS: FROM THE MIDDLE-EAST CRISES TO THE RUSSIAN-UKRAINIAN WAR

Danylets Vadym[1]

Annotation. There are many examples in history when an energy weapon – sharp reduction or cessation of energy supplies – was used by exporting countries as a means of pressure on other states. The Arab oil embargo of 1973 left the greatest effect from such an application and, accordingly, a trace in history. However, today's events of Russia's military aggression against Ukraine allow us to say that energy weapons have evolved and are ready to «shoot» with even greater power. This article demonstrates the evolution and transformation of energy weapons in the period from the events in the Middle East in the second half of the 20th century to the Russian war against Ukraine in 2022. It is illustrated how the source of economic danger for Western Europe changed – from the arab oil-exporting countries to Russia. Regularities and prerequisites are established under which exporting countries resort to energy blackmail. The author highlights the goals, as well as the methods of exporting states, in particular the USSR/Russia, in conducting energy wars.

Key words. energy weapons, exporting countries, Europe, gas, oil, Russia.

After active United States military support for Israel and stopping the offensive of the Syrian-Egyptian troops, on October 17, 1973, the OAPEC states announced the restriction of oil supplies to the US and other countries that supported Israel in one way or another. The reduction in supplies during the embargo reached 7.5%, but on average fluctuated at the level of 4 – 5% of the total world consumption [1, p. 44]. It is clear that this number was not large and was partly offset by increased production in other countries such as Iran [1, p. 14, 44], but even this amount proved critical for the importing countries and caused mass panic among them.

The OAPEC states took advantage of a rather favorable moment in terms of the effectiveness of the use of energy weapons, which was due to three main opportunistic factors that they lacked for success in 1967 during the Six-Day War. First, during the last decade of economic boom in the industrialized countries of the West, the demand for oil by 1970 caught up with supply [2, p. 567]. Second, after 1970 US oil spare capacity had fallen to a critical level – less than 1 million

[1] Danylets Vadym, The State Institution «Institute of World History of the National Academy of Sciences of Ukraine», Kyiv, Ukraine ORCID ID: https://orcid.org/0000-0002-5568-4388//

barrels per day [2, p. 567] – and the countries with the largest spare capacity were now in the Arab Middle East. Thirdly, the countries of Europe did not manage to accumulate enough oil reserves until the autumn of 1973, which, after the embargo was introduced, led to their panic accumulation and, accordingly, a further increase in demand and a deepening crisis.

Consequently, the use of energy weapons by exporting countries is usually combined with a number of market factors that affect the state of the industry and the state of demand for a product (in this case, oil), which should act as a «charge» for energy weapons. Also exporting countries, if possible, join in creating the necessary economic environment, capturing the market and/or its infrastructure. These changes in the conjuncture obviously create the necessary background for a possible energy blackmail. However, this is only the first necessary, but not sufficient condition for the use of energy weapons. The fact is that energy weapons often have negative repercussions for exporting countries and in this regard are used mainly as a radical measure. Its application is traditionally preceded by economic and political conflict, in which the energy producer, using a monopolistic and dominant position in the field of energy generation and supply, already existing, puts pressure on importers in order to receive political dividends, and also seeks to achieve even greater economic benefits – primarily in rising energy prices. Thus, in 1969 – 1973, producing countries put forward a number of demands and ultimatums to American and European international oil companies on issues of price, compensation and participation in oil production. These actions can be characterized as an energy war against Western countries. Despite the fact that this stage of the attack of Arab manufacturers on the countries of the West was based mainly on their economic demands, it can be seen as a preventive measure in the context of the most important political demands, in particular the questions of palestinian refugees, Israeli-occupied territories and the status of Jerusalem. When it became obvious that these issues had not been moved, the Arabs went on another aggravation and started a war against Israel. But after a series of setbacks in the offensive operations of the Egyptian-Syrian forces during the Yom Kippur War, on October 17, 1973, the OAPEC announced an oil embargo «until such time as total evacuation of Israeli forces from all Arab territory occupied during the June 1967 war is completed, and the legitimate rights of the Palestinian people are restored» [3, p. 185].

Thus, the energy (oil) weapon or the embargo was the final offensive of the Arab producing countries in their energy war, where they have so far failed to achieve the main political goals. At the same time, the Doomsday War was not an element of the energy war, but only a separate political conflict coinciding in time in terms of goals and means with the energy war. Here politics and economics or oil and politics intersected at the point where the «oil weapon» as the finale of the energy confrontation was intended to force the industrialized states to make changes in its foreign policy, primarily in an attempt to isolate Israel and tip the scales in the Arab-Israeli conflict in their favor [4, p. 25]. The Yom Kippur War was only a side action, and «at the most played the role of a catalyst in taking

a decision which was already well prepared and well justified on the economic level» [5, p. 13]. At the same time, the arab decision to use the «oil weapon» in a broader dimension was one of the elements of the global struggle of the Third World countries for fairer terms of trade and structural changes in the international economic system [6, p. 149]. Exporting countries saw one of the main goals of this transformation in obtaining permanent sovereignty over their natural resources [7, p. 221 – 222].

Although the main political goals were not achieved by the Arabs, the example of the use of Third World energy weapons was adopted by the USSR for much more aggressive and long-term plans, hidden behind the screen of conventional trade and economic relations with Western Europe.

Ever since the 1950s the USSR began to implement its long-term strategy, developing the infrastructure for bringing energy carriers to the European market – the construction of oil and gas transportation system. In the 1960s – 1970s. Germany, France, Italy, within the framework of the program to reduce dependence on OPEC, increased their purchases of oil and gas from the USSR. At the same time ever more powerful pipelines to European countries were built, which, for their part, increasingly participated in the development of Soviet oil and gas fields, supplying high-quality technical equipment[8]. Although the Soviet oil offensive since the 1960s was driven by economic needs, its purpose was undoubtedly to weaken Western alliances and disrupt normal patterns of trade and investment [9, p. 84]. As early as the early 1960s, when Soviet exports accounted for only a few percent of total world demand, the British press was warning the «obvious risk of security of supply»[9, p. 84].

Europe's interest in Soviet oil was due to two important economic factors. First, Soviet oil was relatively cheap. In the early 1970s, the USSR used dumping to capture the energy market [9, p. 83, 84]. Secondly, the dependence of Western Europe on the oil of the Arab OPEC countries in 1973 amounted to 54% of the total amount of its consumption[10]. And despite the fact that this number has decreased by 21 – 26% [11] compared to, for example, 1971, Europe, the most affected by the consequences of the embargo was interested in finding sources of energy supplies outside OPEC. Among the political factors, the business communication role of the West, represented by the countries of Europe with the communist bloc, should be noted, which is considered to have made a great contribution to détente, when the German and French «Eastern policy», together with energy contracts for oil supplies of from the Eastern bloc, influenced the mitigation of the cold war [12].

Building a system of relations with the Western world on the basis of energy supplies, the USSR hatched far-reaching plans to advance its geopolitical expansion to the West. Since energy carriers acquire the quality of a weapon only in the presence of a powerful infrastructure, which ensures their stable delivery in large quantities, the development of oil and gas transportation systems to Western Europe for decades was an important condition for the implementation of the strategic plans of the USSR. A large role was played by the transition from oil to gas as the primary fuel and the geographical position between the manufacturer and the consumer. This made it possible to transport

energy exclusively through pipelines, which significantly increased dependence on them and significantly reduced the cost of gas for the end consumer.

Having learned the lessons of the oil embargo used by the Arabs, the USSR, in fact, captured the European energy market, establishing control over their transportation, marketing and pricing. Even during the embargo of 1973, the OAPEC countries for the most part did not have the ability to control the transportation and marketing of oil and oil products, which significantly reduced the destructive effect of oil weapons.

Thus, having received the strongest position in the European consumer market, the USSR received a powerful energy weapon in its arsenal. However, as was said, a number of market factors should contribute to the effective use of energy weapons. It was precisely these necessary prerequisites that the USSR did not have in the 1980s.

By the mid-1980s, the price of oil had fallen below $10 per barrel[2, p. 750, 760], which was characterized as an «oil anti-shock». In 1990, prices jumped significantly, but the crisis was overcome relatively quickly. The USSR at that time was experiencing a heavy internal economic and political crisis, which made it impossible for its energy weapons to be fired.

After the collapse of the USSR, the oil industry of Russia, as well as other former republics of the union, quickly integrated into the global industry of oil and gas production and oil refining. The Russian Federation has consistently developed success in a rather quiet energy war, hiding it behind the screen of economic competition. Using its natural energy reserves, as well as the powerful infrastructure inherited from the times of the USSR, in particular the pipeline system, Russia has set itself the goal of gaining control over the EU energy network and, therefore, obtaining instruments for pursuing its foreign policy.

Thus, during the 2000s, Russian energy companies aggressively bought up assets in the EU area, and also through political pressure and through the formed system of corrupt lobbying contacts, influenced the system of redistribution of supplies in the EU countries. As a result, in the 21st century Russia received much more favorable prerequisites for the use of energy weapons than the Arab producing countries in 1973 or 1967. An important component in this was the modification of the main type of fuel: from oil to gas. Due to its characteristics of production, transportation and storage, compared to oil, it is more sensitive to regional pricing, which gives Russia the role of a regional price maker [13, p. 6].

All this constituted the mechanism a universal mechanism for Russia, which it used to effectively influence international politics in order to achieve certain political or economic preferences. Until now, Russia has been trying to concentrate its influence on the energy-vulnerable countries of Europe in order to use them to increase pressure on the Community and, by inclining its institutions to make decisions in favor of Moscow, to realize its geopolitically of expansion to the West. As for the goals and means of functioning of the mechanism of Russian influence on the countries of the West, Ukraine occupies one of the most important places here, since: is located between the EU and Russia; is vulnerable to gas blackmail because it has insufficient domestic natural gas production; insufficiently integrated into Western communities; is of

great strategic importance, in particular as a platform for influencing European countries.

Energy blackmail of Russia in relation to Ukraine began almost immediately after the collapse of the USSR. However, the most active actions with the use of Russian energy weapons against Ukraine began in the 21st century. In these wars, Russia used the methods described above that are inherent in the state monopolistic, namely: price blackmail; attempts to ensure the political binding of the highest officials of Ukraine to Russia through corruption schemes and channels; discrediting Ukraine and creating the image of a state that is unable to provide reliable energy transit and unable to pay for its consumption, accusing it of stealing energy; reduction / cutting of gas supplies to Ukraine and Europe in order to achieve political concessions to Moscow; attempts to gain control over the Ukrainian gas transportation system. This energy blackmail has traditionally been accompanied by a powerful and aggressive information and propaganda campaign. The events of energy aggression escalated in 2009 and 2014, when economic factors, in particular the increase in world oil and gas prices, contributed to this.

Between 2013 and 2021 reduction of gas production in the Netherlands decreased by 4 times [14]. In 2021, due to the economic downturn associated with pandemics, the demand for gas in the European market has reached unprecedented heights. These events led to a record jump in prices for blue fuel until the end of 2021. In the first months of 2022, prices were still high [15]. So, in 2022, the necessary economic prerequisites for a new round of Russian aggression and the use of energy weapons were formed, which did not take long. Starting a war against Ukraine, in February 2022, Putin also launched an energy war against Europe, hoping that it will be held hostage, given the heavy dependence on Russian hydrocarbon supplies [16] and a sharp increase in their demand. Gas prices immediately after the start of the war reached unprecedented heights[15]. Russia's main political demand was to lift the economic sanctions imposed by Western countries on Russia in connection with its military aggression, as well as to counter economic and military assistance to Ukraine in the war with Russia. Due to rising gas prices and the expectation of a disruption in its supplies European Union annual inflation was 9.8% in July 2022, up from 9.6% in June [17]. A significant decline in GDP is also expected in the second half of the year.

It is obvious that Russia, as a producer, is in a much more favorable situation today for the use of energy weapons than the Arabs during previous crises, when energy weapons were used in 1956, 1967, and also in 1973. In the course of the evolution of energy weapons, each of the exporters has accumulated the experience of previous energy crises, and therefore Russia has the most experience in this. However, Russia cannot put pressure on Europe for a long time without harming itself and its own extractive industry. At the same time, Europe and the world also have vast experience in overcoming the shortage of energy resources. This is a significant movement towards the green transition and the development of alternative energy, in particular electric transport. In addition, it is the ability to diversify supplies in such a way as to provide energy to the countries most

susceptible to attacks by energy weapons. An important factor is American aid, which was excluded in 1973, but now it is present thanks to the US shale revolution. There are also alternative powerful exporters represented by OPEC countries.

Conclusions.

Events of energy wars since the 1950s and until 2022 proved that exporting countries with large natural reserves of energy resources and large export opportunities usually resort to the use of energy weapons for the purpose of political and economic pressure on target countries. With each new use of energy weapons, their effect usually increased as the exporting countries gained experience from previous crises, and the producing countries became more dependent on oil and gas. In order to inflict the greatest destructive effect, exporters use favorable economic factors, in particular, an increase in demand for exported energy resources, control of their transportation, control over prices, etc. In parallel, a number of requirements are presented to exporters, which leads to a political conflict. Given these patterns, the war in Ukraine and energy blackmail were quite predictable and expected events, for which, unfortunately, no one prepared, which can eventually harm on the economies of Europe and the world.

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EFFECTS OF PERSONAL INCOME TAX: THEORETICAL ASPECT

Dibrova Helen[1]

Annotation. The purpose of this article is to study the issue of determining the effects of tax on the income of individuals.

During the study of the study, the author's approach to determining the tax effect was proposed, direct relationships between tax functions and tax effects were established, and the author's vision was given regarding the definition and forms of manifestation of the fiscal and regulatory effects of the personal income tax.

The research is based on a dialectical and systemic approach to the knowledge of economic phenomena and processes, which involves studying them in their relationship and interdependence. In the process of writing the work, the following scientific methods were applied: generalization, synthesis, analysis.

Key words: tax effect, personal income tax.

Current conditions of socio-economic transformations, domestic economists face new challenges regarding the research of current problems in the field of taxation, in particular, challenges regarding the shift of research targets towards strengthening the efficiency of the tax system of Ukraine.

Given that the personal income tax is an important element of the tax system of Ukraine, a budget-forming source of the revenue part of the budget and an instrument of the state's fiscal policy in terms of ensuring the social equality of the population, we choose the research of the effects of the operation of this tax as the research vector.

Before proceeding to the analysis of the effects of the personal income tax, it is advisable to directly consider the interpretation of this term.

When studying the socio-economic role of both the tax system in general and its individual components, the concepts of «effect» and «efficiency» are widely used. Mostly, we are talking about the level of compliance of the obtained result with the purpose of taxation, but this definition needs to be clarified, in particular, the distinction between the concepts of «effect» and «efficiency». An overview of approaches to determining the essence of the economic category «effect» and «efficiency» in the economic literature is given in Tables 1, 2.

[1] Dibrova Helen, PhD. Student, Odesa National Economic University, ORCID: https://orcid.org/0000-0002-5738-6253, e-mail: dibrovahelen@gmail.com.

Table 1

Approaches to defining the essence of the economic category «effect» in economic literature

The authors	Definition of the concept	A common feature
O.G. Zagorodnii [1]	The achieved result in a certain form – material, monetary, social, economic, etc.	Result
A. V. Kutsenko [2]	An absolute indicator of the result of any action or activity.	
T. A. Sinitsyna [3]	The result, consequence of any causes, actions, economic measures.	
T.F. Kosyanchuk [18]	The result, the consequence of a change in the state of a certain object, is determined by the action of an external or internal factor.	
A.V. Cherep [5]	A result expressed in a certain form, a consequence of certain causes, actions.	
V.M. Yachmenyova, O.Y. Sulima [7]	The useful result is expressed in the value estimate.	Useful result
I.V. Petrov [8]	The result in absolute terms, which reflects only the success of certain actions.	
L.Sh. Lozovsky [9]	A result that is measured in material, monetary or social terms as the difference between the results and the costs associated with obtaining this result.	The difference between the result obtained and the costs incurred
P.I. Baghrii [10]	The difference between the results of the economic entity's activity and the costs incurred to obtain them for changes in the conditions of activity.	
V.Ya. Karachun, T.V. Kremen [11], A.M. Turenko, I.A. Dmitriev, O.S. Ivanilov, I.Yu. Shevchenko [12]	The difference between the results of economic activity (for example, a product in value terms) and the costs incurred to obtain and use them.	

Source: compiled by the author.

When analyzing approaches to determining the essence of the economic category «effect», we conclude that the vast majority of scientists single out «result» as the leading characteristic of this category.

Table 2

Approaches to defining the essence of the economic category «efficiency» in economic literature

The authors	Definition of the concept
Peter F. Drucker [4]	Efficiency – achieving the goal in the most economical way.
Heine P., Boettke P., Prychitko D. [6]	Efficiency is a positive factor of activity.
T.A. Sinitsyna [3], A.M. Turenko, I.A. Dmitriev, O.S. Ivanilov, I.Yu. Shevchenko [12], B.O. Zhniakin, V.V. Krasnova [13], A.V. Pislytsia [16]	Efficiency is the ratio of the effect and the costs of its implementation.
V.M. Yachmenyova, O.Y. Sulima [7]	Effectiveness is not just a property of an operation (the process of functioning of a system), which is reflected in its ability to produce a certain effect, but the effectiveness of such an ability, that is, effectiveness, is correlated with resource costs.
A.S. Avdyushchenko [14]	Efficiency is an assessment of the result of activity taking into account the costs that ensured its receipt.
V.G. Andriychuk [15]	Efficiency is an economic category that reflects the relationship between the results obtained and the resources spent to achieve them.
I.A. Blank [16], O.H. Zagorodnii [1]	Effectiveness is the ratio of effect indicators and the amount of resources used to achieve it.
I.A. Markina [19]	Efficiency is not only the connection of the result with the intended goals, but also the effect from the point of view of the optimal use of resources – material, financial, and labor.

Source: compiled by the author.

Therefore, based on the results of the conducted research on the definition of the essence of economic categories, we suggest that the category “effect” be interpreted as a result, and “efficiency” – as the ratio of the effect to the costs that ensured such a result.

In the context of determining the effectiveness of the tax, we agree with I.I. Khlebnikova. regarding the expediency of calculating the absolute values of the obtained effect, and not the relative efficiency indicator, given the fact that accounting for administration costs is not carried out separately for each tax [20]. In addition, N. G. Lukova emphasizes that it is possible to objectively assess the effectiveness of tax instruments for regulating the economy only by taking into account their impact on other spheres of social life [21].

Based on the interpretation and arguments of scientists, we choose the category «effect» for further research on the socio-economic significance of the personal income tax.

In this context, it is appropriate to cite the author's definition of «tax effect». The tax effect is a set of economic and social changes that occur as a result of the tax performing its functions.

The issue of tax functions is quite debatable, because economists distinguish a number of functions, namely: fiscal, regulatory, social, distributive, stimulating, disincentive, control [22].

Based on the well-founded beliefs of the vast majority of scientists and personal assets of previous studies, we consider it expedient to distinguish two fundamental functions of the personal income tax - fiscal and regulatory with their characteristic forms of manifestation. The functional implementation of the personal income tax in the fiscal department is unambiguous, but the regulatory function is multifaceted and manifests itself in a stimulating, restraining and compensatory form.

The structural and logical diagram of the interaction of the functions and effects of the personal income tax is presented in Fig. 1.

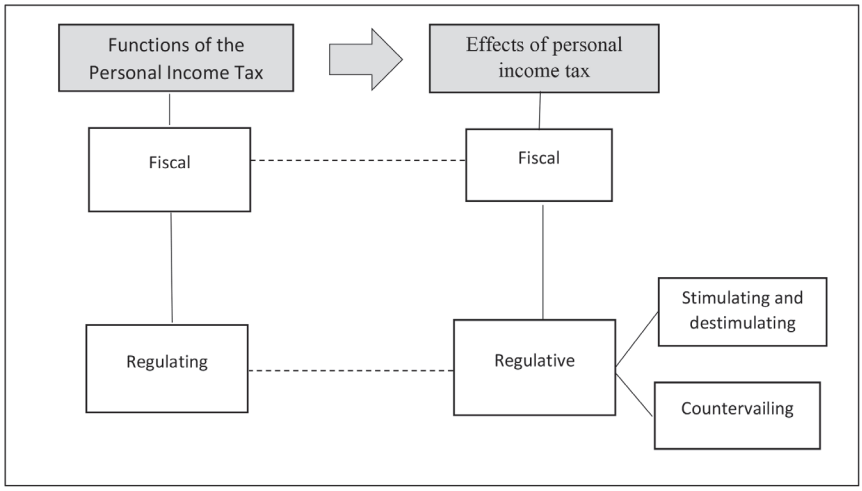

Fig. 1. Structural and logical scheme of interaction of functions and effects of personal income tax.

Source: compiled by the author.

Thus, having established direct relationships between tax functions and tax effects, it is logical that the result of the fiscal function of the personal income tax

is fiscal effects, and the regulatory function is regulatory effects in the stimulating, disincentive and compensatory form of manifestation.

Therefore, as a result of the operation of any tax in general, and the tax on the income of individuals in particular, a certain tax effect is achieved – a complex of socio-economic changes.

The structural and logical scheme of the classification of the effects of the personal income tax is presented in Fig. 2.

We suggest that the economic aspect of tax effects be considered as fundamental, within which fiscal and regulatory effects are realized. Fiscal effects of personal income tax should be considered as the level of receipts of this tax to the revenue part of the Consolidated Budget of Ukraine depending on the influence of factors that are directly embedded in the mechanism of taxation of the income of natural persons, and regulatory effects – as effects of the influence of tax instruments on the level of net income of a natural person-payer tax.

We propose to consider the social aspect of the manifestation of tax effects as compilative, and social effects as a derivative of regulatory effects. This approach is justified in particular by the fact that the social effect in general is determined by the scale of government intervention in the economy, in particular as a result of tax policy measures to regulate the standard of living of the population, which is directly correlated with the level of net income of individuals and is reflected in the trends of social development.

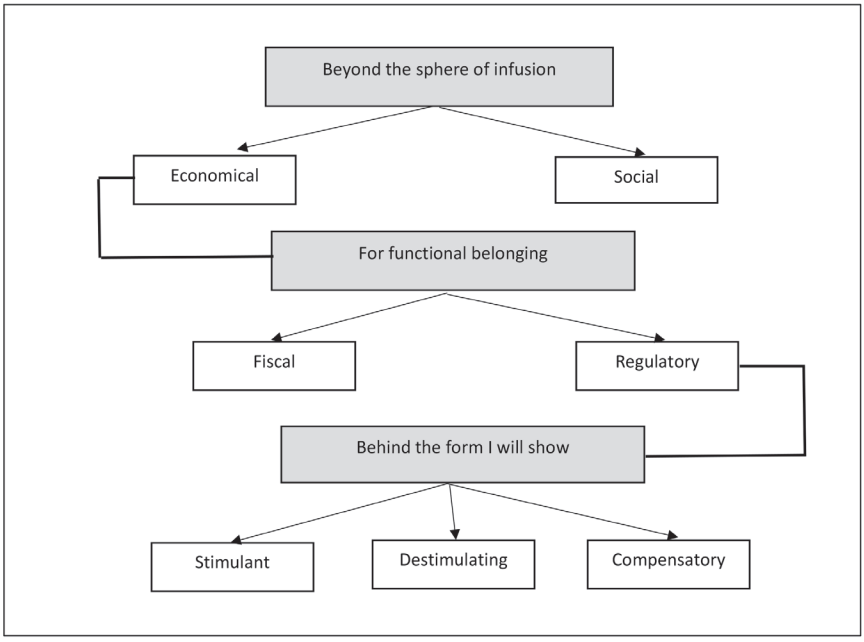

Fig. 2. Structural and logical classification scheme of personal income tax effects.

Source: compiled by the author.

The fiscal effects of the tax on the income of natural persons should be considered as basic, in accordance with the quintessence of the tax, which involves the withdrawal of a part of the income of a natural person-payer of the tax in order to form a material basis for the state to implement its functions. By their very nature, regulatory effects are a superstructure of the fiscal base and are an integral component of socio-economic changes.

The paradigm of regulatory effects in the context of tax incentives and disincentives is revealed through the influence of tax instruments on the adoption of economic decisions by an individual tax payer regarding the profitability of his activity and the formation of his real interest in complying with the conditions of tax legislation that regulate the use of a specific instrument of tax regulation, and already the fulfillment of such conditions serves as a trigger for the implementation of priority programs for the socio-economic development of the state.

A vivid example of the stimulating and disincentive form of the manifestation of the regulatory effects of the personal income tax within the framework of the current legislation is the differentiation of the conditions of taxation of dividends according to the resident status of the issuer and according to the criterion of the tax agent's belonging to corporate income tax payers.

Thus, for income in the form of dividends on shares and corporate rights, accrued by residents – corporate income tax payers, the personal income tax rate of 5% is applied, and for dividends accrued by a tax agent who is a non-resident or a resident acting as a sub- subject to the simplified taxation system or exempted from paying corporate income tax, the personal income tax rate of 9% is applied.

It should be noted that paragraphs 165.1.18 of the Tax Code of Ukraine provides for the case when reinvestments are not subject to taxation. Namely: «dividends accrued in favor of the taxpayer in the form of shares issued by a legal entity – a resident accruing such dividends are not included in the calculation of the total taxable income, provided that such accrual does not in any way change the proportions of participation of all shareholders in the statutory the issuer's fund, and as a result of which the issuer's statutory fund increases by the total nominal value of accrued dividends» [23].

This differentiation of dividend taxation conditions has a stimulating effect on reinvestment, increasing the pace of economic activity of domestic enterprises, while forming a certain fiscal reserve, and a disincentive influence on the outflow of capital abroad, forming the basis for the implementation of the priority tasks of the socio-economic development of the state.

The given example demonstrates how, with the help of tax regulation tools, influence is exerted on economic decision-making by an individual when forming an investment portfolio.

Proceeding from the fact that income in the form of dividends is finally taxed at the time of their payment and at their expense, that is, in fact, an individual investor receives the difference between the accrued amount of dividends and the tax on the income of individuals, the investor assesses the profitability of capital investments taking into account the level of the tax burden at differentiation of taxation conditions. Thus, the use of effective tax regulation tools can have a stimulating effect on the decision-making by an individual regarding economic

activity due to a decrease in the tax burden, and accordingly a disincentive effect due to an increase.

Incidentally, as a deterrent effect of the regulatory effect of the personal income tax, consider the norm of the current legislation regarding the differentiation of tax rates when taxing income from the sale during the reporting tax year of more than one object of immovable property and a second object of movable property at the rate of 5%, and income from the third sale of movable property at the rate of 18%. This tool restrains speculative operations on the markets of movable and immovable property.

Similar tools are used in inheritance taxation depending on the level of kinship and resident status of heirs and testators (Article 174, Clause 2 of the Tax Code of Ukraine) [23].

Compensatory aspects of the regulatory effects of personal income tax are realized in the process of adjusting the degree of divergence of individuals by income level with the aim of economically ensuring a socially sufficient standard of living of the population and leveling the permanent conflictogenicity of society on an economic background.

Smoothing of the degree of economic inequality occurs under the influence of tax instruments on the level of net income of an individual.

Tax social benefits and tax discounts are important tools of tax regulation in the field of personal income tax.

Despite the fact that the use of tax social benefits leads to budget losses as a result of preferential taxation, that is, failure to receive certain potentially possible tax amounts, regulation of the income level of low-income groups of the population is of great importance.

The tax social benefit is the main tool aimed at reducing the tax burden of personal income tax by adjusting the net income of an individual by reducing the tax base.

Also, a progressive tool of tax regulation in terms of ensuring the compensatory effect of personal income tax is a tax discount, which is a reduction of the total annual taxable income in the form of wages by the amount of incurred expenses, in accordance with the terms of the current legislation.

Compensatory effects are manifested in various spheres of the socio-economic life of society, namely in such areas as: education, health care, environmental protection, charity, long-term life insurance, non-state pension provision, mortgage lending, support for internally displaced persons in rent under the housing rental agreement.

Thus, in the course of the conducted research, the author's definition of the tax effect is proposed as a set of economic and social changes that occur as a result of the tax performing its functions. Establishing direct relationships between tax functions and tax effects forms the basis of a systematic approach to the classification of tax effects on the income of individuals. In particular, economic and social effects are distinguished by the sphere of influence, and we propose to consider the economic aspect of tax effects as fundamental, and the social aspect as compilative.

Within the framework of economic effects, fiscal and regulatory effects are distinguished according to the classification feature of functional affiliation. Fiscal effects of personal income tax are recommended to be considered as the

level of income of this tax to the revenue part of the Consolidated Budget of Ukraine, depending on the influence of factors that are directly embedded in the mechanism of taxation of the income of natural persons, and regulatory effects – as effects of the influence of tax instruments on the level of net income of a natural person-payer tax In turn, regulatory effects are classified according to the form of manifestation into stimulating, destimulating and compensatory.

The paradigm of regulatory effects in the context of tax incentives and disincentives is revealed through the influence of tax instruments on the adoption of economic decisions by an individual tax payer regarding the profitability of his activity and the formation of his real interest in complying with the conditions of tax legislation that regulate the use of a specific instrument of tax regulation, and already the fulfillment of such conditions serves as a trigger for the implementation of priority programs for the socio-economic development of the state.

Compensatory aspects of the regulatory effects of personal income tax are implemented in the process of adjusting the degree of divergence of individuals by income level with the aim of economically ensuring a socially sufficient standard of living of the population and leveling the permanent conflictogenicity of society on an economic background. The smoothing of the degree of economic inequality occurs under the influence of tax instruments on the level of net income of an individual tax payer.

Therefore, the need to solve many problems that arise in the process of socio-economic transformations in Ukraine puts the issue of stabilization and growth of the domestic economy, in particular, the improvement of public welfare through tax effects, at the forefront. Given the powerful potential of the personal income tax, the orientation of further scientific research is aimed at finding reserves for the growth of the fiscal and regulatory effects of this tax.

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THE MONSTER AS A HUMAN IN THE NOVEL "THE MINOTAUR TAKES A CIGARETTE BREAK" BY STEVEN SHERRILL

Gurduz Andriy[1]

Annotation. Detection of the amplitude of reinterpretation of legendary-mythological structures in the literature of the XXI century is fundamentally important in comparative studies, and the image of the Minotaur is one of the key and understudied here. In the novel "The Minotaur Takes a Cigarette Break" by S. Sherrill, the image of the main character is a unique example of interpretation, where the emphasis is on the combination of human and animal in the man-bull as on a process. Accordingly, we qualify this novel as philosophical and psychological and highlight the main aspects for study in it for the first time: the peculiarity of the writer's approach to depicting the symbiosis of culture and nature on the example of the image of the Minotaur, as well as the specificity of the S. Sherrill's interpretation of the concepts of time, memory and monstrosity in the world of the XXI century.

The study of the artistic work against a broad literary background allows us to affirm the organicity of S. Sherrill's reinterpretation of the Minotaur image in accordance with the trends in the vision of the monstrous in the literature of the end of the XX – the first decades of the XXI century. The man-bull in the text becomes tragically lonely, his guilt as a legendary-historical monster is leveled. It is important that S. Sherrill's Minotaur loves people, feels like a person, he is aware of the tragedy of civilization's guilt before nature. In the eyes of the hero, the writer rethinks the current situation in the spiritual sphere, which becomes an area for speculation, as well as the issue of gender.

Key words: Minotaur, fantasy, concept, memory, symbol, code.

The relevance of the research topic. Myth-making processes play in the first decades of the XXI century a decisive role in the political, social and cultural spheres, naturally reflected in literature. The study of the productive nature of some of them and the destructive nature of others is important for an adequate interpretation of trends in mass psychology,

[1] Gurduz Andriy, Candidate of Philological Sciences, Associate Professor, Doctoral Candidate of the Department of Ukrainian and Foreign Literatureand Comparative Studies of Berdyansk State Pedagogical University, Ukraine ORCID.org/0000-0001-8474-3773, e-mail: gurdai@ukr.net.

national identity, hermeneutics of history, etc. In the systemic paradoxes of today, V. Pelevyn's vision of the Minotaur as a zeitgeist (Pelevin, 2010, p. 169) does not lose its relevance and is repeatedly reflected in the artistic genre spectrum.

The figure of the Minotaur reflects the combination in and around modern man of diminishing natural and increasingly powerful man-made principles, the struggle in his mind of the moral, ethical – and the opposite in this sense of the rational, mercantile. As a rule, for artistic interpretations of the image of the son of Pasiphae in the middle of the XX – the first decades of the XXI century the characteristic is work of writers with the key image as a ready-made example of the fusion of human and animal as a result of the sinful attraction of Minos's wife to the bull. The American Steven Sherrill, whose philosophical and psychological novel "The Minotaur Takes a Cigarette Break" (2000) in fact begins the artistic gallery of man-bulls of the third millennium, is actually the only one who considers the combination of these two beginnings in the Minotaur as a process. Given the interweaving in this artistic work of the problems of self-determination of the average American, the search for justification of one's existence against the background of general despair and the debunking of hopes for the revival of national character in the new era, the rejection of historical mistakes and the search for a mission in the face of eternity, "The Minotaur Takes a Cigarette Break" stands out from-among the texts of its interpretive cluster, because of an accented complex of originally reinterpreted concepts of national and world memory, Americanness, time, revival and it deserves the close attention of comparativists. We can say, that this novel is forming a certain synonymy with John Updike's "The Centaur" or Stel Pavlov's "Gene".

Analysis of recent research and publicatioms. Philosophical and psychological branching of artistic interpretation of Minotaur image in the XXI century ("Das Versteck des Minotaurus" by U. Gruenter, "Gene" by S. Pavlou, "The Bull from the Machine" by G. L. Oldi, etc.) as one of the priority frames in the study of transformations of legendary-mythological structures remains practically unexplored (with the exception of "The Helmet of Horror: The Myth of Theseus and the Minotaur" by V. Pelevin) and is consistently studied by us (for example, see: Gurduz, 2009; Gurduz, 2021). The named S. Sherrill's novel is extraordinary in view of the artistic concept proposed in it, the disclosure of the mediated artistic valence of the title ancient image. Despite this, "The Minotaur Takes a Cigarette Break", however, is satisfied with individual positive reviews without delving into the analysis of images or vicissitudes (in particular, N. Gaiman, M. Stewart) and specially not researched; for the first time it is considered by us in the panorama of Minotaur images of the XX – the beginning of the XXI centuries (Gurduz, 2009, p. 14).

The ideological and ideological accents embedded in the novel are significant for the interpretation arrays of ancient images of the first decades of the XXI century are generally and completely understandable given the appropriate reading experience of the recipient, and they are also originally developed in S. Sherrill's sequel, "The Minotaur Takes His Own Sweet Time"

(2016). The second novel about the stay of a man-bull in the modern USA was also not the object of literary coverage; in the artistic sense, it is notable rather as a confirmation of the degree of convictions preserved by the writer during more than 15 years of creativity, which is why it is involved in the proposed analysis.

Formulation of the purpose and tasks of the article. The purpose of our article is to determine the originality of the artistic expression of leading concepts and their systematicity in S. Sherrill's novel "The Minotaur Takes a Cigarette Break" for the first time. The key here is to find out the parameters of the transformation of the image of the ancient monster in this book work; to discover the specificity of the writer's interpretation of the concepts of time, memory, love, and monstrosity itself in the modern world.

Presentation of the main research material. The concept of time in the artistic configuration of the novel "The Minotaur Takes a Cigarette Break" is of key importance, providing the logic of connection in the plot of the memories by the immortal hero – a resident of the South of the USA of his existence in antiquity, and also – of the author's assessment of modern (American) reality from the perspective of the fifty centuries lived by the Minotaur. That concept of time euphemistically reflected in the title of the work itself. Naturally for a text with a reinterpreted legendary-mythological image, in S. Sherrill's novel time appears as a whole, where the ratio of its segments is conditional: "The Minotaur dreams of the past as if it were tomorrow" (Sherrill, 2000, p. 104). At the same time, the depicted interval of the hero's existence is interpreted as "a reprieve from the inevitable loneliness» (Sherrill, 2000, p. 244), in the title it indicates as "a Cigarette Break".

Similar to discovered by us in "The Mirror of the Unicorn" by L. Taran and in the "Gene" by S. Pavlou the dialogue of historical eras we record in the S. Sherrill's text too, where the real Minotaur confronts the myth about himself in modern America (Sherrill, 2000, p. 228). Binary opposition is important in the book and natural for fantasy prose, and this opposition emphasizes the paradoxical nature of the artist's thinking. So, having survived people of many generations, the man-bull still "…recognizes that fraction of time for what it is. […] He clings to the moment for as long as possible" (Sherrill, 2000, p. 132). The contrast between the limitlessness of the Minotaur's existence and of his transience is emphasized by hero's wristwatch (Sherrill, 2000, p. 55).

The hero sees the degradation of people and at the same time he wants to be with them, to hear the sounds of their everyday life (Sherrill, 2000, p. 86); he also dreams of learning to sing (Sherrill, 2000, p. 113), but has considerable difficulties with speech. Manifesting the remains of the animal ("…even the animal in him has diminished" (Sherrill, 2000, p. 49)), then the human depending on the situation, S. Sherrill's Minotaur, however, in general feels like a person and is able to feel his life in the same way (Sherrill, 2000, p. 103, 117). His kinship with the animal scares him ("A horrible kinship. A fetid lineage" (Sherrill, 2000, p. 118)), although, watching the bullfight, the hero sympathizes with the wounded and killed bull as much as if he himself were being killed: «The Minotaur feels faint» (Sherrill, 2000: 164).

The approach of the Minotaur to the status of a human personality ("…seems pitifully human" (Sherrill, 2000, p. 296)) is all the more prominent in the novel, the more transparent his vision of animal dictate in the society of the XXI century.

Unequivocal perception of the matador by Pasiphae's son is principled here («stupid, proud, vastly human» (Sherrill, 2000, p. 163)), as well as the judgment of civilization in general: "To be a man means to be capable of this. To be a bull" (Sherrill, 2000, p. 164). So, if the hero of S. Pavlou's "Gene" faces the dilemma of whether or not to recognize the animal (bull) as a component of himself, then S. Sherrill's Minotaur allows the transformation (albeit for a certain time, in moments of passion) of a person into a bull (animal) as such (it is not for nothing that in the finale the novelist addresses the words about the monster to each of us (Sherrill, 2000, p. 297)).

The writer's emphasis on the spiritual insight and correction of the monster, as well as the degradation of humanity as mutually directed processes, is metaphorically reflected in the paradoxical physiology of the Minotaur: "The temperature of the scarlike ribbon and the flesh around it, bullish gray on one side, milky, translucent and human on the other, always seems a few degrees hotter than anywere alse on the Minotaur's body, as if the fusion is still in process" (Sherrill, 2000, p. 89). It is significant that these artistically reproduced interconnected processes as an "inversion of meaning" were previously predicted by J. Baudrillard in relation to modernity: "...all inhumanity turns to the side of people, all humanism turns to the side of the beast..." (Bodriyar, 2004, p. 194).

At the same time, S. Sherrill emphasizes that, while it is relatively easy for a person to descend in development to an animal, it is disproportionately more difficult for the latter to rise to the human level. Therefore, the complete "fusion" of two bodies remains ephemeral and desirable for the hero: "Sometimes this place… becomes a chasm within the Minotaur that he will never span… becomes a separation between two distinct parts. But sometimes he is able to forget it, to believe for an isolated moment that he is a singular and whole being" (Sherrill, 2000, p. 45). Since the protagonist of the novel can also be interpreted as a tragic figure of a man of the XXI century, who is ashamed of (in particular, criminal) mistakes of civilizational development and seeks to reject them, one of the main problems raised by S. Sherrill is the eternal and doomed to failure of man's desire to finally rise over his animal nature, as well as the impossibility for a contemporary human of complete and organic combination of the spiritual and the animal in himself.

The intertextual richness of S. Sherrill's work, which is natural for the postmodern artistic corpus, contributes to the realization of the artistic valence of the image of the man-bull figure: Shakespeareanly tragic (the mention of Othello (Sherrill, 2000, p. 234) is not accidental), the Minotaur is here directly defined as a hybrid (Sherrill, 2000, p. 227), which, in turn, actualizes the semantics of the image of Frankenstein's creation named in the novel (Sherrill, 2000, p. 240). Accordingly, the understanding of the ancient monster as the fruit of the sin of a particular family turns into the understanding that the Minotaur is "detritus… of civilization" (Sherrill, 2000, p. 287) in general. Reflections on the ability of humanity to refuse negative events in history, thereby removing responsibility

for them, strengthen this thesis: "…the human capacity for avoidance, the ability to so completely cloak a moment in denial or shame or fear, to wrap it so tightly inside as to render it fictive, is confounding to the Minotaur" (Sherrill, 2000, p. 184). At the same time, the desire to «unburdening himself of his history» (Sherrill, 2000, p. 69) – the lived millenniums brings the man-bull being closer to the people he critically evaluates, whose languages and cultures he is forced to learn (Sherrill, 2000, p. 47), overcoming the centuries.

Like the scientist M. Shelley's monster, S. Sherrill's Minotaur reads literature (Sherrill, 2000, p. 47), he "dreams… of retribution" (Sherrill, 2000, p. 160) for his suffering, and in the gallery of Frankenstein interpretation of the XXI century he is very close to the hero of the movie "I, Frankenstein" (USA, 2014) directed by S. Beattie. S. Sherrill's ontological justification of the existence of the minotaur ("…the Minotaur exists out of necessity…" (Sherrill, 2000, p. 229)) is consistent with a similar statement regarding the life of Frankenstein's creature in S. Beattie.

The humanity of the American novelist's Minotaur is essential (he "…is nearly human blood. It carries with it, through his monster's veins, the weighty, necessary, terrible stuff of human existence: fear, wonder, hope, wickedness, love" (Sherrill, 2000, p. 103)) and manifests itself in the spectrum of experiences of an ancient creature, which has fundamentally changed over time: he tries to avoid conflicts (Sherrill, 2000, p. 30), be submissive and have hope (Sherrill, 2000, p. 54), he's timid (Sherrill, 2000, p. 93), feels tenderness (Sherrill, 2000, p. 109). The hero's shyness is repeatedly emphasized ("The Minotaur is already imagining the flush of shame he'll feel…" (Sherrill, 2000, p. 145), "hobbled from shame" (Sherrill, 2000, p. 14)), his embarrassment (Sherrill, 2000, p. 169, 178, 203). The dominance in the image of S. Sherrill's man-bull of the female nature is obvious ("Now, among cocky boys and arrogant men, he is reserved and hesitant, unsure" (Sherrill, 2000, p. 35), he is vulnerable (Sherrill, 2000, p. 296), sews clothes for oneself (Sherrill, 2000, p. 87), etc.), and this is consistent with the corresponding tendencies of the fantasy novel of the first decades of the XXI century.

Frontal analysis of fantasy of the beginning of the XXI century testifies to the growing interest of its authors in the religious aspect of social life, which is indirectly consistent with the thesis that this metagenre has taken over the "philosophical and religious functions" (Nesterova, 2015, p. 66). We trace such trends in the Minotaur interpretations as well. Unlimited long life has made S. Sherrill's hero not just an observer (Sherrill, 2000, p. 178): he is in search of faith (Sherrill, 2000, p. 114) according to his beliefs, and thus he is close to the God-seeking vampires from "Empire 'V'" and "Batman Apollo" by V. Pelevin. The Man-bull "…recognizes Christ as a recent phenomenon… he admires the tenets" (Sherrill, 2000, p. 112). This brings the novel closer to L. Kaverina's "Minotaur" and the intentions of the parodic "Goblin" by D. Savelyev and O. Kochergina: if in the named play the story of the man-bull – prophet acquires a Christian subtext through the parallel "Minotaur / Christ", the son of Pasiphae here is a vegetarian, he teaches literacy to the Athenians and is the teacher of Theseus, then in the parodic story the Minotaur is a Christian "missionary, apologist, ascetic" (Savelyev, Kochergina, 2012, p. 211), a teacher of a centaur, eventually

tortured by elves. S. Sherrill's sarcasm in his criticism of modern society, which brings Christian ideas to the point of absurdity, resembles V. Pelevin' tone in the named dilogy. An example here can be a bus painted with scenes from the life of Christ, which gets stuck in the mud (Sherrill, 2000, p. 119).

Notable in this context is the metaphorical meeting of the man-bull in the continuation of the novel by S. Sherrill, "The Minotaur Takes His Own Sweet Time", with the unicorn: the noble beast is depicted on the clothes of the girl, whom the hero meets (Sherrill, 2016, p. 14) and which enters for a certain time in his life. In one of the episodes, apparently relying on the Christian symbolism of the unicorn, the writer subtly observes that "the fickle beast of change» (Sherrill, 2016, p. 176) is rushing after the Minotaur (a symbol of antiquity, conservatism). Based on the legend of the hunt for a unicorn, its image on the girl's T-shirt is also not accidental, and in the text the semantics of the miraculous horse "merge" with the owner of this clothes, giving the nomination «the little unicorn girl» (Sherrill, 2016, p. 25, 176).

Bearing in mind the dominance in the Western cultural canon of masculinity (Hundorova, 2013, p. 285) and that the United States, having a weak feminine and maternal primal (Gachev, 2008, p. 180), accordingly embodies the masculine (Gachev, 2008, p. 20), which associated, in particular, with the image of a unicorn, we draw special attention to the opinion of B. Harris, who, in the context of the history of the symbolization of this image, writes about the great hopes for it in American literature: "Resurrecting the Unicorn addresses our need of a renewed masculine image in the 21th century. Currently this transformation is falling…" (Harris, 2008, p. xii). "The Minotaur Takes His Own Sweet Time", in this way, confirms the thesis of B. Harris, although the feminine element dominates in S. Sherrill's novel of 2000 too.

Based on the concept of the artistic work "The Minotaur Takes a Cigarette Break", the determination of the ancient code in it (in the mentioned interpretation of M. Menshchikova (Menshchikova, 2012, p. 162)) is natural, and this code is formed by an American, similar to the Pavlov's one in the "Gene". The origin and the past in the labyrinth have a decisive influence in the present both on the attitude of those around the hero and on his self-awareness, and he often acts as a benefactor here. The Minotaur also imagines the future based on who he is and what (other than a monster) he wants to become. The personal history of the Minotaur in the novel is marked by references to the labyrinth (Sherrill, 2000, p. 132, 229), to Pasiphae and Knossos (Sherrill, 2000, p. 104), Daedalus (Sherrill, 2000, p. 160), Prometheus (Sherrill, 2000, p. 95), Janus (Sherrill, 2000, p. 120), Zeus, Helios, nymphs, Perseus, Ariadne, Phaedra, etc. (Sherrill, 2000, p. 43); in the present day, the hero is accompanied by a myth about him (Sherrill, 2000, p. 228), his favorite Greek coffee (Sherrill, 2000, p. 24), a tattoo of Pan on a stranger (Sherrill, 2000, p.62), a symbolic in the context of the novel the name of the restaurant "Next Exit" (Sherrill, 2000, p. 15), etc. The hero's emphasized perception of reality depending on the principles of the primitive world for him (antiquity) (Sherrill, 2000, p. 103) indicates that the spiritually regenerated man-bull see his own future through such a prism.

In the open finale, the writer resorts to already traditional in the modern Minotaur interpretations reception – rescue from a state of loneliness in a conditional temporal labyrinth by love: "…even the most monstrous among us needs love…" (Sherrill, 2000, p. 297). Emphasis by a number of writers (E. Biss, N. Solntseva, S. Pavlou, etc.) of the metaphor of love in the symbol of Ariadne's thread as a way out of the labyrinth – a conditional self-discovery can be explained by the fact that love is the "deepest type of identification" (Stepyko, 2011, p. 243), that is, almost the main purpose of S. Sherrill's man-bull.

Conclusion. As can be seen from what has been said, the method of reinterpreting the image of the main character in the novel "The Minotaur Takes a Cigarette Break" is organic to the philosophical and psychological models of the transformations Minotaur image of the first decades of the XXI century with its bringing to the fore the soul of a contemporary man, doomed to seek a way out as self-determination in the conditional labyrinth of fate. At the same time, the specificity of the figure of the American man-bull is the emphasis in him on the procedural nature of the combination of human and animal. Accordingly, the leading and functionally interconnected concepts of this novel with its binary oppositional system are unlimited and valuable time in every moment, necessary and threatening memory, the total monstrosity of humanity in the modern world, which it tries not to notice, and love as a means of knowing oneself and of break out of the labyrinth of destination into the space of self-determination.

Expansion of the positions of the proposed article in the format of the study of the larger field of Minotaur image transformations and similar interpretive thematic arrays of the end of the XX – the first decades of the XXI century will contribute to a deeper understanding of the tendencies of the reinterpretation of legendary-mythological structures in the modern art of words, as well as the actual mechanisms of the development of fantasy as perhaps the most productive metagenre of today.

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THE CERTAINTY OF JUSTICE IN UKRAINE AS THE MAIN FACTOR OF FAIR LAW ENFORCEMENT

Guyvan Petro[1]

Annotation. The article analyzes the essence of the legal doctrine, on which the activities of the European Court of Justice are based, namely the judicial precedent that came from the Anglo-Saxon system of law. The content and essence of the notions «ratio decidendi» – part of the court decision, which sets out the rules of law on the basis of which the case was decided, and «obiter dictum» – remarks and conclusions of the court, made by him on issues that do not directly concern the subject of the judgment . Practical differences of these two categories are given, and examples are given that prove the complexity of their differentiation.

The existence of conflicts between justice and legal stability (which consists in monotonous observance of the content of legal norms, without considering whether this content corresponds to the principles of justice) is investigated in the resolution of litigation. The author fully supports the so-called «Radbruch formula», according to which a positive and authoritative sanctioning right takes precedence even when it is unfair and inexpedient in content. But when the acting law becomes flagrantly unfair, incompatible with justice, it becomes unjust by its nature and is not subject to application. It is in this that the principle of the rule of law manifests itself both in law-making and in law enforcement.

The paper concludes that the precedent decisions of the European Court of Human Rights are binding for all subjects of law, and not only for those who participated in a specific examination, and the interpretation contained in these conclusions is, in fact, judicial lawmaking. Especially it concerns those branches of law that contain significant gaps. Actually, the right to a fair trial can be considered in two aspects: in a narrow, reflecting the provisions of Art. 6 of the 1950 Convention, and widely, as it is interpreted in the judgments of the European Court of Human Rights, including the requirements of the certainty of legislation and proceedings. In this case, the requirements of legal certainty in the implementation of law enforcement, although they are not explicitly declared in the Convention, must necessarily be implemented by the relevant actors.

[1] Guyvan Petro, doctoral student of the Institute of State and Law named after V. M. Koretskyi of the National Academy of Sciences of Ukraine, PhD. Sciences, Honored Lawyer of Ukraine.

Subject to the principle of legal certainty, judicial clarification (concretization) of legal terms and certain fuzzy provisions contained in the law is connected, that is, a reduction in the uncertainty of regulatory legal acts for each particular case. Judicial lawmaking of this kind guarantees the consolidation of confidence in the law, and is systematically included in the elements of the principle of the rule of law (rule of law). This, in turn, provides citizens with the opportunity to confidently plan their behavior, expect clear, understandable, non-discriminatory and certain legal norms, to foresee the possible consequences of using state coercion for violating the rules of law.

Key words: fair trial, legal certainty, precedent.

According to Art. 6 of the 1950 Convention, the right to a fair trial consideration is one of the defining legal ideas that ensure the protection of individual rights. The thesis that it consists of institutional and procedural elements is supported in the literature. The institutional elements include the requirements for the court as an institution, and these are, first of all, independence, impartiality, creation on the basis of law. Procedural components are the minimum requirements for the trial procedure, in particular, publicity, ensuring the rights granted by the procedural law to the trial participants, adversarial nature, a reasonable term of the case trial, execution of the final court decision, etc. [1, p. 95]. However, the specified requirements for the essence of the right to a fair trial are written in the very text of Article 6. Meanwhile, given the fact that the application and interpretation of the essence of each provision of the Convention, including the right to a fair trial, is carried out by the European Court of Human Rights person, there are specific features here that must be taken into account.

Numerous works of scientists, studied this issue in particular, such as V. Paliyuk, P. Rabinovych, M. Magrelo, V. Marmazov, A. Meleshevich, O. Romanyuk, V. Kostytskyi, U. Koruts, V. Stefaniuk, S. Taghiev and some others. At the same time, the issue related to the study of the legal nature of the ECtHR's decisions and their adaptation to the national law-enforcement platform in view of the multifaceted manifestations and the importance of the result remains very relevant. Therefore, the purpose of the article is a conceptual study and disclosure of the meaning and role of the principle of fair trial in the process of development of the national legal system. The effectiveness and efficiency of precedent law for improving law enforcement in Ukraine will also be determined.

The legal doctrine on which the activity of the European Court is based is a judicial precedent that came from the Anglo-Saxon legal system. In this way, a certain fusion of legal systems took place, since the methodology and legal technique of creating and applying a precedent was recognized as necessary for use in the activities of the European Court. Precedent as a legal phenomenon has the peculiarity that its content includes the obligation for judicial authorities of their previous decisions – stare decisis (stand by what has been decided). In such a case, judges refer not only to theses from court decisions, but also use doctrinal sources of law and foreign precedents when making a decision in the case under consideration [2, p. 398-399]. According to its structure, the court verdict, which has a precedent character, contains two parts: ratio decidendi and

obiter dictum. The first, ratio decidendi, is that part of the court's decision, which sets out the rules of law on the basis of which the case was decided. It contains the principles of law based on which the court makes a decision. It is this part of the decision that will be binding on all subsequent decisions of the courts, if they have to consider similar cases. The ratio decidendi forms a legal basis that has a normative character and must be applied to all other persons, not only to the parties in this case. Thus, the ratio decidendi is a rule of precedent law [3, p. 196]. The second part of the decision is obiter dictum, which is the court's remarks and conclusions made by it on issues that do not directly relate to the subject of the court decision. Unlike the ratio decidendi, these provisions do not make it possible to formulate a certain principle of law and do not justify the court's decision. This is a legal position stated in the decision, which does not claim to directly resolve the disputed issue between the parties, but which explains or illustrates the main principle of dispute resolution [4, p. 8].

However, the distinction between ratio decidendi and obiter dictum in practice is not simple [5, p. 49]. For this, first of all, one should analyze the purpose and direction of a specific court instruction: is it aimed at solving a specific dispute, or does it provide a general assessment of the situation. Thus, in the decision in Salgueiro da Silva Mota v. Portugal, the ECtHR examined two possibilities: whether the factor taken into account by the Lisbon Court of Appeal (the applicant's homosexual orientation) was simply an obiter dictum (said casually) and had no direct influence on the final decision the decision, or vice versa, was the decisive factor. For this, the Court reviewed the decision of the Lisbon Court of Appeal and emphasized that the latter, having learned about the lack of sufficient grounds for depriving the mother of her parental rights, which she obtained by agreement with her husband, also recognized that: «...even if this were not the case, we believe that the care of the child should be left to the mother.» At the same time, the appeals court, taking into account that the applicant was homosexual and lived with another man, ruled that: «the child should live in a normal Portuguese family» and that «there is no need to determine whether homosexuality is a disease or a sexual orientation towards other people same sex In any of these cases, it is abnormal, and the child should not grow up under the influence of abnormal conditions.» In the Court's opinion, these provisions of the decision of the Lisbon Court of Appeal were not only straightforward, unsuccessful or simply obiter dicta. They suggested that the applicant's homosexuality was a decisive factor in the final decision and therefore gave rise to a distinction based on the applicant's sexual orientation which the Convention prohibits. This conclusion is supported by the fact that when ruling on the applicant's right to communicate with the child, the appellate court advised the applicant not to reveal to the child during communication with her that he lives with another man «as a spouse» [6].

So, individual court statements and comments, which in themselves do not create a precedent (in the classical sense), nevertheless, given the authority of the court that adopted them, significantly affect the practice of other courts [7, p. 50]. Actually, certain guarantees provided by the ECtHR's application of the principle of legal certainty have the meaning of obiter dictum (obiter or dicta in

abbreviated version). Thus, judicial precedent, from the point of view of legal nature, is «a decision on a specific case, which is binding for courts of the same or lower instance when deciding similar cases or serves as a model of interpretation of the law, which do not have binding force» [8, p. 301].

The ECtHR itself in its rulings is guided by its previous practice, but at the same time it is not bound by the subject composition of the precedent. When presenting its decisions on complaints against Ukraine, the ECtHR refers to its precedent practice in cases against other states. And this corresponds to the principle of legal certainty. Using precedent, the ECtHR constantly supplements the content of conclusions, interpreting the essence of principles, and changes its legal positions from time to time. According to most scientists, this concept is justified because, although the possibility of changing judicial practice does not contribute to legal certainty, it should be borne in mind that there is a dialectical contradiction between legal certainty and the development of law. The latter, for obvious reasons, has a tendency to dynamic development, and therefore, judicial practice must also change [9, p. 331].

It is worth noting that in the process of law enforcement and accompanying interpretation of legal norms, as well as in the direct decision-making in a specific case by an authorized body or official, the principle of substantive application of specific norms of international law applies not only to written acts, but also to the general rules of evaluating legislation in as a whole Because in the process, the question will certainly arise: whether to apply a legal norm uniformly, logically removing its content, or, according to the circumstances of the case, to be guided by justice (as, by the way, a fairly abstract evaluation category) and the principle of the rule of law. The conflict between justice and legal stability (which consists in uniform compliance with the content of legal norms, regardless of whether this content meets the principles of justice) can be resolved as follows. A positive and powerfully sanctioned right has priority even when it is unfair and inappropriate in its content. The only exceptions are those situations when the current law becomes blatantly unfair, incompatible with justice, when the law as an «unfair law» categorically rejects and denies justice. It is impossible to distinguish between cases of «legislative wrong» and a law acting contrary to its unjust content. However, it can be clearly defined: when justice is not even sought, and when equality, which is the basis of justice, is deliberately denied in the law-making process, then the law is not only an «unjust law», but even more than that, it is illegal by its very nature, because law, including positive law, cannot be defined differently than the order and totality of laws, called by their essence to serve justice. This is the essence of the well-known «Radbruch formula» [10, p. 68].

The study of the legal nature of the decisions of the European Court of Human Rights allows us to conclude that they are binding for all subjects of law, not only the persons who participated in a specific proceeding, and the interpretation contained in these conclusions is, in fact, judicial law-making. This especially applies to those areas of law that contain significant gaps. Therefore, taking into account the serious volume of creative activity of the ECtHR regarding the interpretation of the fundamental ideas of the Convention on the basis of

precedent practice, attention should be paid to a broader classification of its elements than what is literally prescribed in Art. 6. Therefore, the requirements of legal certainty in the implementation of law enforcement, although they are not directly declared in the Convention, must necessarily be implemented by the relevant subjects. In other words, the right to a fair trial can be considered in two aspects: in a narrow one, reflecting the provisions of Art. 6 of the 1950 Convention, and broadly as it is interpreted in the decisions of the European Court of Human Rights, including the requirements of legal and judicial certainty. For example, compliance with the principle of legal certainty involves judicial clarification (specification) of legal terms and certain unclear provisions contained in the law, i.e., reducing the uncertainty of regulatory legal acts in relation to each specific case. Judicial law-making of this kind guarantees the consolidation of trust in the law, which is systematically included in the elements of the principle of the rule of law (rule of law). This, in turn, provides citizens with the opportunity to confidently plan their behavior, to expect clear, understandable, consistent and defined legal norms, to foresee the possible consequences of the use of state coercion for violating the norms of law.

Quite often, researchers equate the concept of «right to trial» with the concept of «right to a fair trial». At the same time, the Ukrainian judiciary does not always adhere to the same position, believing that the literal meaning of the provision of Article 6 of the Convention covers only the procedure of judicial proceedings itself and has obvious procedural features that manifest themselves after the start of the case and before its conclusion. In view of the importance of this issue, the ECtHR at one time gave a specific interpretation of the meaning of the concept of the right to a fair trial, and it is currently adhered to in numerous decisions. In particular, in Hornsby v. Greece, the Court stated that, in accordance with established case law, Article 6(1) guarantees everyone the right to bring a claim to court or arbitration in respect of any of their civil rights and obligations. Thus, this article proclaims the «right to trial», one of the aspects of which is the right of access, that is, the right to file a lawsuit on civil law issues in court [11, paragraph 40]. Therefore, the concept of the right to a fair trial is covered by the content of the right to a fair trial, which is a somewhat broader concept with a complex structure. According to the above, it contains as an element the right to a court, and as a sub-element – the right to access to a court. And, although the literal understanding of the wording of the relevant article of the 1950 Convention does not include the establishment of access to court as a component of the right to a fair trial, this does not mean that this right excludes or does not take into account such an important category as access to court.

The requirements arising from certainty in the process of law enforcement provide that normative legal acts must be implemented, there must be a practice of clarifying (specifying) the content of such acts, the practice of uniform application of the law must be applied, and court decisions must be final and binding and subject to enforcement [12, p. 312–315]. Meanwhile, there are numerous examples that vividly illustrate that not sufficiently clear and defined prescriptions of the legislator in the same field of regulation through different

interpretations of them when applied can lead to the adoption of completely opposite decisions, and this is a manifestation of the uncertainty of the legal system. Sometimes contradictory provisions of a normative act, which does not allow to achieve certainty in legal regulation, are contained in the same document. The said, for example, is often manifested when decisions are made in absentia. Issues related to the court's rendering of a decision in absentia and its review are covered in detail by the Supreme Court of Ukraine in the summary «Practice of adoption and review of decisions by courts in absentia in civil cases». It states that, according to the content of the relevant regulation of the Civil Procedure Code of Ukraine (CPCU), conducting a case hearing in absentia (and therefore reviewing the decision in absentia) is possible only if the conditions specified in this rule are met. The legislator established that in case of failure to appear at the court session of the defendant, who was duly notified and from whom no response and notification of the reasons for failure to appear was received, or if the reasons given by him are recognized as invalid, the court can make a decision in absentia on the basis of the evidence available in the case, if the plaintiff does not objects to such a resolution of the case.

Thus, the courts must observe the following conditions for absentee consideration of cases: non-appearance of the defendant at the court session; proper notification of the defendant about the time and place of the court session; lack of valid reasons for the defendant's non-appearance; lack of response and petition of the defendant to consider the case in his absence; lack of objections of the plaintiff against absentee consideration of the case. Only if all these conditions are present, the court can hold a case hearing in absentia. Therefore, the court must verify the fact that the defendant was properly notified of the time and place of the court session before issuing a decision on the absentee hearing. Notification of the parties about the time and place of the hearing must be carried out in accordance with the requirements of Article 128 of the Civil Procedure Code. At the same time, the case file must contain adequate evidence of such notification. If there is no relevant evidence, then the defendant cannot be considered properly notified, and there are no grounds for absentee consideration of the case.

At the same time, the Oktyabrsky district court in Poltava accepted for consideration a complaint about an «absentee» decision, which, in fact, was not such, and considered it on its merits [13]. Despite the fact that the court, in the end, refused the defendant to satisfy the application for review of the decision, he, not having the authority to do so, still performed an action that violated the rights of the plaintiff. After all, in this way, the local court actually renewed the deadline for appealing the decision to the appeals court. Because in the event of a refusal to grant an application for review of a decision in absentia by a local court, such a refusal can be appealed in the appeal procedure within 10 days after its announcement. Whereas, under the correct application of the law, the court should have closed the proceedings regarding this review due to its lack of the necessary jurisdiction. Then the ten-day period for appealing the decision of the local court would be calculated from the date the plaintiff became familiar with it.

We have a situation where the local court has committed an action that is not provided for by the procedural law and does not belong to the competence of the court of first instance. That is a serious violation. This is recorded in the decisions of the European Court of Human Rights, which are a source of national law. The application by a national court of judicial methods that it has no right to apply is recognized by the ECHR as a violation of paragraph 1 of Article 6 of the Convention, which in the relevant part provides for the following: «Everyone has the right to a fair and public hearing of his case... by an independent and impartial court established by law, which will resolve the dispute regarding his rights and obligations of a civil nature...». According to the conclusions of the ECtHR, expressed in the case «Veritas v. Ukraine» [14, paragraph 27], «having exceeded its powers, which were clearly stated in the code, the court cannot be considered a «court established by law» within the meaning of paragraph 1 of Article 6 of the Convention (see also the decision in the case «Sokurenko and Strygun v. Ukraine» [15, paragraphs 26–28].

Therefore, the role of courts in achieving legal certainty in the application of legal norms through the implementation of local creative activity regarding their assessment is very significant. Legal specification actually creates a general rule of application of legal norms in relation to certain life circumstances. An abstract legal norm is translated into a concrete rule that applies to a certain circumstance, fact, their combination, is individualized, and «specific forms of implementation of the general type of behavior allowed by the norm» are produced. Within the framework of law-enforceable concretization, it is impossible to create a new legal norm, but as a result of it, a certain element of novelty is introduced into the legal regulation, which, together with the norm, itself becomes the object of application. Moreover, this new element should not go beyond the content of the legal norm, which is specified [16, p. 19].

Meanwhile, the progress of Ukrainian justice in the direction of European values has not yet been observed. Monitoring of the judicial practice of local and appellate courts on the subject of their application of the legal positions of the ECtHR allows us to conclude that the quality of references to the decisions of the European Court of Human Rights remains low. There is not only a lack of justification in the methods of applying references to the legal positions of the ECtHR contained in its decisions, but also their complete absence, along with the incorrect use of the legal positions themselves based on the factual similarity of the «plots» of the cases, without taking into account the entire complex of legally significant circumstances. As for the higher courts, although they apply European standards of human rights in their acts, they do not seek to actively expand the application of these standards by lower courts. This hinders the process of unification of standards in the field of human rights and freedoms, and does not contribute to the orientation of lower courts of general jurisdiction to the correct and correct use of the legal positions of the ECHR in the administration of justice, which, ultimately, prevents the realization of the goals that the ratification of the Convention was aimed at achieving and recognition of the jurisdiction of the ECtHR.

So, summarizing what has been said, we must state that the national courts have not yet reached the appropriate level of law-making when applying the law. Therefore, in order to ensure the implementation and protection of individual rights and freedoms in the context of the requirements and guarantees stipulated by the Convention for the Protection of Human Rights and Fundamental Freedoms, special importance should be attached to the use of legal approaches, the peculiarities of the legal interpretation of democratic and fair principles by the European Court. Clarity and unequivocal justice can be achieved if the decisions of domestic courts are based on the principles of justice, reasonableness, morality, etc. And this depends not only and not so much on the replacement of personalities in the judicial mantles (although updating the composition of judges also plays a significant role), but, above all, on a radical change in approaches and giving them European features.

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DEVELOPMENT OF THE KYIV CITY COUNCIL STRUCTURE

Havrylenko T.[1]

Annotation. The scientific article is devoted to the issue of the development and formation of the structure of the Kyiv City Council as a body of local self-government. The scientific article examines the signs of formation of the structure of the relevant local self-government body. Also, the scientific article offers a detailed description of most of the structural subdivisions of the Kyiv City Council, which make up the structure of the Kyiv City Council. The problems of the structure of the Kyiv City Council were identified and investigated, and ways of solving them were proposed.

Key words: Kyiv City Council, local self-government body, structure of Kyiv City Council, structural subdivisions of Kyiv City Council, features of Kyiv City Council subdivisions.

Formulation of the problem. The Kyiv City Council is a local self-government body with a special status defined by part five of Article 1 of the Law of Ukraine «On the Capital of Ukraine – Hero City Kyiv». According to the fifth part of the first article of the defined Law, the metropolitan status of the city imposes additional duties on local self-government bodies and executive power bodies and guarantees these bodies the granting of additional rights by the state. The functions, competence and powers of the Kyiv City Council are defined by the Law of Ukraine «On Local Self-Government in Ukraine».

Presenting main material. The structure of the Kyiv City Council is approved by the City Council on the proposal of the mayor, as well as the structure of the executive body of the Kyiv City Council – the Kyiv City State Administration. In particular, in accordance with the first part of Article 54 of the Law of Ukraine «On Local Self-Government in Ukraine», a village, settlement, city, district council in a city (if it is created) within the limits of the structures and states approved by it can create departments, management and other executive bodies for exercising the powers that belong to the executive bodies of village, settlement, and city councils.

It should be emphasized that the Kyiv City State Administration, although it is formed in a certain way by the Kyiv City Council, although it is the executive body of the council, it is not part of the structure of the Kyiv City Council, but is both a local self-government body and an executive body with its own structure.

[1] Havrylenko T., Postgraduate student «KROK» University.

The Kyiv City Council has a Regulation that defines its structure and other issues of functioning directly of the Kyiv City Council. Part 1 of Article 1 of the Regulations of the Kyiv City Council establishes the definition of the term «Kyiv City Council» as a representative body of local self-government, which represents the territorial community of the city of Kyiv and performs on its behalf and in its interests the functions and powers of local self-government, defined by the Constitution of Ukraine, the European Charter of local self-government and the additional protocol to it, the laws of Ukraine «On local self-government in Ukraine», «On the capital of Ukraine – the hero city Kyiv», «On the status of deputies of local councils», other laws of Ukraine and the Statute of the territorial community of the city of Kyiv.

We would like to emphasize that in the quoted part of the first article 1 of the Regulations of the Kyiv City Council it is stated that the functions and powers of the Kyiv City Council are determined by the specified normative legal acts, however, after analyzing the provisions of these normative legal acts, we must state that the functions of the local council are not defined, but powers are partially defined, and in particular, the concepts of «functions» and «powers» are not defined at all by the above-mentioned legal acts. What do we see as the problem?

Today, the structure of the Kyiv City Council of the ninth convocation includes the chairman of the Kyiv City Council, the secretary and 120 deputies (factions, parliamentary groups, non-factional deputies), permanent commissions, in the case of formation - temporary investigative commissions and working groups, the secretariat of the Kyiv City Council advice The Kyiv City Council Secretariat has its own structure.

According to the results of the 2020 local elections, 120 deputies joined the Kyiv City Council, which formed seven factions: the deputy faction of the political party «European Solidarity», the deputy faction of the «Udar (Ukrainian Democratic Alliance for Reforms) Vitaliy Klychka» political party, the deputy faction «Unity» , deputy faction «Servant of the People», deputy faction «All-Ukrainian Association «Batkivshchyna», deputy faction «Opposition Platform – For Life», deputy faction «Voice» [1].

In the ninth convocation of the Kyiv City Council, the number of permanent commissions also increased, in particular, the following are active today: the Kyiv City Council Permanent Commission on Architecture, Urban Planning and Land Relations, the Kyiv City Council Permanent Commission on Budget and Socio-Economic Development, the Kyiv City Council Permanent Commission of the Kyiv City Council on Property Issues, Kyiv City Council Standing Committee on Law Enforcement, Law and Order and Relations with Law Enforcement Bodies, Kyiv City Council Standing Committee on Environmental Policy, Kyiv City Council Standing Committee on Housing and Communal Affairs and Fuel and Energy complex, Kyiv City Council Standing Committee on Culture, Tourism and Public Communications, Kyiv City Council Standing Committee on Local Self-Government, Regional and International Relations, Kyiv City Council Standing Committee on Education and Science, Family, Youth and sports, permanent coma session of the Kyiv City Council on Health and Social Policy, the Kyiv City

Council Standing Committee on Cultural Heritage Protection, the Kyiv City Council Standing Committee on Entrepreneurship, Industry and Urban Improvement, the Kyiv City Council Standing Committee on Regulations, Deputy Ethics and prevention of corruption, Kyiv City Council Standing Committee on Regulatory Policy, Kyiv City Council Standing Committee on Transport, Communications and Advertising, Kyiv City Council Standing Committee on Digital Transformation and Administrative Services [1].

In the previous eighth convocation of the Kyiv City Council, the number of permanent commissions was less than sixteen, in particular, such areas as digital transformation and administrative services were absent, and regulatory policy was the subject of the permanent commission on entrepreneurship. The protection of cultural heritage was also not separately allocated.

According to the Regulations of the Kyiv City Council, at a plenary meeting of the local council, deputies can form a temporary investigative commission that will consider a specific problematic issue, based on the results of which it will draw up a conclusion, and at a meeting of the permanent commission, a working group can be formed to consider the issue that is the subject of consideration by the permanent commission, based on the results of which he will report at the meeting of the permanent commission on consideration of a certain issue.

The secretariat of the Kyiv City Council is headed by the secretary of the Kyiv City Council, and the case manager manages the secretariat. The secretariat of the Kyiv City Council includes departments, departments, etc., in particular the following: Department of Legal Support of Kyiv City Council, Department of Organizational and Documentation Support of Kyiv City Council, Department of Document Management, Analysis of Correspondence and Control and Analytical Work of Kyiv City Council, Department of Support for the Activities of Permanent commissions of the Kyiv City Council, Department for ensuring the activities of the Kyiv City Council's permanent commission on budget and social and economic development, Department for ensuring the activities of the Kyiv City Council's permanent commission on property issues, Department for ensuring the activities of the Kyiv City Council's permanent commission on issues of architecture, urban planning and land relations , Department of Administrative and Economic Support of the Kyiv City Council, Department of Support for the Activities of the Deputy Mayor – Secretary of the Kyiv City Council, Department of Planning and Finance activity, accounting and reporting of the Kyiv City Council, Department for Prevention and Detection of Corruption, Department of Organizational and Methodological Support for the Activities of Kyiv City Council Deputies, Department of Information and Communication Systems and Technologies, Department for Work with Personnel, Department for Work with Open Data , Department for Ensuring Openness of Access to the Administrative Complex, Internal Audit Sector, Department for Decentralization, Development of Local Self-Government, Regional and International Relations, Department for Ensuring the Activities of the Commissioner of the Kyiv City Council for the Rights of Persons with Disabilities [1].

It is worth emphasizing that the Department of Ensuring the Activities of the Commissioner of the Kyiv City Council for the Rights of Persons with Disabilities became a novelty of the ninth convocation of the Kyiv City Council.

The structure of the Kyiv City Council is formed in such a way that the decision-making procedure takes place effectively. For example, a draft decision of the Kyiv City Council is registered in the department of organizational support, after which it is considered by permanent commissions, one of which is specialized, to the department of legal support of the Kyiv City Council. Based on the results of consideration by the standing commissions and the legal support department of the Kyiv City Council, the draft decision is placed on the agenda of the plenary session of the Kyiv City Council if this draft decision was adopted by the standing commissions and reviewed by the legal support department of the Kyiv City Council. A decision is made at the plenary session and the procedure for its publication is once again handled by the Kyiv City Council secretariat.

Local self-government officials whose legal status is determined by the Law of Ukraine «On Civil Service» and the Law of Ukraine «On Service in Local Self-Government Bodies» work in each department or department of the Kyiv City Council Secretariat.

According to Article 2 of the Law of Ukraine «On Service in Local Self-Government Bodies», an official of local self-government is a person who works in local self-government bodies, has the relevant official powers to carry out organizational-administrative and consultative-advisory functions and receives a salary at the expense of the local budget .

The Presidium of the Kyiv City Council and the Conciliation Council of the Kyiv City Council should also be included in the structure of the Kyiv City Council, as collegial bodies that include the heads of deputy factions and decide on the agenda of the plenary session of the council.

In accordance with Articles 13 and 14 of the Regulations of the Kyiv City Council, the Presidium of the Kyiv City Council is an advisory body of the Kyiv City Council that preliminarily prepares agreed proposals and recommendations on issues that are expected to be submitted to the consideration of the Kyiv City Council. The Presidium of the Kyiv City Council includes the Kyiv City Mayor, Deputy Mayor – Secretary of the Kyiv City Council, Chairmen of the Standing Committees of the Kyiv City Council, Chairmen or authorized representatives of the parliamentary factions. Deputies of the Kyiv City Council have the right to participate in meetings of the Presidium of the Kyiv City Council with the right of an advisory vote. The Presidium of the Kyiv City Council operates on the basis of the Regulation on the Presidium of the Kyiv City Council. The Presidium of the Kyiv City Council carries out its work in the form of meetings convened by the Kyiv City Mayor or on his behalf by the Deputy Mayor – the secretary of the Kyiv City Council.

The heads or authorized representatives of the deputy factions of the Kyiv City Council, one from each, can form the Conciliation Council of the deputy factions of the Kyiv City Council, which has the status of an advisory body. The meeting of the Conciliation Council is chaired by the Kyiv City Mayor or the Deputy Mayor - the secretary of the Kyiv City Council, and in case of their absence

or impossibility of conducting the meeting – another member of the Conciliation Council, elected by the majority of the members of the Conciliation Council. The conciliation council of the deputy factions of the Kyiv City Council is convened by the Kyiv City Mayor or the deputy mayor – the secretary of the Kyiv City Council or upon the proposal of the Kyiv City Council deputy factions. The organization of the convening of the Conciliation Council is entrusted to the secretariat of the Kyiv City Council. The conciliation board does not make binding decisions.

Conclusions. The structure of the Kyiv City Council is formed conveniently and effectively, in particular, the instances that pass the draft decision consider it at the same time with the aim of spending as little time as possible so that the document gets on the agenda of the council meeting. Departments and departments have a small number of officials and each of them has clear duties. It is worth emphasizing that since 2019, the first floor of the Kyiv City Council was renovated, as a result of which the offices were removed and an open space was created, which allows the citizens of Kyiv to be closer to solving the issues of their city.

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LINGUAL ENVIRONMENT OF NATIONAL MINORITIES IN TRANSCARPATHIA: SOCIO-COMMUNICATIVE ELEMENTS OF DESIGN

Hychko Lesia[1]

Annotation. This article examines the influence and use of bilingual elements in travel industry messages, advertising, and in the design of school textbooks. A comparison is made between the term «communication design» and the phraseme «to speak the same language». Advertisements in Transcarpathia feature the national component. The article demonstrates successful applications of bilingual elements in the tourism industry. Socio-communicative elements are introduced in the author's design of textbooks.

Key words: communication design, socio-communicative elements, bilingual elements, advertising, design of school textbooks, Transcarpathia.

The concept of «communication design» is often used to denote visual communication, although it has a much broader meaning (involves fast reading of information, clear navigation, etc.). Communication design correlates with the phraseological units «to speak one language», «to find a common language» and is relevant to many areas of human life. On the one hand, it can mean success in communication processes, on the other hand to characterize the coexistence of optimally selected elements in environmental design, where, for example, natural landscape is harmoniously combined with human works, where the exterior interacts with the interior, where visual information is accessible and understandable for everyone, etc.

Researching the communication design of urban space, Ukrainian scientist Y.O. Sosnytsky notes that its ultimate goal is not to create a product, but to create a kind of «community» – an aesthetic environment in which a creator and a consumer, a seller and a buyer, a sender and an addressee find each other and «speak» one language on «common» topics. However, the researcher notes, "we should not poeticize this function, which, on the one hand is practical, and on the other hand is mostly artistic. Depending on this, the transmitted information is represented by a spectrum from utilitarian-objective knowledge to subjective attitude, which expresses someone's aesthetic position, assessment, reflection" [8].

[1] Hychko Lesia, PhD of Art History, Docent at Department of Sociology and Social Work Uzhhorod National University, Uzhhorod, Ukraine ORCID: https://orcid.org/0000-0003-4929-4428 Email: lesia.hychko@uzhnu.edu.ua.

It follows that the work of the designer-communicator is to maximize the adaptation of information, including visual, to the needs of each consumer. If several languages are actively used in a particular lingual environment, including a native, an official and foreign languages, and this ratio has a wide variability for residents of the region, namely such tendencies have developed in Transcarpathia historically [7], the degree of complexity and responsibility of such work increases massively.

The aim of our article is to find out the influence of multilingual, including bilingual elements, on human perception of visual presentation of various types of information, as well as tracking the quality of communication processes when using bilingualism in messages on the example of tourism industry, advertising, school textbooks.

I want to note that the issue of bilingualism is studied by scholars in various fields, including linguists, historians, tourism experts, specialists in the field of social communications, design and more. In particular, bilingual influences on the linguo-creative component of the advertising discourse of Slobozhanshchyna were studied by I.B. Ivanova [4]; the issue of road signs, in particular the dubbing in Latin alphabet, was researched in the study of I.S. Posokhov [6]; an analysis of the rhetorical features of visual commercial advertising in Lviv before the Second World War was made in the article by K. Borodin, I. Gonak «Rhetoric of pre-Soviet murals (based on modern Lviv)» [1] (with the examples of bilingual advertising in Polish and Yiddish), etc.

Advertising. Transcarpathia, having been a part of various state or semi-state formations throughout its history, has constantly gained experience of communication in various formats of subordination, language decisions, etc. The history of these influences is written and reflected in the political, economic, social, cultural and artistic life of the region. The development of information and communication space can be traced by the preserved visual commemorative materials of Transcarpathia. On postcards, advertising signs, in magazines of different periods we can see texts in two / three languages, for example Ukrainian, Hungarian, Slovak. There are even examples of logo adaptation. Thus, when reproducing the names of companies, some Transcarpathian editions of the Czechoslovak period (Nova Svoboda, Zemledelskaya Politika), in addition to the Latin typeface, also present the Cyrillic version. Let's illustrate this with the example of the Bata logo.

«Земледѣльческая политика», 1928 г., декабрь, 7, годъ изданія VII, № 51, с. 4.

«Земледѣльческая политика», 1936 г., сентябрь, 3, годъ изданія XVI, № 35, стор. 5.

«Нова Свобода», 1939, січень, 28, річник XI., число 18, с. 3.

In this proper name, which is the name of the shoe factory owner, there is a letter "a" remained from the Latin version, others were replaced by Cyrillic counterparts. In general, the features of the font design are transmitted with the least loss, so the logo remains original and recognizable. Bata advertising was the most common on the pages of Transcarpathian magazines published in Ukrainian, as well as Russian, Hungarian and Czechoslovak languages [5]. At the present stage the adaptation of the corporate style was implemented by the chain of meat shops "Rodynna Kovbaska" in 2014 in Berehove.

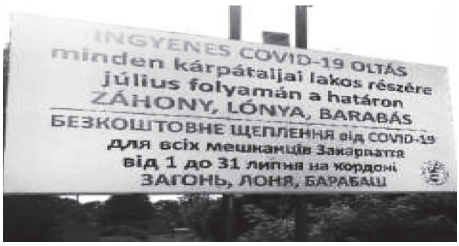
A similar situation with regard to the use of multilingual elements in information messages is observed in Lviv region. In particular Borodin K., Gonak I. note: "Inscriptions in a number of languages, including Polish, Yiddish, Latin, German, Ukrainian, and Armenian, coexisted in pre-Soviet Lviv. Undoubtedly, potential buyers responded best to the messages made in their native language or by the authors from their language or ethnicity group" [1].

Advertising in the Berehovo district often has features of bilingualism (Ukrainian + Hungarian, less often English). A similar situation, but in the version of "Ukrainian + Romanian" is observed in the villages of the former Tyachiv district: Solotvyno, Bila Tserkva, Apsha and others.

Prior to the introduction of the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language", which entered into force on January 16, 2020, the situation was somewhat different: an array of advertisements and information messages was offered in only one language – mainly the national minority of Transcarpathia, which predominates in a particular location.

The use of Hungarian national colors in advertising is typical for various institutions of the Berehove district, in particular the health and recreation complex "Kosyno", thermal pools "Zhaivoronok" and others. Note that the national component in advertising is a fairly common technique: this is emphasized by researchers from different countries. For example, "A specific feature of Kazakhstan's social advertising is the national component in the advertising message. It manifests itself in different ways. … Television social videos may contain elements of the national culture of the Kazakh people or other peoples living in the territory of multinational Kazakhstan. These include national ornaments, elements of national clothing, the infusion into the Russian language of Kazakh words or words of other ethnic groups living in the country, national music, national cuisine and others. In addition, advertisers often use blue (turquoise) and yellow colors when creating external advertising, which refers us to the flag as a national symbol of independent Kazakhstan" [2]. The Hungarian national component is used not only by institutions located in the Berehove district, but this also applies to the widespread or at least partial use of them in the design of books, social media accounts, etc.

If in Berehove the dubbing in two languages is perceived as the norm, in Uzhhorod such samples emphasize the importance of the message. For example, during the elections, the bilingual component is relevant for political parties, in particular the Transcarpathian Community of Hungarian Culture (KMKSZ Ukrajnai Magyar Párt). Advertising bilingual samples, which are distributed throughout the Transcarpathian region, are mostly congratulations on the holidays. There are also examples of some very important messages, such as vaccination, including the fact that in the summer Hungary provided its mobile vaccination points to 8 neighboring countries, including Ukraine, for free vaccination.



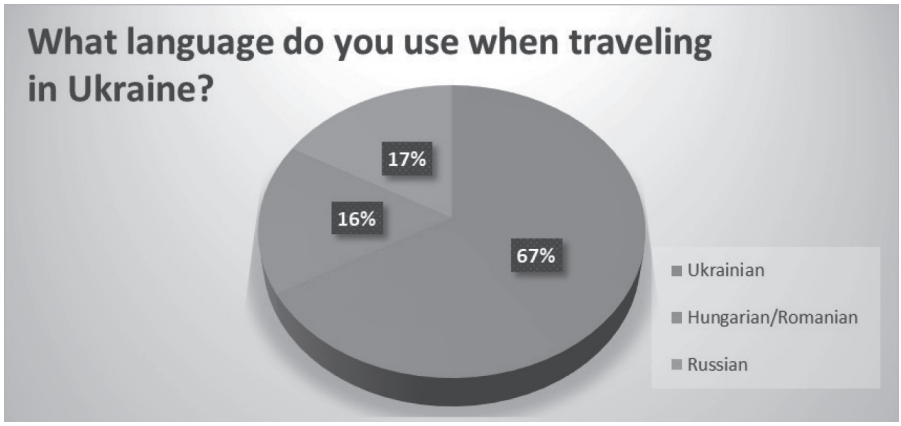
With the development of new technologies, the amount of tools of advertising is constantly growing. At the same time, printed samples of advertising products, which have been successfully tested for years, continue to remain on the market. These are common bilingual publications on gastronomic topics in the tourism industry. For example, the gastro guide in Transcarpathia was first published in Hungarian in 2018, and 2 years after the translation offer and the success of the first edition, the edition was published in Ukrainian.

Tourism. Popularization of tourism in Transcarpathia is one of the priority tasks of the region, which involves the representation of the region by means of souvenirs, information and advertising publications, etc. However, the most important thing for a tourist is orienteering in space. Ten years ago researchers wrote about the language barrier in the perception of road signs in Ukraine ("Ukrainian language is based on Cyrillic, so reading or at least interpreting inscriptions and texts made by using it, is extremely difficult for most tourists from Western countries. Transliteration of signs and translation of texts are not common in Ukraine. There is also an almost complete absence of signs for sightseeing, made in familiar for the foreign tourist (light brown) color") [6]. But nowadays we can state the fact of improving the situation with information on the roads: dubbing in English is present on almost all types of roads, bilingual signs have been developed in cities. And what is important: the font that is used for this is Ukrainian. This practice of identification (recognizability through drawing) is quite popular in the world, in particular British transport font, Lviv municipal font and others.

The dubbing of road signs in Hungarian is typical for Transcarpathia, mostly in the settlements of Berehove and Vynohradiv districts. For example, at the entrance to Berehove, the road sign "The beginning of the settlement" has a bilingual representation in Ukrainian and Hungarian. Nearby there is a welcoming sign of the city with a Ukrainian-Hungarian inscription and a table with ancient Hungarian (Székelys) runic symbols.

A research has been conducted within the project "Contested Language Diversity – Dealing with Minority Languages in post-Soviet Ukraine and Russia" / "Debate on Linguistic Diversity: Management of National Minority Languages in Ukraine and Russia". It was conducted according to the methodology of triangu-

lation (autobiographical narratives, public debate on linguistic diversity (media text analysis) and official management (language policy documents)) and using the discursive approaches (especially critical discursive analysis). The respondents of the survey are Hungarians (74%) and Romanians (26%) aged 18 to 72 from Uzhhorod, Berehove and Tyachiv districts of Transcarpathian region. The vast majority of respondents to the question "What language do you use when traveling in Ukraine?" indicated Ukrainian.



Textbooks. School textbooks on language learning, as well as educational publications in general, require careful attention to both textual and visual content. In the spring of 2021, the Ministry of Education and Science of Ukraine formed the rules and recommendations for the selection of textbooks, which emphasize the importance of the design component and the conditions of the examination. In particular, it is stated: "Design examination includes an assessment of compliance of the participants with the Contest sanitary and hygienic requirements for the design and printing of textbooks / manuals (formats, fonts, typeface, font size), ensuring a unified style, originality and modernity of illustrative material created specifically for certain publications, color balance, aimed at ensuring the readability of the text in order to prevent the negative impact of the reading process on children's health" [3].

During 2018-2021, we developed a series of textbooks for the schools with Hungarian as the language of instruction, published in Transcarpathia [9]. In the graphic author's presentation (by Lesia Gychko), conceptually, everything is aimed at creating a positive and friendly mood towards learning Ukrainian. The design uses a national component, the coloring of the textbooks clearly and openly emphasizes the importance of tolerant dialogue and cultural Ukrainian-Hungarian communication. When a person does not yet know a language, the first way to convey information is to communicate

through gestures. That is why the textbook for 5th grade, which begins the series, shows a common gesture that means “Love” / heart symbol. In order to maintain a unified style in the design, the textbooks for the following classes demonstrate communication skills in mastering the Ukrainian language, namely: “Open” / the symbol of key (for 6th grade), “Listen” / the symbol of headphones (for 7th grade), “See”/ the symbol of magnifying glass (for 8th grade), “Motivate / Remember”/ the symbol of stickers with motivational inscriptions (for 9th grade).

Conclusions

In conclusion, bilingual elements in the visual representation of various kinds of information are a typical feature of different times of historical development of Transcarpathia. Many Transcarpathians are accustomed to communicating in different languages. In the advertising sphere, bilingualism is an additional tool for demonstrating and motivating closer communication. In tourism it helps with speed and convenience in orientation and in the educational sphere, wtih preserving national identity and at the same time implementing the Law on State Language. The implementation of the Law on Language has made significant changes in the communicative design of the language environment of national minorities in Transcarpathia. Duplication in the state language of all information messages / landmarks / advertisements has become not only a requirement, but also a certain motivation to know / learn the Ukrainian language.

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THE HUNGARIAN REVISIONISM ON THE EVE OF WORLD WAR II IN UKRAINIAN HISTORIOGRAPHY

Ihnatolia Myroslav[1]

Annotation. Hungary's foreign policy on the eve of World War II was characterized by a strong desire to overcome the "cage of Trianon" at any cost. Signed on June 4, 1920 at the Trianon Palace Versailles, the peace treaty between the Entente and the Kingdom of Hungary deprived the once powerful state of almost its territories, 2/3 of the population, 80% of natural resources, access to the sea and the chance to play a significant role in world politics. Vae victis was so stunning and strong that June 4 is still considered a day of national mourning in Hungary. Not surprisingly, the interwar period was a time of feverish search for a way out of the "national catastrophe", which pushed Budapest directly into the arms of another country that felt a strong desire to restore historical justice and revenge for the unjust humiliation of Germany. The aim of the work is to try to systematize the main scientific works of Ukrainian historians on key events in Hungarian foreign policy on the eve of World War II. These include, in addition to the direct occupation of Podkarpatská Rus the First Vienna Arbitration on November 2, 1938, and the Little War on March 23–31, 1939, during which the Kingdom of Hungary decided to force the newly formed Slovak Republic to reconsider its existing borders. Among the methods used in writing the work, we note the means of specific historiographical analysis and the method of historiographical synthesis. As a result of the research the main works of Ukrainian scientists are considered, in which the peculiarities of these events are revealed. An attempt is made to analyze what key issues were raised and how the focus of attention changed in the study of these events. It is concluded that attention is mostly focused on the fact that most studies of Hungary's foreign policy at this time are considered in the context of the Ukrainian state-building process. In addition to the direct chronology of the Hungarian occupation, researchers often consider the importance of Zakarpattia in Budapest's plans, the Hungarian-Polish rapprochement and the activities of their joint sabotage groups, the activities of a pro-Hungarian agency in Podkarpatská Rus, and the world community's reaction to Hungarian

[1] Ihnatolia Myroslav, Postgraduate Student of the Department of Modern History of Ukraine and Foreign Countries, Uzhhorod National University, ORCID: 0000-0002-9850-0657 myroslav.ihnatolia@uzhnu.edu.ua.

aggression. The degree of research of the “Little War” and its relative novelty for Ukrainian historical thought is characterized.

Key words: historiography, Hungary, First Vienna Arbitration, Podkarpatská Rus, “Little War”.

Presenting main material. The assessment of the Vienna Arbitration has found a rather modest place in Ukrainian historiography. Naturally, most Ukrainian researchers who have considered this topic have analyzed this event in terms of its impact on the fate of Podkarpatská Rus.

It will be recalled that the First Vienna Arbitration on November 2, 1938 was a diplomatic success of Hungary, which marked the first real achievements of its strategic goals. Hungary received an area of 12,400 km2, which included part of Podkarpatská Rus along with the cities of Uzhhorod, Mukachevo and Beregovo, as well as southern Slovakia with the city of Košice. The first attempts of analysts took place immediately, because at the end of 1938, in Lviv, a popular science book by V. Pachovsky “Silver Land. Millennium of Podkarpatská Rus” , which was republished in the USA almost 20 years later. It should be noted that Pachovsky did not consider this event on a strategic scale, but only stated that Uzhhorod, Mukachevo and Beregovo (which he subjectively assessed as “Jewish-Hungarian cities”) would be separated from Podkarpatská Rus.

B. I. Spivak’s work entitled “An Essay on the History of the Revolutionary Struggle of the Workers of Zakarpattia in 1930–1945” , published in 1963, was a breakthrough in Ukrainian historiography. The author included in his work the documents of the Ministries of Foreign Affairs of Hungary, Germany and Czechoslovakia, and also clearly emphasized that the Munich Conspiracy and the Vienna Arbitration hit hard on the national interests of the Czechoslovak Republic. Also, in his work a lot of attention is paid to the problem of Hungary’s use of its own agency in the territory of Podkarpatská Rus, which was intended to prepare the ground for local referendums. Despite the topic of searching for foreign agents, which was popular in Soviet times, such actions by Budapest did take place.

In the next two decades, the world will see several solid scientific works of Ivan Ivanovych Pop. He pointed out that only the Third Reich really benefited from the Vienna Arbitration, because, owning Zakarpattia, it could influence Hungary . In his subsequent works the scholar concludes that the defeat of the Polish-Hungarian alliance was inevitable, aimed at creating a common border and strengthening its role in the region, and their temporary successes (meaning the territories obtained in 1938) later led to the loss of independence. Published 20 years later, a book on Podkarpatská Rus on the eve of and during World War II also contains reflections on its place in Hungary’s foreign policy, but without new conclusions.

M. Shvahuliak also pointed out the common views on Podkarpatská Rus between Hungary and Poland. According to him, Poland was interested in the terrorist acts of Hungary on the territory of Podkarpatská Rus, and also planned joint actions of Polish-Hungarian saboteurs. Pursuing its interests, Warsaw sided with Budapest during the Hungarian-Czechoslovak talks in Komarno,

as well as during the Vienna Arbitration. Similar conclusions are reached by V. Hanchyn, who in his article focused on the negotiations between Hungary and the Czechoslovak Republic in Komarno, the consequences of the Vienna Arbitration, and so on.

It is also worth mentioning the work of M. Boldyzhar in 1995, in which he comprehensively considers the importance of the Vienna Arbitration for Zakarpatska oblast. The historian emphasizes the regularities and expectations of this phenomenon.

I. S. Haponenko reveals the attitude of most neighboring countries to the territorial encroachments of Hungary in his article. He argues that Budapest's primary plan was to use force to resolve the issue, that is, a direct attack on Czechoslovakia. In October 1938, a plan was developed for a joint attack on the Czechoslovak Republic by Hungarian and Polish troops, and support negotiations were held with Italy. Germany's strengthening forced it to turn away from Czechoslovakia and its former allies, Romania and Yugoslavia. I. Haponenko also reveals the nature of the negotiations in Komarno on October 9–12, 1938, the unacceptable conditions of the Hungarians, who allegedly left the Czechoslovak Republic no choice but to deny Hungary its demands, urging the latter to apply for "objective arbitration" to Germany and Italy.

N. Vasylyna focuses her attention in more detail on the Vienna Arbitration. Participation in the process of representatives of Podkarpatská Rus – A. Voloshyn, S. Klochurak, I. Rohach and Y. Khymynets is shown. The decision of the Vienna Arbitration caused great indignation not only among the Ukrainians present, but also among the diaspora, in particular, in the United States, which was manifested mostly in the demonstrations. Despite the fact that Ukrainians in Podkarpatská Rus were not fully included in the Kingdom of Hungary, the loss of almost 12% of the territory, including 97 settlements, looked like a significant blow to national interests. The researcher also emphasizes the deliberately biased approach of the commission, which used the 1910 census, which referred to the period when the Kingdom of Hungary significantly sinned by overstating the Hungarian population in official censuses.

The process of negotiations in Komarno and the First Vienna Arbitration in the framework of separate articles is also briefly described by the well-known researcher of Podkarpatská Rus M. Vehesh in the collective monograph "Zakarpattia 1919-2009: history, politics, culture" . In addition, M. Vehesh and O. Malets argue that the Vienna Arbitration gave a certain crack in the Hungarian-German relations, and not only political but also economic arguments were used in the negotiations.

Much more attention in Ukrainian historiography is devoted to the issue of the Hungarian occupation of Zakarpattia. For the most part, it is naturally described in the context of considering the socio-political life of Podkarpatská Rus, but there are also specialized studies. It is worth noting that most of the works up to the 80's are quite biased in covering this issue.

One of the first manuscripts on this topic was the work of O. Borkaniuk "On the situation of Podkarpatská Rus on the eve of the occupation of horthy Hungary" . Despite the controversial coverage of the figure of A. Voloshin, the

article contains interesting data on the activities of the Hungarian "fifth column" in Zakarpattia.

Well-known hungarologist Andriy Ivanovych Pushkash, in one of his major works on Hungary's policy in World War II , argues that Budapest was preparing for a violent solution to the problem with Czechoslovakia in early 1938, not believing in the possibility of a peaceful way to meet its territorial claims. According to Pushkash, preparations for the occupation of Podkarpatská Rus had already been completed on November 18, 1938, but were then impossible due to the interests of the Third Reich. The historian argues that the "green light" for the occupation of Z Podkarpatská Rus was given to Hungary together with the condition of Budapest's assistance during the forthcoming German attack on Czechoslovakia. This proposal was fully in line with Hungary's plans, as it foreshadowed new achievements, including in the Slovak territories.

With Ukraine's independence, the attention of domestic researchers to the issue of the Hungarian occupation of Podkarpatská Rus is increasing. In particular, the first steps to move away from the then dominant Soviet vision are observed in the joint monograph of O. Dovhanych, Z. Pashkuy and M. Troian .

In the early 1990s, M. Boldyzhar's work "Zakarpattia Between the Two World Wars" 16 was published, which was almost entirely devoted to the socio-economic and political development of Podkarpatská Rus, but contained a relatively brief analysis of Hungarian aggression in March 1939.

In 1994, a reprint edition of Petro Stercho's book "Carpatho-Ukrainian State: The History of the Liberation Struggle of Carpathian Ukrainians in 1919–1939" was published (the first edition was published in 1965 in Toronto). In it, the author reveals the significance of Podkarpatská Rus for the international community, involving both his own memoirs and many documents. The author notes that the government of Podkarpatská Rus was convinced that no neighboring state would help in the fight against Hungarian aggression, and Berlin did not directly advise acts of resistance. In a separate article , the scientist also considers the issue of cooperation between Polish and Hungarian terrorist groups.

The issue of brutal persecution of Sich soldiers by the Hungarian occupation forces, which contradicted the norms of international law, was raised at a scientific-practical conference dedicated to the 56th anniversary of the Carpathian Sich . It once again focused on the fact that the events of March 1939 can be considered the beginning of World War II, because the Ukrainians were the first to fall under the blow of German-Hungarian revenge. Other well-known researchers of this period also came to similar conclusions: I. Hranchak , S. Prunytsia , V. Prykhodko, O. Dovhanych and others.

Extremely fruitful on this issue is the work of the already mentioned Mykola Vehesh, whose PhD and doctoral dissertations consider the place of Podkarpatská Rus in Hungarian politics to varying degrees. In a successful joint monograph with V. Hyria and I. Korol, M. Vehesh introduces a significant number of previously unprocessed documents, as well as discusses the degree of involvement in the future occupation of the Hungarian "fifth column" and terrorist groups. Scholars conclude that, despite their detailed training, Hungary's efforts to "grow" its agency as a national minority in Podkarpatská Rus, were insufficient for

occupation without the permission of the Third Reich. Traditionally, in Hungarian historiography, this conclusion is sharply denied.

M. Vehesh also considers the Hungarian occupation of Podkarpatská Rus as an integral part of the pre-war processes, but at the same time emphasizes the fact that the vast majority of the world community not only failed to take any action to stop it, but even refrained from making significant remarks. The researcher also claims that the approximate number of soldiers of the Carpathian Sich who opposed the Hungarians reached 4 thousand . These figures look the most realistic, although in Ukrainian historical thought this figure varies from 2 to 60 thousand. For example, V. Kosyk in his monograph "Ukraine and Germany in World War II" indicates that the number of combat-ready Sich was 2 thousand at the end December 1938, but rose sharply to 10–12 thousand by March 1939.

A peculiar result, which repeats the previous conclusions, is the monographic work of M. Vehesh "State-Building Processes in Podkarpatská Rus (1938–1939)" . In this paper, the researcher extensively reveals the use of Hungary's map of the Hungarian-speaking minority, the activities of Hungarian and Polish terrorist groups and shows in detail the chronology of hostilities during the occupation of Podkarpatská Rus.

I.Haponenko-Tovt, in his article on the occupation of Podkarpatská Rus by Hungarian troops , provides information about Hungarian spies who reported on the weak combat capability of the Czechoslovak army and the process of training Carpathian Sich soldiers. It should be noted that the Carpathian Sich itself was only in a state of formation, and therefore could not be a reliable shield against Hungarian aggression. The author lists the main weaknesses of the Carpathian Sich, which facilitated the attack of the Hungarians: its formation was mostly of Galician emigrants, among whom were many people without military training; lack of sufficient weapons; sudden emigration of the General Headquarters.

Many new studies on this issue were published in 2009 – the year of the 70th anniversary of the events described. It is believed that until 2008 most of the works sinned by glorifying the heroic defense against the Hungarian occupation and concealing unfavorable facts, and 2009 was the beginning of a new milestone in the study of this issue. Here it is worth mentioning the monumental work "Podkarpatská Rus: Doc. and Materials: Chronicle of Events: Personalities" , which widely covers the terrorist acts of Hungary and the occupation process on the basis of documents and materials from the archives of the Department of Security Service of Ukraine (Zakarpatska region), Central State Archive of Higher Authorities, State Archives of Zakarpattia Region, as well as the Archive of the Organization of Ukrainian Nationalists in Kyiv. A significant layer of archival documents is also used in N. Vasilina's monograph , in which the author draws attention to the activities of political and public organizations in the region and their impact on the international perception of the region.

A detailed description of the battles against Hungarian troops is contained in the memoirs of the Commander-in-Chief of the Carpathian Sich S. Efremov . An important part of his book are numerous excerpts from the European press, which clearly illustrate the reaction of the world community to Hungarian politics. The memoirs of Colonel V. Filonovych of the Ukrainian People's Republic also belong

to the memoir literature. The paper analyzes in detail the defense capabilities of the troops of Podkarpatská Rus on the eve of the Hungarian offensive, draws attention to the unprofessionalism of the command staff.

National memory is closely connected with the growth of national consciousness. In this context, the process of "humanization" of history is important, in particular the identification of the fallen defenders of the Fatherland. This kind of work is the historical-memorial edition "Book of Memory of Ukraine", the task of which is to clarify the exact scale of human casualties of Ukrainians during the Second World War. A separate issue concerns Zakarpatska region and has 10 volumes published from 2002 to 2013. These publications contain almost the most complete list of people from Zakarpattia killed during the Hungarian-German occupation. The volumes are devoted to individual districts, which facilitates the analysis of the dead people by settlements.

The diplomatic dimension of relations between Hungary and Podkarpatská Rus is much less studied. O. Pahyria made an important contribution to this issue. In his article "Unknown Letters of the Delegation of Podkarpatská Rus Government to the Hungarian Government" the author analyzes three Hungarian-language letters from the Podkarpatská Rus government delegation to the Hungarian government: from March 19, May 26 and June 12, as well as a number of short telegrams exchanged conflict. On the example of these letters, the author proves an attempt to avert repressions against activists of Podkarpatská Rus, minimize the occupation damage and magyarization of the region. In an article on the foreign policy maneuvers of Podkarpatská Rus government during the Hungarian aggression, O. Pahyria compares his Carpatho-Ukrainian colleagues to the Slovaks, who were forced to seek protection from stronger neighboring countries, but without success. The Carpatho-Ukrainian delegation, which arrived in Budapest on March 17, 1939, with the intention of agreeing on a peaceful settlement of the conflict, was ignored because Hungary already felt the strength to conquer Podkarpatská Rus without the need to seek compromises or autonomous projects.

In another article, O. Pahyria considers Hungary's attack on Podkarpatská Rus through the prism of Russian aggression against Ukraine in 2014 and rightly calls it a "Hybrid war" . The author proves this by long preparations for destabilization in the region, where the pro-Hungarian uprising was to break out and legitimize the occupation process. At the same time, the author investigated the action of disarming Czechoslovak troops on March 14–16, 1939 by the Sich soldiers . In some places the action took place peacefully (as, for example, in Bushtyno), and somewhere (in particular, in the Volovets district) it turned into positional battles with the Czechs. As a result, about 700 Sich soldiers were provided with ammunition, although, unfortunately, this did not help stop the Hungarian occupation.

The flirtation of Germany with Hungary in order to persuade it to its side is partially described in his works by S. Vidniansky. He points to Hungary's attempt to obtain a plebiscite at the hands of its agents (A. Brodiy and S. Fentsyk) , the unwillingness of major European countries to prevent the Hungarian occupation (and even the greeting of the Hungarian ambassador by the French Foreign

Minister) , and Voloshyn's unsuccessful attempts to reach a peaceful settlement of the situation, etc.

Ihor Shnitser's scientific research "Preconditions, Course and Consequences of the Small (Local) Ukrainian-Hungarian War in March 1939" analyzes in detail the issue of Hungarian-Polish rapprochement against the background of the desire to form a common border. The researcher drew attention to the peculiarities of the activities of the Hungarian sabotage detachments, explained the reasons for the rapprochement of the Carpatho-Ukrainians with the Third Reich, and also provided a detailed chronology of the Sich soldiers fighting with the Hungarian troops.

Hungary's attack on Podkarpatská Rus also appears in M. Derzhaliuk's article , which analyzes the strategic goals of Budapest's foreign policy before and during World War II. The scholar notes that Hungary motivated its actions not only by historical law, but also by the desire to restore the Hungarian-Polish border and even in the context of a certain messianism. As Budapest explained, the future of this region concerned the whole of Europe, because it was from here that the so-called "Eastern despotism" (meaning the Mongol-Tatars and probably Russia) penetrated into Europe. Thus, Hungary took under its wing a potentially dangerous region and defended the whole of Europe. At the same time, the article shows that Hungary perceived the USSR as one of the biggest threats to its strategic plans, and therefore the occupation of Podkarpatská Rus was necessary for its own security and further expulsion of the USSR from the region.

Ivan Homeniuk analyzes the main features and directions of the Hungarian aggression in the context of the conflicts in Central and Eastern Europe on the eve of the Second World War in his popular science book. He draws attention to the Hungarian-Czechoslovak conflict over southern Slovakia, to the terrorist attacks by the Hungarian "Free Detachments" and the "Ragged Guard" (Hungarian the "Rongyos Gárda"), and to the success of Hungarian diplomats in the First Vienna Arbitration. Hungary's attack on Podkarpatská Rus and the "air war" between Slovak and Hungarian fighters are described separately.

Let us consider separately the events of the "Little War" in Ukrainian historiography. Since these events were incomparably less important for Ukrainian state-building than the defense of Podkarpatská Rus from Hungarian troops, the issue of the Hungarian-Slovak war in March 1939 affected only a few.

In 2004, O.O. Kaftan's article "The 'Little War' of the Slovak State" appeared. The author convincingly proves the inevitability of a Hungarian military attack on Slovakia. The main reason for this was Budapest's desire to continue the movement to establish "historical justice" after the occupation of Podkarpatská Rus on March 15-16, 1939. The author also draws attention to the formation of military forces in the newly created Slovak state, whose main problems were low numbers, lack of experience, ammunition and team. Despite significant problems and lags behind the Hungarian army in both quantitative and qualitative terms, the Slovak Air Force has gained some time to mobilize the army. Drawing attention to the Third Reich's maximum interest in destabilizing the situation in Central Europe and inciting Hungary to revanchism, O. Kaftan for the first time in Ukrainian historiography considers the "Little War" as the first manifestation

of open aggression against an independent state (which, incidentally, Hungary officially recognized) on the eve of World War II.

Much attention is paid to the development of Slovak-Hungarian interwar antagonism, which resulted in the "Little War" in the works of I. Borovets. His monograph "Historical Conditions and National Features of the Slovak State formation" shows the development of the Slovak lands from the middle of the XIX century until the end of World War II. Although it is devoted to the development of Slovakia at this time, the author draws attention to Hungary's dissatisfaction with the results of the Treaty of Trianon and its interest in restoring "historical justice".

In a short article "The Hungarian-Slovak Armed Conflict of March 1939" , I. Borovets gave a brief description of the "Little War", highlighting its main events and clearly stating the important thesis that this was the first case of using aircraft to attack a neighboring country in six months before the Second World War.

In his next article, I. Borovets for the first time in Ukrainian historiography reveals the diplomatic dimension of the "Little War" . The main narrative of the work is devoted to the diplomatic maneuvers of the Slovaks between Berlin and Budapest, a comprehensive analysis of Hungary's strategic plans, the activities of their diplomats and the complex process of Hungarian-Slovak negotiations on the line of demarcation. The scholar clearly proves that in its foreign policy, Hungary worked closely with Germany, realizing that the latter would support its revanchist efforts. Also, for the first time in Ukrainian historiography, I. Borovets voices an interesting conclusion about the possibility of drawing a parallel between Hungary's attack on Slovakia in 1939 and the Russian Federations attack on Ukraine in 2014. Among the common features of these events is the fact that both countries solemnly proclaimed recognition of a neighboring country, justified their aggression by restoring historical justice and protecting their national minority, convinced the world community of their innocence and ignored international law and treaties.

The relevance and necessity of research into historical memory is beyond discussion. In 2018, I. Borovets and S. Vidniansky also published a qualitative review of the Slovak collection "Malá vojna v marci 1939 a jej miesto v pamäti národa" , which contains articles by leading Slovak researchers on the issue of the "Little War". In this review, Ukrainian scholars draw attention to the latest findings of Slovak historiography: the ignorance of the "Little War" for the modern Slovak people, planning the revisionism of Hungary throughout the interwar period, stretching the chronological framework of the war to May 22, attempts to reject the heroism of the Slovak defense etc. Commenting on the articles of Slovak researchers, I. Borovets and S. Vidniansky point out that Slovak historians are also increasingly drawing parallels between the "Little War" and Russia's aggression against Ukraine in 2014.

Several works of the author of this article are devoted to the topic of the "Little War". In particular, the immediate reasons and preconditions are revealed in the work "Slovak-Hungarian diplomatic Relations on the Eve of the "Little War" . It draws attention to the peculiarities of the international situation at the time: the Czechoslovak leaders' hopes that Berlin would guarantee their

security, the Hungarian-speaking minority of Subcarpathian Russia flirting with Budapest, Hitler's plans to make Slovakia a springboard for further attacks on Poland. Diplomatic reports show that other countries are "concerned" about the further development of the militaristic attitudes of Hungary and Germany, but have not taken any decisive action to stop this process. In general, the newly created Slovak state felt a clear lack of military power to ensure its security, and the presence of strong neighbors did not leave it then a chance for independent policy.

The author of this article also tried to give a general description of the current state of Slovak and Hungarian historiographical thought on the issue of the "Little War" . Despite the seemingly small significance of this war (which is why the term "conflict" has long been more common in historical thought), Slovak and Hungarian historians have been quite active in controversy over many aspects of it. Naturally, the assessment of the "Little War" differs significantly: from the description of the heroic defense of the Motherland in Slovak historiography to a superficial description, omission or even denial of the fact itself – in Hungarian. Extremely important in the process of searching for historical truth was the so-called Deak-Chefalvai discussion, related to the terminological definition of war and the assessment of the political and military goals of the two countries. The controversy, which began in 2004, provoked a gradual departure from the dominance of the interests of military historians, who for a long time focused mainly on studying the combat capability of the Slovak army, analyzing the military tactics of the Hungarians, and so on. With the beginning of the XXI century increasingly the key themes are rethinking chronological boundaries, terminology, and the "humanization" of history through the study of the "Little War" in the national memory of the Slovak people.

Conclusion. Thus, we see that Hungary's foreign policy initiatives on the eve of World War II are presented rather unevenly in Ukrainian historiography. The least attention is paid to the analysis of the "Little War", as it did not have a significant impact on the development of Ukrainian statehood. The First Vienna Arbitration was studied much better, because it determined the fate of a large part of the territory of today's Zakarpattia. The process of Hungarian occupation of Podkarpatská Rus is considered in great detail, usually in these researches' attention is paid to the role of the Hungarian "fifth column", Polish-Hungarian sabotage groups and the chronology of the hostilities themselves. Increasingly, in modern Ukrainian studies of Hungarian pre-war revanchism, researchers see certain parallels with Russia's military aggression against Ukraine in 2014.

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WHAT IS FAIR TAXATION IN THE GAS MARKET: THEORETICAL VIEW FROM THE LAW & ECONOMICS PARADIGM

Karvatskyy Viktor[1]

Annotation. The article aims to open a relatively unexplored theoretical paradigm for the Ukrainian legal discourse, which is the economic analysis of law (also called "law & economics"). By applying principles of microeconomic theory, the author would like to demonstrate the effect of possible legislative tools. In this article, one uses economic analysis to predict the consequences of specific legal terms; therefore, the piece is written more in the vein of positive law and economics.

Such a theoretical toolkit was taken to reflect the legal reality surrounding such a complex topic as taxation of the gas market. As our topic deals with vast parts of economic life, such as "taxation," "market," and "gas", it was decided to take the economic analysis of law as the most accurate method to evaluate the possible effect of legal novelties within the real socio-economic context.

This article is written as a two parts-piece: in the first one, the report gives the reader the main views of main world-class global scholars of the field; in the second one, the author argues and interacts with these and many more authors, proposing the explication of his view what is "a fair taxation in the gas market."

Even though the article is composed of more theoretical reflections on the subject, the voiced ideas and suggestions were made perfectly coherent with reality. Namely, price discriminations are used as a price-setting tool in many energy markets worldwide.

Key words: Gas market, taxation, monopoly, economic analysis of law, behavioral economics

Research and Discussions.

I. Theoretical paradigms of Richard Thaler, Cass Sunstein, Robert Lee Hale and Thomas Piketty

[1] Karvatskyy Viktor, Expert in Energy of Think Tank ADASTRA (Kyiv, Ukraine), Non-Resident Expert in Energy of Eurasian Research Institute (Almaty, Kazakhstasn), LL.M., Candidate in Legal Business Consulting at Taras Shevchenko National University of Kyiv, Ukraine, ORCID: https://orcid.org/0000-0002-1375-9871, e-mail: victor.karvatskiy@icloud.com.

Nothing can pose more of a challenge to a conventional law & economics (L&E) than a critique of the existence of "homo economicus." Even as a theoretical concept, "homo economicus," an egoistic rational utility-maximizer with access to all needed information for decision-making, was modeled to represent human nature. Behavioral law & economics not only introduced a concept of boundaries to an all-mighty homo economicus, but for the first time showed how an application of such behavior may impact an existing legal system.

In its vein, the first vital doctrine to take is the nudge theory of Richard Thaler and Cass Sunstein [5]. Not only is this theory ideally mirrored into the paradigm of "homo economicus non-existence," but it also continues an anti-antipaternalism spirit of behavioral L&E (calling it libertarian paternalism). Nudges constitute a system of encouragement by relatively minor features aimed to influence the decision-making process positively. Nudges would have been impossible if behavioral L&E have not stressed the existence of not always rational people, which may need guidance in their decisions. Thaler gives an example of a music festival`s banner "drink more water," which helped protect people during heatwaves.

A behavioral school stated that people had bounded rationality (all of us have at some point limited cognitive skills), bounded willpower (people may act in a way that harms its long-term interests), and bounded self-interest (people care about other people even in markets, desiring to threat others nicely). All these features have a clear impact on people`s economic choices behavior. People, including economists and lawyers, cannot judge all facts and events properly and, therefore, always make good choices: e.g., environmental regulations fell under the influence of a "pollutant of the month syndrome." Due to media coverage of massive nuclear disasters such as Three Mile Island, people tend to tolerate coal, even though coal is responsible for 351 more pollution and accident-related deaths than nuclear.

As for willpower, Behavioural Approach to Law and Economics of Thaler, Sunstein, and Jolls [1] gives an example of smokers who cannot force themselves to quit and would prefer tax-funded governmental programs to help cigarettes-addicts to quit. From the role of the government goes another crucial point undermining a conventional spirit of normative L&E on "consumer sovereignty". Behavioural L&E reconsiders the role of the government as an agent capable of correcting people`s mistakes. However, a golden middle is not to be crossed to prevent a state machine from abusing its powers. As Howard Margolis rightly noted, the governmental aim is not to harm.

Nudges theory is based on libertarian paternalism, an idea that "architectures of choice" (governments or private companies) may interfere with a person`s liberty of choice with some advice. Liberalism manifests in the absence of pressure, as a person still may decide to go the other way. The strong point of nudges is their negligible marginal cost and numerous implementation ways. As nudges are rooted in the idea of altering human behavior, it allows them to be a universal tool. However, this abundance is voiced as their weak point, as there is no theoretical framework for elaborating a nudge or projecting its impact. So,

nudges work following Milton Friedman`s point of view [4] that economists` predictions and not the realism of their assumptions are to be judged.

When it comes to shortcomings of nudges, a slippery-slope assertion and so-called "evil nudges" are major counterarguments. Slippery-slope denotes risks of governments crossing the golden line and doing extreme interventions in freedom of choice. However, nudges theory`s scholars tend to emphasize people`s power to vote the government out of the office. Even though some government officials may be driven by private interests or simply under-qualified, the democratic nature of the government is the main counterweight. The main drawback of nudges is the possibility of using nudges not to promote positive results for people (evil nudges). Thaler gives an example of British Times magazine, which under the nudge of paying 1 pound for article access, foresaw a mechanism for obtaining more customer's money foreseeing a necessary phone call to end the subscription.

Evil nudges symbolize a possibility of private companies incentivizing people to do something good, not for their interests, but for the profits of a particular company. Following "evil nudges" logic, there is a general objection to the whole theory as a social engineering project, aiming to manipulate people's behavior or not bring any long-term behavior changes. Libertarians also argue that any government-related wealth redistribution is unjustified, and any "helping the poor" initiatives will be financed by wealthy people's taxes.

The second vital doctrine to analyze is Robert Lee Hale`s theory on coercion and distribution [6]. Being one of the representatives of legal realism, Hale contributed to challenging at that time mainstream views on the nature of a market economy. At the end of the 19th century, a decentralized and competitive economy would assure the existence of impartial and neutral institutions, which would act as arbitrators in wealth distribution. Following up with Adam Smith`s invisible hand, a market economy in itself was positioned to be an intermediary to assure equal opportunities to everyone. Any direct intervention of legal arbitrators in wealth distribution would backfire in undermining the credibility of legal institutions to remain neutral.

Within a laissez-faire paradigm of governmental market non-intervention, freedom of contract was praised as a guiding point. Freedom of contract enabled parties to negotiate the terms of the contract independently with a great amount of discretion power. Courts were not concerned with a question of how "fair" the contract was (e.g., if contract prices correctly reflected market prices), but with assuring that consent was reached. All economic rationality behind the deals was to be determined by an all-mighty market economy. The U.S. Supreme Court decision in "Lochner v. New York" [9] reached a culmination in such a theoretical framework. In this case, the court named unconstitutional the limit from New York state law on the number of work hours. Therefore, the fine on Mister Lochner for breaching the limit in contracts with his employees was annulated.

Robert Hale challenged a market-centered paradigm, stating that a market economy is just a form of organized coercion. In this piece on coercion, he defended an unfairly negative connotation of the word "co-

ercion," as private coercion is widely applied to different aspects of the market economy.

A worker`s choice of job was not free but driven mainly by a desire not to die from hunger. A factory owner is also subject to the coercive power of other people. The workers may strike and stop an everyday production process, and customers may stop buying factory products, causing profit losses. From its part, a factory owner has a coercive power in not giving wages to its workers if they do not fulfill their obligations to work. Consequently, Hale argued that almost all incomes result from private coercion. The market was portrayed not as a place where freedom gets its manifestations in contracts but a system of hierarchical ties between market actors, in which coercive nature of pressure is disguised.

A societal income is distributed in the way of how market participants may use their coercive powers over each other. Hale interprets income as a price for not using coercive powers (e.g., leaving the job). Furthermore, as Hale agrees with Thomas Nixon Carver (even though criticizing him all the time), coercive power constantly changes. Coercive power`s value of one unskilled worker to a factory will increase if the government decides to launch educational programs or ban immigration, limiting the supply of unskilled workforce.

In his argumentation, Hale devoted significant attention to the law of property. He opposed a narrow understanding of the law of property as a mere right of the owner to exercise its power over a property object. Property rights encompass factories owners' ability to distribute their goods to customers only if they are willing to pay for them. In this realm, the government exercises a coercive power to prevent non-owners from infringing on the property without owners` consent. Moreover, property laws are not working independently from a neutral market; they are defined by each market system. The meaning of property cannot evolve separately from legal norms on coercive powers.

The major shortcoming of Hale`s theory seems to be an exaggeration of coercive elements as an antonym to freedom in the market`s logic. Inside each situation to be understood as coercion, there is a very indistinct limit with the notion of freedom. Suppose a consumer decides not to buy apples because of high prices. Apart from using its coercive powers on a particular apple seller, he still operates within the freedom of contract to purchase apples from another shop or buy bananas instead.

The third critical move is Thomas Piketty`s argument on the necessity of a progressive tax on capital as an indispensable part of complementing an existing financial model [8]. Thomas Piketty`s work should not be perceived as something hostile to previous tax theories; he positions a capital tax as a valuable complement to progressive income tax. Tax on capital should be the next evolutionary step in tailoring a tax system to the 21st century.

As Piketty argues, a progressive income tax has already played its part in stabilizing the financial system, making taxes contribute almost half of national income in European countries. Namely, without it, a state would have returned to immense wealth concentration levels, ones during Belle Epoque

(period of economic prosperity from the 1870s till the first world war). In a model without progressive income taxes, the state can exercise only its "pouvoirs regaliens" (foreign policy, army, judicial system), not engaging much into wealth redistribution from the rich to the poor by public services and institutions.

However, new areas, causing immense inequalities, have been made apparent, which with one cannot cope only with an income tax. These inequalities are rooted in the capitalist system. Piketty gives a core inequality equation (r, annual return on capital > g, annual economic growth), stating an employee could never possibly surpass the incomes of a person with capital assets (stocks, bonds, partnerships). This view challenged Simon Kuznets` hypothesis [7] that inequalities will rise initially but lower afterward within economic development.

Piketty's proposal shall be implemented to target the richest, which cannot be reached with a progressive income tax, one working as a bell curve. To illustrate capital tax logic, the French economist gives an example of Liliane Bettencourt, heiress of the L'Oréal empire. She was the richest world woman but contributed too little to the budget in terms of taxes. The thing is that Bettencourt could live on a few million of dividends (to be taxed) but have her real wealth (30 billion) on family trusts and private foundations. Moreover, after her passing, Francoise Bettencourt inherited family wealth and the world's richest woman's status. Piketty emphasizes that an absence of wealth tax alongside low inheritance taxes drives the world to "patrimonial capitalism" of families like Bettencourt.

An annual wealth tax on financial and non-financial assets such as real estate should remedy this situation and end the era of private wealth, exceeding the GDP of some countries. The main strength of a capital tax proposed by Piketty consists of a beneficial effect of even a tiny tax share (1% after 1 million, and 2% after 5 million). Such a modest capital tax will equalize our society and generate 2 percent of European GDP if implemented in the EU.

Concerning weak sites, we can define two the most evident ones.

As Piketty himself claims a global tax on capital as a utopia, it is hard to imagine a relatively easy way to achieve a so-needed financial transparency and information exchange between banks. Even if some European countries make some financial transparency advancements, existing financial mechanisms, especially trusts, as Katharina Pistor rightly notes, enable the elite to choose from a world "legal menu" the most attractive legislation. So-called tax havens (chiefly poor island countries, to which tax avoidance constitutes a significant part of revenues to local economies), some of which even grant citizenship for a certain amount of made investments, would be reluctant to act in this direction arguing about bank secrecy.

Furthermore, Piketty`s proposal aims to fight the outcomes of the existing economic system. By merely proposing to tax the wealthiest ones, Piketty does not come closer to solving the question of what economic asymmetry causes such a vast number of poor people. Pistor also stresses the difference between combating the gap between the super-rich and the rest and tack-

ling inequalities [3], emphasizing the role of wealth accumulating benefits the wealthy receive from "legal steroids" in the form of a legal system for financial assets. Besides, in stating low economic growth as a reason why the rich are becoming richer, Piketty does not answer how a high economic growth would have helped the poor. And as it becomes evident from economic literature, economic growth has no explicit dependency on people`s well-being and may exacerbate inequality.

II. Applying a described framework to the gas taxation

A gas industry foresees many taxes at different stages, from governmental royalties for subsoil use to payments for gas distribution to regional companies. The state may decide to introduce additional taxes to boost national production amid world gas prices shock or implement carbon taxation to comply with Paris Agreement environmental goals. In the gas industry, given even some world energy giants are getting out from the sector to finance "green energy projects," new taxes, new revenue losses, would inevitably be shifted to consumers.

We cannot agree with Edwin Seligman [2] that, in a gas case, a monopolist market will not entail tax transfer to consumers. We share the point of view of Robert Hale that taxation would impact a company`s financial situation and inevitably raises prices for consumers. Furthermore, we hardly see any difference in behavior in either a competitive or monopolist gas market. A carbon tax or tax for boosting production by equipment renovation would be, in any case, externalized to consumers. The unfair thing is that gas taxes are regressive in their nature. For the poor, gas consumption payments take a far larger part of their income than for the rich. Whereas extra taxes on gas may not impact the welfare or behavior of wealthy citizens, it will severely hit the well-being of the poor. Our proposal on this matter is to proceed to tax redistribution to protect lower walks of life. Hale would vigorously oppose it, arguing the uselessness of equalizing taxation and a broader understanding of property laws.

According to Hale, redistribution by the wealth of the rich is unfair for the rich, as they managed to take income out of society. In contrast, the poor would get redistribution benefits for doing nothing. So, the rich should cause sympathy in this realm and not the poor. Hale even stresses that from a phycological point of view, to deprive the rich of the wealth is unfair, as, for the rich, their luxurious life habits become a necessity. At the same time, the poor may continue to have their lifestyles at no loses. Furthermore, rich people's possession of a sufficient level of personal skills constitutes their "legitimate expectation" as part of property law. However, as such expectations were not recognized as a part of property law, the state should reward the rich with little support to the poor.

Nevertheless, we cannot accept Hale`s views. Even his coercive power argument does not work correctly in this realm. As he gives an example of the consumer`s power to go or not go to the theatre, a poor consumer does not have consumer power in the gas market. Given meager electrification rates in Africa and the global accessibility of gas infrastructure, gas is necessary for heating and

cooking in most countries. The poor do not have enough money to electrify their heating systems and substitute gas with electricity. Furthermore, contrary to a factory worker, a poor man`s non-purchase of gas will have no impact on the gas supplying company. In contrast, a gas non-purchase threatens him to end up in terrible living conditions.

In this realm, it seems reasonable to agree with marginal welfare school, and, namely Carver, so criticized by Hale. Having already shown a danger of gas non-purchase by the poor, we support the transfer of wealth from the poor and the rich, following up with their argument on diminishing marginal utility. In the case of gas prices, it would manifest in second-level price discrimination, one introduced by Arthur Pigou, for different amounts of consumption. Therefore, taxes would be shifted differently to the poor, the middle class, and the rich via price discrimination. Each level of consumption will mirror progressively increasing prices. A progressive tax will balance its existing regressive nature.

The due attention should be devoted to defining a fair limit between gas consumption amounts. Reflecting Jules Dupuit`s argument on price discrimination in transport, the aim should be "not to punish the poor but frighten the rich." Therefore, wealthier people, not wanting to keep track of how much they consume, would pay a higher price, ipso facto taking higher tax share.To apply Piketty`s arguments to fair gas market taxation, one needs to understand his reasoning behind the tax on capital. Piketty advocates a tax on capital as a valuable complement to progressive income tax. Namely, progressive taxation by income is what we propose to reflect in the gas market. Rich people tend to live in bigger houses, consequently consuming more gas than the poor ones.

Moreover, supporting redistribution from rich to poor, he states that progressive taxation envisages it only through the complex system of institutions. We propose it not always be the case. In general, redistribution in the gas market is carried out by governments in the form of subsidies for the deprived ones. Why should we need so many subsidies if it is possible to protect the poor directly? Not to mention that a mechanism of gas subsidies creates additional transition costs for public servants and consumers. Besides, there are frequently problems with having enough budget money to finance them.

Additionally, by proposing a tax on capital, Piketty wants to target a system of global inequalities, in which the wealth accumulation by the richest ones plays a vital role. Inequality can be well understood as a lack of equality in access to opportunity. In the gas sector, such inequalities manifest in the inability of the poor to substitute gas with electricity in heating systems because of high equipment costs. Just as Piketty`s tax on capital aims to make the richest contribute more to the public good, our proposal on fair taxation in the gas market plans to push the rich to create additional benefits for the poor.

Having the incentive to cut their spending on gas, the middle class would raise demand for heating electrification equipment, consequently lowering

its marginal costs. Why is it important? Given power sector decarbonization, gas will phase out in decades, and each poor family will have to electrify its house.

What is more, the same logic applies to the richest ones. They may not care about gas costs, but some of the richest constitute the class of Hale`s factories owners, and factories consume a tremendous amount of gas.

The thing is that heavy industries and heavy-duty transport cannot electrify their production process, as existing technologies run by electricity and not gas would not generate enough heat and paralyze the production. So once again, the richest ones (especially after carbon taxes) would invest in new technologies such as hydrogen or carbon capture, driving their costs down. It would promote decarbonization and advance a better future for everyone, as heavy industries and transport make up 30% of global CO2 emissions. And there is an evident connection between greenhouses gas emissions from fossil fuels, climate change, and human health.

Furthermore, alongside gas taxes reforms, an application of Thaler and Sunstein's nudge theory would complement a system's fairness of gas pricing. When it seems unfeasible for the poor to substitute gas right now, with the help of nudges, the government may help them achieve smaller gas consumption amounts. With the help of simple letters, the state may promote the advantages of relatively cheap energy efficiency measures, indicating possible savings for a consumer. People may save around 20% of the monthly gas bill simply by radiator reflectors and roof insulation.

Even if the private companies would be reluctant to assist the government because of profit losses, in many gas systems worldwide, the government names a state gas company as a "last hope supplier." This role means that if a private company fails to supply gas, a state company will take over its obligations. Besides, the status of the last hope supplier grants access to data of all people`s post addresses, so there won`t be even costs in data collection.

Conclusions.

The toolkit of law & economics (also called "economic analysis of law) allowed to consider the different facets of price-setting mechanisms in the gas market in a far larger context of the economic system. Just as the poorer people cannot stop consuming gas (or electricity as its perfect substitute), they do not possess any of Hale's coercive power. The fact of already being in the regressive taxation system on utilities, which favors the rich, as a class not taking care of its utility bill, is the best argument toward involuntarily taking a part of the income for the poor at the expense of the rich.

As the marginal utility theory says, a dollar's value is far higher for the poor than for the rich. Therefore, just as Dupit writes, the aim is to "frighten the rich" by instituting the tight limits of double-level price discrimination. Such a decision will still perfectly align with Piketty's views on the nature of his progressive income tax. Nevertheless, it would be far too naïve to make a system reliant only on value redistribution; simple state actions such as gas reduction benefits in utility bills, the state may help the disadvantaged without taking even more money from the rich.

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PLANNING OF LEGISLATIVE ACTIVITY AS THE BASIS OF THE EFFECTIVE WORK OF PARLIAMENT: UKRAINIAN EXAMPLE

Kohut Oksana[1]

Annotation. Parliamentary work becomes one of the most important steps to build high level of good governance nowadays. In this connection purpose of this article is to establish new ways how to improve legal work with draft laws by such function as planning of legislative activity by analysis of Ukrainian experience. Relevant tasks could be accomplished, and desired goals could be achieved by implementation of the following scientific methods: action research, hypotheses, sampling, case selection, questionnaires, interviewing, desk research. Results of the research showed essential part of the whole procedure of planning of legislative activity in Ukrainian parliament (hereinafter – Verkhovna Rada of Ukraine), as well as its impact on the results of legislative process. Furthermore, it should be emphasized that the Regulation of Verkhovna Rada of Ukraine provides for the existence of such a document as the Agenda of the Session of the Verkhovna Rada of Ukraine. Based on this document, the parliament is planning to work on the consideration of bills. The inclusion of already developed and registered bills in the plan of legislative work leads to the mixing of this document with the Agenda of the Session of the Verkhovna Rada of Ukraine.

Analysis of previous draft versions of plan of legislative work of Verkhovna Rada of Ukraine for last 2 years as well as the current one gives evidence to make following conclusions regarding improvement of its legal definition. First, in the section of the table "Issues requiring legislative regulation (name of the bill, its purpose and subject of regulation)" in terms of paragraphs, it is not the issues that need legislative regulation that are indicated, but directly the name of the draft law, which does not always reflect the essence of the issue. Secondly, in the section "Indicative main committee of the Verkhovna Rada of Ukraine responsible for the development (submission) of the draft law" in a significant number of points there is no information about the main committee. Those recommendations should be considered not only by Ukrainian civil servants, but also could be appropriate guidance for legislative planning in foreign countries.

Key words: public administration, Verkhovna Rada of Ukraine, plan of legislative work, civil servants, rule of law

Current situation in political and legal spheres highlights new challenges for many parliaments as sources of democracy. Today research activities as well as

[1] Kohut Oksana, PhD student of the Department of Public Policy of the Educational and Scientific Institute of Public Administration and Civil Service of the Taras Shevchenko National University of Kyiv, https://orcid.org/0000-0026275-2043, Email: oksanakohutt@gmail.com.

planning of legal activities are carried out not only by libraries, but also by individual parliamentary libraries research departments. Deputies cannot effectively participate in the legislative decision-making process if they do not competent and underinformed, and the competent analysis provided by the Parliamentary Research Services contributes a better understanding of the problems, provides more realistic and effective legislative solutions, and predicts the future impact of policies, first than it will be adopted by the parliament [9, pp. 52–61].

The following typology of parliaments is distinguished, according to the criterion of analytical support (Miko, Robinson, Polsby):

1. Rubber stamp parliaments do not need informational and analytical support; often have nonanalytical services and departments (totalitarian countries).

2. Parliaments in countries where legislation is at the stage of creation need analytical information in order to be effective participate in the law-making process. Usually, they have already created a parliamentary library with archives and reference materials; in some provide research services.

3. Information parliaments have a parliamentary library and a research service that provides analytical services, prepares reports, offers research services that are available to all members of parliament.

4. Transformational parliaments have strong research services with a wide range of services in which the strong and the good work staffed research groups capable of developing options for new policies [8, pp. 8–12].

According to this classification Verkhovna Rada of Ukraine is more likely to be 2nd kind, as we have parliamentary library with archives and reference materials, but still all members of parliament need analytical information regarding each draft law. Each draft law has own peculiarities, moreover Constitution of Ukraine has few requirements for specific draft laws, which must be accomplished. For example, Chapter XIII of the Constitution of Ukraine defines requirements for draft laws which relates to any changes to Constitution of Ukraine, those peculiarities are more about authors for such draft law. Thus, Article 156 of Constitution of Ukraine states that … the draft law on amendments to Chapter I "General Principles", Chapter III "Elections. Referendum" and Chapter XIII "Amendments to the Constitution of Ukraine" is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine or by at least two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine and, subject to its acceptance by at least two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine, it is approved by an all-Ukrainian referendum appointed by the President of Ukraine. Re-submission of the draft law on amendments to Chapters I, III and XIII of this Constitution on the same issue is possible only before the next convocation of the Verkhovna Rada of Ukraine [13, art. 156].

By evaluating draft law before first reading in Verkhovna Rada of Ukraine civil servants need to find potential risks of implementation of the following draft law. Furthermore, legal and scientific expertise needs to define problems with legal technique as well as Gaps and conflicts with current legislation. If there any the task of civil servants as representatives of good governance concept must find ways how to resolve them by giving necessary recommendations to authors of draft laws. In this context planning of legislative activity becomes very important and significant way of legislative improvement.

It is also true that the data analysis reveals that the deficiencies that some libraries may experience in some respects (e.g. size of the collection, number of yearly acquisitions, etc.) are not compensated by other characteristics (e.g. larger research staff). The libraries with the largest collections or research staffs are also the libraries with the highest number of yearly acquisitions, while the libraries with the smallest collections tend to be the least adequately staffed and tend to have a fairly limited number of yearly acquisitions. This lack of independent and reliable information forces parliaments to rely almost exclusively on the government-generated information and prevents them from effectively overseeing the executive (Ukraine could be example in this case too) [8, p. 6].

But if free (and reliable) information is a necessary condition for the effective functioning of parliaments (and parliamentarians), it is not sufficient. Parliamentarians need to know how to use the information that they have. Often this requires training for both them and, perhaps more especially, for their staff. Indeed, evidence suggests that parliamentary libraries in developing countries are not effectively utilized by parliamentarians. Here, and most probably elsewhere, parliamentarians have proved to be unable to process the available information because of the "lack of proper understanding by members of parliament of their role as law makers and overseers of government action" [1, p. 1]. Not surprisingly, training is one of the activities that some parliamentary libraries perform. However, since parliamentary training is a complex activity and the complexity of the activities that a parliamentary library is able to perform reflects its resources, it is not surprising that most of the understaffed parliamentary libraries are actually unable to provide courses and seminars for parliamentary members [8, p. 7].

Accordingly, each parliament and their civil servants set a goal:

1. Develop a unique internal database of information sources.

2. Develop information pluralism (providing information from different sources).

3. Provide information that is as politically and ideologically neutral as possible [3, pp. 6–8].

As mentioned in different legal reviews and in accordance with US politicians it should be noted that in particular: …Congress needs four basic types of information to better perform its role. Congress as a whole and individual congressmen need information to coordinate and plan their work schedule and that of their staffs. As a decision-making body, Congress needs to track legislative activity and record aggregate and individual voting behavior. Individual congressmen need to track constituent demands, improve their efficiency in dealing with them, and develop means for following up constituent interests in both the legislative and non-legislative realms. Congressmen in their legislative role need improved information for monitoring problems, developing solutions, predicting consequences, and facilitating influence strategies. In its role of overseeing the bureaucracy, Congress needs to monitor the success of ongoing programs and to identify areas of weakness [12, pp. 256-257].

In this regard Ukrainian parliament looks very similar, that is why the same approach should be used. Verkhovna Rada of Ukraine need information to coordinate and plan their work schedule especially through the plan of legislative work.

In order to understand legal definition of the plan of legislative work in Ukrainian parliament it is obvious to analyze relevant legislation act. In this connection it should be mention that in accordance with Part 2 of Art. 19-1 of the Regulation of the Verk-

hovna Rada of Ukraine the plan of the legislative work of the Verkhovna Rada of Ukraine must contain a list of issues that require legislative regulation, justification of the need to draft a draft law, approximate title of the draft law and deadlines for its submission, persons responsible for drafting the draft law, information on the priority of introduction and consideration of draft laws [11, Art. 19-1]. In addition, the phrase "legislative work" implies work on the development of draft laws, and not consideration of already developed and registered draft laws in the parliament.

It should also be noted that the Regulation provide for the existence of such a document as the agenda of the session of the Verkhovna Rada of Ukraine. Based on this document, the work of the parliament on consideration of draft laws is planned. The inclusion of already developed and registered draft laws in the Plan of Legislative Work leads to the confusion of this document with the agenda of the session of the Verkhovna Rada of Ukraine.

In some points, there is no proper justification of the need to adopt the draft law, which would reveal the essence of the problem that is proposed to be resolved. In particular, the need to adopt a draft law is limited solely to the need to implement by-laws without additional explanation. There is a thematic inconsistency of the bills with the sections of the plan.

During preparation of this article not only internal definitions were deeply reviewed, but also such external element as structure was considered.

Concept of good governance distinguishes essential parts of appropriate public service and high level of documentation prepared by civil servants during process of administration. One key element is appropriate structure of legal or any other act in public sector (plan of legislative work is not an exception). Regarding this it should be emphasized that number of sections (topics) of the draft laws is frankly too small, and their names do not always give an opportunity to understand what it is about. This applies, for example, to such sections as "Large Construction and Regional Development" (art. 174–250), "Light Business" (art. 251–320), "Investment Hub" (art. 321–326) and "New Economy" (art. 327–471) [10].

At the same time, the draft plan as well as sometimes plan itself lack the division of draft laws by such parameters as macroeconomics and microeconomics, infrastructure development and economic development (including the restoration of domestic industry, support and development of state-owned enterprises and military-industrial complex enterprises, etc.), for example, there are no sections in which draft laws have been fully regulate issues of finance (financial system), development of the financial services market.

Regulation of the Verkhovna Rada of Ukraine defines also duties for good governance in sphere of implementation of the plan of legislative work. In particular, Art. 19-1 of the Regulation of the Verkhovna Rada of Ukraine states that the plan of legislative work of the Verkhovna Rada of Ukraine is taken into account when forming and making changes to the agenda of the session of the Verkhovna Rada. In January of the current year, at the end of the regular session of the Verkhovna Rada, in accordance with the calendar plan of the session of the Verkhovna Rada, the committees submit to the Verkhovna Rada a report on the state of implementation of the plan of legislative work of the Verkhovna Rada for the previous year.

Ob the other hand, it is also interesting to compare process of legislative plan-

ning in foreign countries, for example, UK, which has a different system of law, but also own procedure of planning legislation.

Before drafting legislation, it is obvious in UK to have a clear delivery plan for developing the bill and supporting documents.

As mentioned in the Guide to making legislation in UK, prepared by the Secretariat to the Parliamentary Business and Legislation Committee of Cabinet, with the advice of Parliamentary Counsel and the Offices of the Chief Whips, Leader of the House of Commons, Leader of the House of Lords and the Public Bill Offices of both Houses: "...it is essential to the success of a bill project that the department does not underestimate the time needed for preparing instructions and drafting the bill. If insufficient time is allowed for this in the department's project plan the following difficulties may arise:

● the bill may not be ready in time for introduction to Parliament meaning that it has to be abandoned by the Government;

● the bill may be introduced to Parliament with errors or omissions that need to be dealt with during the passage of the bill. This will reflect badly on ministers and on the department and will result in parliamentary time being spent unnecessarily on government amendments; or

● the bill may contain errors or omissions which are not spotted until after its enactment with the result that the Government's policy is not delivered. 8.56 In deciding how much time to set aside in the project plan for preparing instructions and drafting the bill the following things in particular should be remembered:

First, experience shows that when working on a bill it is necessary for the policy to be developed in much greater detail than when pursuing a policy that does not require legislation. Even once the policy has been developed to the satisfaction of policy officials in the department it is likely that it will need to be revised (sometimes substantially) to reflect the advice of departmental lawyers and the views of other departments with an interest. All of this will take time.

Secondly, it may not be possible for drafting to begin as soon as the department sends instructions to OPC. The Team Leader or the drafter concerned will be able to indicate whether this will be the case.

Thirdly, the process of turning the department's instructions into workable draft clauses is often a lengthy and complex one. It will usually take the drafter some time to become familiar with the instructions and the existing law before draft clauses cn be produced and it will frequently be necessary for there to be numerous rounds of correspondence between the drafter and the department in order for the first draft to be refined into something everyone is happy with.

Fourthly, in the course of drafting the drafter will often raise unforeseen policy and legal questions which require an answer before progress can be made. Sometimes answering these questions requires the department to consult their minister, other departments and stakeholders. Time needs to be factored in for this" [5, pp. 55-56].

In comparison, we can see how different processes of legislative planning in different countries are. Regarding Ukrainian example of the plan of legislative work civil servants as representatives of good governance concept in the sphere of public administration should act according to the Regulation of the Verkhovna Rada of Ukraine, remembering that the plan of legislative work must contain a list of issues that require legislative regulation, justification of the need to draft a draft law, approximate title

of the draft law and deadlines for its submission, persons responsible for drafting the draft law, information on the priority of introduction and consideration of draft laws. To sum up, the following issues should be considered in future: in some points, there is no proper justification for the need to adopt the draft law, which would reveal the essence of the problem that is proposed to be resolved. In particular, the need to adopt a draft law is limited exclusively to the need to implement by-laws without additional explanation. The plan lacks a unified approach to the structuring of the provisions in "Justification of the need to adopt the draft law, expected legal and other consequences of its adoption" – for some draft laws, such justifications and consequences are defined, and separately, for others – not. In the regard of terms of consideration (quarter), it might be appropriate to indicate that the relevant draft law is defined as urgent.

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MAN IN THE CONDITIONS OF DIGITAL CIVILIZATION: COGNITIVE-ETHICAL PERSPECTIVE

Kozlovets Mykola[1]

Samoilenko Danylo[2]

Horokhova Liudmyla[3]

Hlushko Tetiana[4]

Annotation. The purpose of research is the socio-philosophical understanding of the digital society as a new paradigm of modern society. Based on the analysis of the works of modern Western and domestic researchers, the connection between the rapid achievements of the information revolution and changes in individual and social life was identified and understood. It is stated that the progressive achievements of the technosphere in the XX–XXI century have created qualitatively new conditions for the development of society and man, led to the transition to more complex social ties and relationships. In particular, e-economy, e-learning, e-tourism, e-government, health care, etc. are emerging and developing. It is substantiated that the relationship "man-world", mediated by the Internet, mobile communications, technical innovations in general, forms a culture of digital society, a qualitatively different worldview with relevant values, social roles and patterns of personality behavior. The methods of the study are based on socio-philosophical, cultural and anthropological aspects of the impact of information and computer technology on the formation of personality, awareness and self-affirmation in the modern world. The results of the study put epmphasis on the fact that personality development problems should be integrated into a broad philosophical, psychological and pedagogical context in which the individual acts as a cultural ob-

[1] Kozlovets Mykola, Zhytomyr Ivan Franko State University, Zhytomyr, Ukraine, e-mail: mykola.kozlovets@ukr.net, ORCID: 0000-0002-5242-912X.
[2] Samoilenko Danylo, Zhytomyr Ivan Franko State University, Zhytomyr, Ukraine, e-mail: samjjlenk.dank@gmail.com, ORCID: 0000-0003-2316-3200.
[3] Horokhova Liudmyla, Zhytomyr Ivan Franko State University, Zhytomyr, Ukraine, e-mail: vszdu@ukr.net, ORCID: 0000-0002-5114-523X.
[4] Hlushko Tetiana, National Pedagogical Dragomanov University, e-mail: tetyana.glushko@gmail.com, ORCID: 0000-0002-8759-7975.

ject formed under the influence of self-creation and self-determination in his life, being in the communicative space of information society, should include awareness and high-tech training to operate in the digital world, to operate in well-functioning communication networks.

Key words: personality, life world, identity, digital generation, digital culture, virtualization, communication, postmodern.

The development of modern civilization is characterized by an unprecedented pace of profound changes in technological and socio-economic infrastructure. Innovations that came into our lives with the fourth industrial revolution – the widespread use of information and telecommunications technologies, robotics, mediatization, artificial intelligence technologies, virtual and augmented reality, the Internet of Things (IoT) large amounts of data (Big Data), digitalization – indicate that there is a change in the material and spiritual era. As a result of the creation of digital technologies, the process of digitalization of society was launched, and, consequently, of all its sectors – economic, political, cultural, educational, managerial, etc.

As scientists rightly point out, the formation of the sixth technological system is inseparable from the fourth industrial revolution, the so-called Industry 4.0. [Titarienko, 2020, p. 23; Ford, 2016, p. 200; Shvab, 2019, p. 331] The innovative trends of the sixth technological system in the context of the development of the potential of Industry 4.0 cause a significant transformation of the social environment and gradually immerse modern man in a fundamentally new reality. The rapid growth of innovative technologies reduces the time to adapt to the new world, especially for the older generation, which is accustomed to slower transformations of the environment. In addition, in the context of the COVID-19 pandemic, human interaction is forced to become increasingly digital, changing the way of thinking and everyday habits of modern man. The process of digitalization of educational and working environments, as well as other important social activities creates a new level of complexity in social interaction and forms new values, such as the idea of guaranteed basic income, theoretically conceived and written by a representative of the Austrian neoliberal school of economics F. von Nut. [Ford, 2016, pp. 332–335] Digital technologies are constantly changing the modern market, they have created the conditions for the emergence of parallel currencies, blurred the clear line between work and leisure, influenced the development of human and social capital, the formation of digital man and digital consciousness.

Technologies of digital civilization are not only basic economic artifacts, but also an ideology that determines the main directions and rates of development of society, changes its social structure, and most importantly, directly and indirectly affects the biological, social, mental and spiritual essence. The dynamics of the development of innovative technologies gives rise to a new style of communication and a different way of life. At the same time, the digital age contains ontological, epistemological, moral and ideological uncertainty. In this context, many questions arise, not so much about the consequences of the transition to the digital society, but about the rapid changes in the technological environment

of the digital world, the ability of man to accumulate, analyze and transmit information.

Analysis of recent research. The issues of information and communication and digital technologies are the focus of attention not only of philosophers, but also of scientists and experts in various fields; it brings together the most important players in the IT market (Google, Open AI); it is addressed in the political arena (Davos Economic Forum; Japan approves the Society 5.0 program, which proposes to solve social problems based on the achievements of Industry 4.0, etc.). The challenge of recent years is the Internet of Things, which is directly related to artificial intelligence, and it is in this segment that experts see prospects for future technologies (R. Davis, W. Elfrink, S. Gringard, G. Thomson, K. Schwab) [Hrinhard, 2017, p. 124; Shvab, 2019, p. 332; Elfrink, 2018]

In our study, we rely on the work of foreign authors, in whose works we find the conceptualization of the digital society, namely: O'Reilly Tim " WTF? What's the Future and Why It's Up to Us." [O' Reilly, 2017, p. 224]; Rose David's "Amazing Technology. Design and Internet of Things" [Rose, 2018, p. 135]; Christopher Steiner "Total Automation. How computer algorithms change lives " [Shestakova, 2015, p. 33]; Schwab Klaus "The Fourth Industrial Revolution, Forming the Fourth Industrial Revolution" [Shvab, 2019, p. 332] and others.

Post- and transhumanist discourses view digitalization as a trend toward the increasing use of technology in a variety of contexts, from artificial intelligence theory to human and societal conditions in the face of ultra-rapid changes inherent in the digital world. analysis of social consequences arising as a result of total accessibility of university education and blurring of ideas about its role in the digital society (I. Afanasenko, V. Banakh, O. Vodennikov, V. Voronkov, M. Ivlev, V. Inozemtsev, M. Kirichenko, M. Maksymenyuk, V. Nikitenko, R. Oleksenko, O. Punchenko, V. Sosnin, O. Fursin, I. Shestakova, etc.) [Afanasenko, Borisova, 2018, p. 7; Inoziemtsev, Ivlieva, 2020, p. 111; Sosnin, Voronkova, 2015, p. 24; Shestakova, 2015, p. 33; Punchenko O., Punchenko N., 2019, p. 95; Shestakova , Polanski, 2018, p. 412.]

Despite the availability of a number of sources, the problems of the impact of digital technologies on the development of human and social capital in the digital society remain unresolved and insufficiently analyzed. that the digital society is not standing still, but is constantly generating a new set of problems related to the impact of digitalization on individual and social life.

The purpose of the article is to analyze and systematically comprehend the problems and challenges of human existence in the digital world and its ultra-fast transformations, conceptualize the impact of digital technologies on the development of human and social capital.

Presenting main material. The qualitative leap in the speed of socio-technological development in combination with its concentration in the field of information and communication technologies determines the uniqueness of the new reality of the digital world. The physical reason for this new pace of development lies in the unique properties of digital technologies, namely – the universality of their application, making them the driver of all scientific and technological progress, as well as the specific temporality of their own development and distri-

bution, micro-dimensionality and virtuality, their low cost, resource intensity and unprecedented mobility.[Shestakova I., Polanski S., 2018, pp. 412–417]

In a broad sense, digitalization is defined as the creation of new information-based systems, processes and structures that extend to all spheres of society, followed by the involvement of people in work and life in digital reality. It is the process of transforming various physical or analog actions into digital information systems. Thus, the term "digitalization", which was originally interpreted as a new way of storing information, has today gained new understanding, new meaning and development, which provides an innovative approach to solving complex multi-level information and communication tasks based on informatized entities. That is why digitalization is considered as one of the defining trends that shape the future. [Sosnin, Voronkova, 2015, p. 24–31; Punchenko O., Punchenko N., 2019, p. 95]

Thus, the positive trends in the formation of a new social reality, due to the specifics of digital society, V. Inozemtsev and M. Ivlev include the following: 1) the creation of a new organization of labor and the emergence of new forms of employment, which in turn leads to new professions new requirements for professional competence; 2) the formation of a new class – the "class of intellectuals", represented mainly by professional and academic experts, people of science and technology, who participate in the management and formation of information flows; 3) allocation of a new form of capital – "public", owned by a market entity that operates in the space of public communications, which, in turn, allows you to strengthen a positive image, increase public confidence, etc .; 4) the emergence of "electronic democracy", which involves the implementation of activities through modern information and communication technologies. [Inoziemtsev, Ivlieva, 2020, p. 112]

At all levels of modern life over the past few decades there have been dramatic changes. In this new reality, it is critical not only the emergence of a new information and communication field that has radically changed the usual infrastructure of individual and social life, but also the explosive growth rate of change caused by the breakthrough development of digital technologies. The uniqueness of the present moment also lies in the fact that radical changes are taking place in real time, creating both unprecedented opportunities and problems that humanity has never encountered in its history.

Another feature of the current stage of development of information communications and cognitive technologies is that they have intervened "in the holy of holies", in the field that makes a person intelligent [Shestakova I., Polanski S., 2018, p. 412.] , and human society distinguishes it from any other biological communities. Thus, the rapid development of digital technologies determines the inevitability of radical social changes that occur in front of our eyes and are embodied in such new concepts as "information (digital) society", "digital civilization", "digital world", "information (digital) era" ; the third, and now the fourth, industrial revolution, the "information (digital) revolution."

The transition from relative technological stability to the era of ultra-rapid changes in technological infrastructure, which coincided with the transition to the digital age, is interpreted by scientists as a qualitative leap in the pace of

development. If in the pre-digital era radical changes in the technological environment and the resulting transformations in society were spread over time for at least several generations, giving people the opportunity for gradual evolutionary adaptation, the current pace of technological modernization has accelerated so much that radical socio-technological changes occur throughout human life. [Shestakova, 2015, p. 47–51]

The impressive speed of development of digital mobile devices, from seemingly incredible mobile phones to modern smartphones, which immediately became an integral part of human life and humanity, sets the trend for a possible merger of man with increasingly powerful intelligent machines. Mobility and proportionality, compliance with the human brain and senses makes these devices as a continuation of man, which, on the one hand, repeatedly enhances its specific human qualities and abilities, and on the other – frees the human brain from its usual functions with unpredictable consequences. primarily from the ability to accumulate, analyze and transmit information. The speed with which this is happening suggests that we are witnessing another revolutionary process, which may result in a symbiosis of man and the intellectual machine, accompanied by profound transformations of society and possibly personality. [Shestakova I., Polanski S., 2018, p. 413.]

New computer technologies appear both as a prerequisite and as a consequence of new relationships in work and production. Total digitalization and the progressive development of intelligent machines lead to the devaluation of human labor, changes in the quality and volume of the labor market, to the revision of ideas about the implementation of the profession as a core value. Thus, today it is already generally accepted among researchers the view that "artificial intelligence programs will inevitably increasingly encroach on more highly skilled jobs". [Ford, 2016, p. 326]

Experts believe that in the next 10–20 years, information technology will penetrate into most areas of human activity. The peculiarity of the new technological revolution is that there are fewer and fewer areas of activity where man could be more productive than a machine. First of all, workers who are deprived of any economic, political or even artistic value run the risk of losing their jobs. Demand will be those employees who will have knowledge of technology and the ability to think creatively. Another important factor for the employee of the future will be the ability to communicate with other people, the ability to quickly integrate into the team and active interaction with the team. Stress resistance, high organization and mobility will also be important, as it is likely that remote work outside the office, flexible schedules and the ability to work from anywhere will remain in our lives for a long time. [Shestakova, 2015, p. 133]

The temporal acceleration of the pace of development of the digital world makes real in the near future the prospect of reducing the vast sphere of intellectual work to a very narrow sector, where only the highest forms of creativity will be required (basic science, top management, etc.). One of the reasons for this is the automation of many processes, the role of artificial intelligence, as a result of which professions based on repetitive actions will be at risk. Instead, it concerns the creative industries less, which is one of the strategic reasons for strengthen-

ing their development. [Shvab, 2019, p. 426] Therefore, one of the key skills of the present and the future is creativity, as confirmed by the World Economic Forum in Davos. The rapid erosion of mass professions and the possible reduction of the labor market requires an appropriate response from the government and society, the need to form national models of economic development.

Due to the rapid development of digital technologies, there is a fragmentation of different age groups due to the limited ability of people to adapt to the changing socio-technological environment. It is also worth mentioning that some employees have phobias, which are caused by an insufficient level of mastery of computer technology. While welcoming new trends (competencies, digital economy, industry 4.0, human capital, new professions, etc.), it should be borne in mind that at the same time they have difficulties and problems, in particular: what to do with old professions, how to employ people, who did not have time to receive appropriate training and knowledge on how to develop vocational education, improve the relationship between education and business. [Inoziemtsev, Ivlieva, 2020, p. 113] It is quite possible that the next generations, born in the conditions of a permanent socio-technological revolution, will not be so prone to such fragmentation.

The peculiarities of the modern digital generation are determined by the expansion of cognitive and epistemological spheres, which is accompanied by the development of new cultural competencies: the ability to think critically and the ability to learn throughout life. When talking about innovation, we should not forget about the risks they involve. In particular, it is artificial intelligence, security, ethical aspect, digital propaganda. The latter are characteristic of both Ukraine and the world as a whole. In our opinion, any technology must be accompanied by an appropriate system of value coordinates, which are still insufficiently balanced during the transition period. Therefore, it is time to update the development of the axiological basis for determining the relationship between digital and humanitarian dimensions of value support of processes. That is, it is an answer to the question: why, why, how and what motivations will determine our techno-sociogenesis at the beginning of the third decade of the XXI century. And these are precisely the questions to which we will not be able to answer without involving the interdisciplinary potentials of the humanities.

The relationship between consumption, technology and morality in modern science is an issue that requires a separate thorough study. But in the 60s of the twentieth century. a number of scientists have drawn attention to the fundamental impact of technology on the development of social values. [Inoziemtsev, Ivlieva, 2020, p. 114] Thus, they found that technology, as a component of human existence, influences the formation of social consciousness, which, in turn, is in dialectical connection with morality. Technology shapes a person, the principles of his behavior, moral choices. The combination of the latest technologies with the ideologues of neoliberalism and its highest value – unlimited consumption – can be considered a phenomenon of the XXI century. Goods and services made and provided by new technologies have become more attractive and, most importantly, more affordable. In this way, liberal civilization through the techno-

logical sphere forces the formation of a system of personal and social values in a certain direction.

Accordingly, no modern country can meet the modern requirements of Industry 4.0 without fundamental reforms of the education system, the organization of continuous monitoring of changes in the labor market and taking into account the trends, including non-standard forms of employment. For example, in 2019, scientists at Oxford University predicted that in the next ten to twenty years, almost half of the jobs in the United States will be occupied by computers. According to experts, by 2030, as many as fifty-three professions may disappear or change significantly. Among them are currently popular in the Ukrainian labor market: accountant, notary, lawyer, consultant, copywriter, proofreader, journalist and translator. [Titarienko, 2020, p. 24] However, these areas still receive a huge number of applications from entrants during the induction campaign. Instead, professions such as space pilot and pilotess, ethics manager, digital rehabilitation consultant, elderly companion, personal memory curator, virtual reality travel manager, highway controller, body parts manufacturer, digital advisor may be very relevant. currency, memory surgeon, garbage designer. The following professions will also develop and become more popular: artificial intelligence management, data analysis and management, digital promotion, digital service, digital sales, digital finance specialist, digital currency consultant, personal pages editors on social networks, social media specialists in cybersecurity.

Therefore, in response to the challenges of Industry 4.0, it is necessary to develop 4.0 universities capable of resolving many of the contradictions of current trends in the digital world. A significant part of higher education institutions demonstrates a low degree of their readiness to work in the conditions of Industry 4.0. Educational strategies need to be significantly changed today to prepare people for the changes associated with process automation: to focus on the development of soft skills, creative, cognitive and other skills. After all, it is the new professional competencies of the employee that become the key to his social dynamics. [Sosnin, Voronkova, 2015, p. 24–31]

In addition, the digitization process has intensified significantly during the Covid-19 pandemic. Millions of people have begun to actively use digital platforms. It is obvious that Covid-19 also became one of the stressors that significantly affected the inner world of people. In such conditions, mental tension increases, the likelihood of affective states and cognitive impairment increases, people's adaptability to new conditions decreases. [Shchielkunova, Husarova, 2020]

Since digitalization is wedged into the moral and legal space of society, the field of analysis of human innovation and technology must necessarily include an ethical component. Moral norms and laws, being the laws of human coexistence, should protect the individual and communities from such a threat to the future as "the subjectlessness of human development" caused by high technology. [Afanasenko, Borisova, 2018, p. 7–11] A person's ability to self-control and moral evaluation of their actions on the basis of understanding the responsibility for their activities is expressed in the form of awareness of the socio-practical significance of their actions. Therefore, in our opinion, in the future there will

be an urgent need for people who can critically evaluate the data collected using algorithms. Accordingly, the relevance of the philosophical and humanitarian component in education and systematic understanding of the new reality will come to the fore.

Thus, the living space changed, and with it changed the being-in-the-world, which for a long time, based on the authority of M. Heidegger, was considered unchanged. Real space ceases to be vital and is even easily replaced by artificial. Given the spatial identification of man, at the same time raises the question of human life. In general, in the modern discourse of the philosophy of culture, the human personality is considered in the circle of the world of life created by him, because man is always rooted in being.

Conclusions. In the digital age, the latest technological relationships, artificial intelligence, and the digital economy have become an integral part of people's daily lives. Information and communication and digital technologies are transforming almost all segments of social infrastructure, including such basic ones as work, education, mass communications, trade, and management. At the same time, they specifically affect a person, his ability to accumulate, analyze and transmit information, which, in turn, form the basis of human identity. Therefore, modern society needs people who know how to socialize in a fleeting society, creative and active, competitive and competent, with flexible critical thinking, capable of change. System dynamics, the development of the technological world have an extremely powerful influence on the ideology and worldview of modern man.

Today, a new generation of young people has grown up – the digital generation, which has a predominantly technical mindset and somewhat other moral and ethical guidelines, from which full-fledged humanistic and humanitarian elements have been largely removed. Therefore, the problem of forming this type of personality, which focuses not only on the requirements of modernization of concepts of education, but also the need to revise fundamental ideas about human destiny and basic existential values, focused on preserving spiritual and moral identity and preserving cognitive and creative potential. The need for the formation of new ideas and values, which will help to adapt to the rapid changes of digital civilization, is especially acute.

The modern period of civilization is characterized by changes that affect all spheres of human life. The rapid pace of socio-economic transformation in the country, changing values in society, increasing information and further tendency to expand management functions in professional activities have led to changes in society's requirements for higher education in training future professionals. The ability of specialists to adequately perceive complex situations, evaluate them correctly, quickly adapt to new cognitive situations, purposefully process existing information, search and supplement it, know the patterns of its optimal use, predict the results of activities using their intellectual and creative potential.

Thus, the new global economic architecture in the transition to the sixth technological mode, the main vectors of which are artificial intelligence systems and global information networks, creates conditions and needs for a fundamental revision of educational strategies and moral and ethical competencies of future

generations. We must also recognize that in the context of the crisis of democracy and the neoliberal globalization scenario, the fragmentation of the world is once again forcing us to consider that education and science are important structural and strategic resources for the development of national economies. That is why the definition of clear guidelines in these areas is an extremely important task of modern humanities, especially social philosophy, philosophy of technology, philosophy of education and applied ethics.

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THE RIGHT TO APPEAL IN THE SYSTEM OF GUARANTIES OF THE IMPLEMENTATION AND THE PROTECTION OF THE ADMINISTRATIVE AND LEGAL STATUS OF A PRIVATE PERSON IN THE PUBLIC SPHERE

Kostyukevich Sergiy[1]

Annotation. The purpose of the article is to establish the content of the right to appeal in the system of guarantees for the implementation and protection of the administrative-legal status of a private person. Research methodology. Universal scientific research (analysis, synthesis, generalization) and interdisciplinary (structural-system) methods were used. Special attention was paid to the actual historical methods of scientific knowledge (the method of generalization and synthesis, the method of comparison and structural-logical connections). Thus, the creation and functioning of the administrative justice system is defined as a guarantee of the realization and protection of subjective public rights of a person in the public sphere. That is, the realization of the right to challenge the decisions, actions or inaction of subjects of power is a component of the "checks and balances" system, a kind of criterion for the effectiveness of the functioning of public service bodies. Reasoned by the author, that the above-mentioned subject jurisdiction of administrative courts shows that the subjective public administrative rights of a private person are protected in the procedure of administrative proceedings (in particular, the right to elect and be elected, including public service positions); subjective public service rights of a private person (the right to access public information, the right to receive an appropriate level of administrative services). The criteria for determining the subject jurisdiction of administrative courts include: 1) the nature of the dispute (depending on the presence of a private interest in the decision, action or inaction of the subject of authority, the dispute is considered either in the civil (with the participation of natural persons) or economic proceedings (with the participation legal entities), or in the order of administrative proceedings (if it is established that there is a public interest in the dispute); 2) subject composition of the dispute (disputes in which state authorities and local self-government bodies

[1] Kostyukevich Sergiy, judge of the Volyn District Administrative Court, ORCID: https://orcid.org/0000-0003-4384-6017, e-mail: konfpolitech@i.ua.

participate are usually considered in the order of administrative proceedings, however, for example, disputes with the participation of the Antimonopoly Committee of Ukraine, the Accounting Chamber can be considered in the order of commercial proceedings, when the subject of the dispute is a corporate interest).

Key words: subject jurisdiction, subjective public rights, private person, implementation, protection, administrative proceedings, right of appeal, right of appeal.

Establishing a problem in general terms. The right to appeal refers to the subject's exercise of specific powers to act or refrain from acting as a person in specific life circumstances. According to Art. 55 of the Constitution of Ukraine, everyone is guaranteed the right to appeal in court decisions, actions or inactions of state authorities, local self-government bodies, officials and officials, in particular, if the rights and interests of a person in the public sphere are violated, the right to appeal is exercised in the order of administrative proceedings.

Legislative consolidation of the constitutional right to appeal occurs at the level of individual legislative and codified acts. Thus, in one of the first cases, the right to appeal was enshrined in the Law of Ukraine dated October 2, 1996 "On Citizen Appeals", which establishes the possibility for citizens to appeal to the court actions (inaction) and decisions of state authorities, local governments, officials, made in violation of the law.

Subsequently, a special branch of the judicial system was created, which became the system of administrative courts, which, according to their subject jurisdiction, includes consideration of public legal disputes in the sphere of functioning of state authorities and local self-government. The principles of protection of the subjective rights of a private person in the public management sphere are established in accordance with the Code of Administrative Procedure of Ukraine.

Recognizing the previously unresolved parts of a general problem. Implementation of the reform of the judicial system in Ukraine is of particular importance in the aspect of ensuring human rights and freedoms in the public and administrative sphere. Establishing the essence and problems of the functioning of the system of administrative courts as a component of the system of guarantees for the implementation and protection of the subjective public rights of a private person has repeatedly become the subject of scientific publications by representatives of domestic and foreign jurisprudence of different times. In this aspect, special attention should be paid to the scientific works of such scientists as: V.B. Aver'yanov, Yu.P. Bityak, O.T. Bonner, I.P. Golosnichenko, I.B. Koliushko, O.F. Konstanty, P.M. Rabinovych, M.I. Smokovych and others.

It is worth highlighting a number of dissertation and monographic studies devoted to the problems of the functioning of administrative courts as a guarantee of ensuring the implementation and protection of human rights and freedoms in the public-management sphere of social relations.

The studied phenomenon was one of the first to be covered in the dissertations of Yu.V. Georgievsky on the topic "Administrative Justice" (2004), V.A. Syomin on the topic "Problems of legislative regulation and practice of consideration of administrative and legal disputes" (2005). The implementation of procedural rights and procedural legal personality in the order of administrative proceedings was considered in the dissertation studies of such scientists as A.V. Rudenko, dedicated to the formation of the administrative justice system (2006); O.V. Kuzmenko, who studied the procedural relations of public law (2006), etc.

The purpose of the article is to establish the content of the right to appeal in the system of guarantees for the implementation and protection of the administrative-legal status of a private person.

Research methodology. Universal scientific research (analysis, synthesis, generalization) and interdisciplinary (structural-system) methods were used. Special attention was paid to the actual historical methods of scientific knowledge (the method of generalization and synthesis, the method of comparison and structural-logical connections).

Layout. Adoption and acquisition of legal force in 2005 by the CAS of Ukraine, the accentuation of scientists' attention focused on the study of certain issues of legal regulation of administrative proceedings, establishing shortcomings, substantiating proposals for improving a certain codified act. In particular, the work of P.V. Wolf (2009); the works of I.V. Shrub (2009); A.L. Borko (2009).

The issue of establishing subject jurisdiction at a complex conceptual level was emphasized in the monograph of M.I. Smokovych, which was first published in 2010, but was reprinted several times after that, and its modern edition was published in 2022 (Smokovich, 2012).

From the point of view of developing the conceptual foundations of reforming the system of administrative courts, the works of R.O. Corn (2010); O.V. Muses (2010). The important issue of establishing the principles of administrative courts, the application of accountability measures to judges was studied in the dissertations of S.O. Bondar (2010), M.A. Boyaryntseva (2019).

Separate issues of establishing the peculiarities of the administrative-procedural status of the participants in the proceedings and the resolution of public-law disputes in court were considered in the studies of O.V. Bachun (2010); OHM. Sobovoy (2010); O.E. Mishchenko (2011) and others.

The subject jurisdiction of the functioning of the system of administrative courts consists of public legal disputes. In modern conditions, there is a disputable approach to understanding the essence of the content of the category "public legal dispute" and its relationship with such categories as "a dispute arising in connection with the appeal of a decision, action or inaction of a state authority and local self-government", which should be resolved in civil or commercial proceedings.

The criteria for determining the subject jurisdiction of administrative courts include: 1) the nature of the dispute (depending on the presence of

a private interest in the decision, action or inaction of the subject of authority, the dispute is considered either in the civil (with the participation of natural persons) or economic proceedings (with the participation legal entities), or in the order of administrative proceedings (if it is established that there is a public interest in the dispute); 2) subject composition of the dispute (disputes in which state authorities and local self-government bodies participate are usually considered in the order of administrative proceedings, however, for example, disputes with the participation of the Antimonopoly Committee of Ukraine, the Accounting Chamber can be considered in the order of commercial proceedings, when the subject of the dispute is a corporate interest). Therefore, the current administrative-procedural legislation of Ukraine establishes the priority of applying the criteria for determining the nature of the dispute compared to the application of the subject criterion as an indicator for establishing the content of the court's subject jurisdiction. M. Smokovych considers the basis for establishing the category of "subject jurisdiction of an administrative court" to be the establishment of the scope of the court's competences in relation to the settlement of a certain category of disputes (Smokovych, 2012: 38). In this sense, the author's approach to understanding the category "administrative jurisdiction" as the subject jurisdiction of an administrative court, defined by V.K. Kolpakov as the competence of the authorized bodies to perform the functions provided by them in accordance with the specified objects (Kolpakov, 2004: 384).

Similarly, M.I. Tsurkan considers jurisdiction as a certain part of the authority of a public authority to resolve disputes (Tsurkan, 2010: 125), which gives the scientist grounds to separate two related categories: the administrative jurisdiction of an administrative court and the administrative jurisdiction of executive and local self-government bodies (Tsurkan, 2010: 126). Therefore, the protection of the subjective public rights of a private person is allowed both in the procedure of administrative proceedings and in the procedure of administrative appeal in accordance with the procedures established, in particular, by the Laws of Ukraine "On Appeals of Citizens", "On Access to Public Information", "On Administrative Procedure" .

The opinion of V. Koverznev stands out, which substantiates the inexpediency of dividing disputes into public-law and private-law due to the lack of formation of the division of the national legal system into public and private spheres (Koverznev, 2013: 27). It is worth noting that this approach was not reflected in the current legislation, because according to the provisions of the Civil Code of Ukraine, the category "public-legal dispute" is directly used as a dispute in which: "at least one party performs public-authority management functions, in which number for the performance of delegated powers, and the dispute arose in connection with the performance or non-performance by such party of the specified functions; or at least one party provides administrative services on the basis of legislation that authorizes or obligates to provide such services exclusively to a subject of authority, and the dispute arose in connection with the provision or non-provision of said services by

such party; or at least one party is the subject of an election process or a referendum process and the dispute arose in connection with the violation of his rights in such a process by a subject of authority or another person" (Article 4). This approach is conditioned by the provisions of Part 4 of Art. 125 of the Constitution of Ukraine, where it is emphasized that the jurisdiction of administrative courts includes the resolution of public legal disputes. Such a legislative approach actually cemented the dichotomous structure of the national legal system of Ukraine.

If we compare the provisions of Art. 19 of the Code of Administrative Procedure of Ukraine with the provisions of Art. 17 of the Code of Administrative Procedure of Ukraine of the previous version, valid until October 3, 2017, the subject jurisdiction in the field of consideration of public legal disputes was detailed. In accordance with the current administrative-procedural legislation of Ukraine, it is established that disputes between: 1) individuals or legal entities with the subject of authority regarding the appeal of his decisions (normative-legal acts or individual acts), actions or inactions are considered and resolved in the order of administrative proceedings , except for cases when the law establishes a different procedure for court proceedings for consideration of such disputes; 2) regarding the acceptance of citizens for public service, its completion, dismissal from public service; 3) between subjects of authority regarding the implementation of their competence in the field of management, including delegated powers; 4) arising from the conclusion, execution, termination, cancellation or invalidation of administrative contracts; 5) at the request of a subject of authority in cases where the right to apply to court for the resolution of a public-law dispute is granted to such a subject by law; 6) regarding legal relations related to the election process or the referendum process; 7) natural or legal persons with the administrator of public information regarding the appeal of his decisions, actions or inaction in terms of access to public information; 8) regarding seizure or forced alienation of property for public needs or for reasons of public necessity; 9) regarding the appeal of decisions of attestation, competition, medical and social expert commissions and other similar bodies, the decisions of which are binding for state authorities, local self-government bodies, and other persons; 10) regarding formation of the composition of state bodies, local self-government bodies, election, appointment, dismissal of their officials; 11) natural or legal persons in relation to the appeal of decisions, actions or inaction of the customer in legal relations arising on the basis of the Law of Ukraine "On the Peculiarities of Procurement of Goods, Works and Services for the Guaranteed Provision of Defense Needs", with the exception of disputes related to the conclusion of a contract with the winner of the procurement negotiation procedure, as well as the change, termination and execution of procurement contracts.

The above-mentioned subject jurisdiction of administrative courts shows that the subjective public administrative rights of a private person are protected in the procedure of administrative proceedings (in particular, the right to elect and be elected, including public service positions); subjective public

service rights of a private person (the right to access public information, the right to receive an appropriate level of administrative services). However, the controversial position of A.Yu. Barlit regarding the need to distinguish subjective public environmental rights (Barlit, 2020: 70–77) as a special subject of an administrative-legal dispute. It is not appropriate to agree with the scientist's position, in our opinion, for reasons of understanding access to environmental information and the development and adoption of management decisions in the field of environmental protection.

O.S. Bulgakov in the field of protection of individual rights in public-service relations, which within the scope of this study are understood as "subjective public management rights" (Bulgakov, 2017: 30–34) separates such disputes as: "disputes regarding the admission of citizens to public service, its completion, dismissal from public service; disputes regarding the appeal of decisions of attestation, competition, medical and social expert commissions and other similar bodies, the decisions of which are binding on state authorities, local self-government bodies, and other persons; disputes regarding the formation of the composition of state bodies, local self-government bodies, the election, appointment, dismissal of their officials". However, at the same time, scientists have assigned to a separate category of administrative-legal disputes the consideration and resolution of disputes related to the provision of housing rights and the interests of judges, employees of the prosecutor's office, the National Police, and military personnel, but it is seen as inappropriate to distinguish it from disputes arising in connection with the implementation and the exercise of the subjective public management rights of a private person (Bulgakov, 2017), because the state of financial support of an employee has a direct impact on the effectiveness of the exercise of the powers entrusted to him.

It is necessary to agree with the position of O. L. Sokolenko, who emphasizes that the effectiveness of the administrative-legal mechanism for the protection of the status of a person in the public sphere of a person, including judicial protection, is a guarantee of achieving "certain social justice"; at the same time, the scientist substantiates that the defining goal of protecting the rights and freedoms of a person and a citizen is directly ensuring the "reality of such rights of citizens" (Sokolenko, 2013: 119-120).

Conclusions and prospects for further research. Thus, the creation and functioning of the administrative justice system is defined as a guarantee of the realization and protection of subjective public rights of a person in the public sphere. That is, the realization of the right to challenge the decisions, actions or inaction of subjects of power is a component of the "checks and balances" system, a kind of criterion for the effectiveness of the functioning of public service bodies.

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CONSTITUTIONAL PRINCIPLES AND PRACTICE OF DECENTRALIZATION REFORM IMPLEMENTATION IN FRANCE, PORTUGAL AND POLAND

Lavrynenko Hanna[1]

ŢOCA Constantin-Vasile[2]

Chirodea Florentina[3]

Annotation. The article is devoted to the analysis of the constitutional principles and practice of the decentralization reform's implementation in states that are members of EU. For the study purposes France, Portugal and Poland were chosen as EU countries that are part of the group of unitary states that are at the stage of implementing reform of decentralization. However, it is noted that each of them has different results of the decentralization policy's implementation at present. It was determined that, regardless of the effectiveness of the manifestations, decentralization in EU countries is based on shared ideas and values. At the same time, it is established by the authors that the nature of the decentralization process reflects the national characteristics of each state provided for by the legislation of countries in EU. However, it is noted that in the constitutions of EU member states, decentralization of power is secured as the basis of the constitutional order. It is emphasized that each of the analyzed states has secured strategic issues of state's power decentralization in its law, and supplementing the existing legislation with additional legal acts related to the decentralization process contributes to more effective implementation of its key provisions in practice. It is accentuated that the nature of constitutional consolidation's manifestations of the decentralization process was influenced by the legal tradition, national-historical features, the past experience of public author-

[1] Lavrynenko Hanna, PhD in Political Science, Associate Professor at the Department of Political Science, Borys Grinchenko Kyiv University, Kyiv, Ukrainem, h.lavrynenko@kubg.edu.ua, https://orcid.org/0000-0001-7705-6545.
[2] ŢOCA Constantin-Vasile, Ph.D., lecturer at the Department of International Relations and European Studies, University of Oradea.
[3] Chirodea Florentina, Ph.D lecturer at the Department of International Relations and European Studies, University of Oradea.

ities' functioning and features of the administrative-territorial organization of states. The processes that are universal for the decentralization policy in the EU member states and that influenced the development of local government in them are identified. The multidimensionality of the decentralization process is emphasized. The characteristic features of political, administrative and fiscal decentralization are specified. The practical aspects of the decentralization reform in France, Portugal and Poland were analyzed using the Decentralization Index, developed by the European Committee of the Regions as part of the analysis of the separation of powers. It was established that the specified measurements of decentralization in each studied country develop asymmetrically, universal factors are the reluctance of central state authorities to transfer part of their powers to local authorities, the desire to maintain influence on the regional level of government, financial limitations of local budgets and the lack of independence in matters of making decisions by local government.

Key words: decentralization, local government, universalism, constitution, measurements of decentralization, index of decentralization, unitary state.

Formulating the problem. The process of decentralization, as a universal public phenomenon, is being actively developed in European countries. This applies to both federal and unitary states. In the process of state power's decentralization, relations between regional and local governing bodies and the state government are gradually becoming stonger. Although these manifestations do not have linear signs, since decentralization is unevenly manifested in its various measurements in EU member states, it is always based on values and ideas shared by all EU countries – civilian participation, governmental and population's closeness to each other, principles of local government [20]. Given that the decentralization of state power is determined by the division of public power taking into account its systemic unity, national peculiarities in matters of the state system's form and the legal tradition that has developed over a certain historical period, it is considered relevant to look upon general and unique features of the constitutional consolidation of norms of the distribution of state power, as well as their practical implementation taking form of implementing the decentralization reform in the EU member states.

The purpose of the research is to carry out a comprehensive political analysis of the constitutional principles and practice of implementing the decentralization reform in EU member states (France, Portugal and Poland).

The following researchers paid attention to investigation of separate aspects of European countries' experience in decentralization as T. Bartley, J.M. Cohen, G. Lovatcharin, S.B. Peterson, J.I. Stollmann, V.B. Averyanov, N.T. Honcharuk, V.S. Kuybida, N.R. Nyzhnyk, T.V. Steshenko. However, most of their works were devoted to the study of each specific dimension of decentralization, as well as the legal regulation of decentralization norms. At the time, a systemic view of the problems of the decentralization reform implementation requires deepening of further research by scientists.

Presentation of the main research material. In modern conditions, decentralization is considered to be a multi-vector process of transferring powers in the political, administrative and economic spheres to the regional and local levels. Besides that, the degree and form of decentralization is determined in proportion to the distribution of the balance of forces and resources in the center-region format [3, P. 198].

The term "decentralization" as the antithesis of "centralization" began to be used in the first half of the 19th century. by European political figures, including Alexis de Tocqueville, when he characterized the Great French Revolution as a desire for decentralization of the state administration system [16, P.10]. Precisely why it seems quite natural that the process of decentralization of power began to be embodied in politics and became widespread, first of all, among European states.

It should be taken into account that the legislation of the EU countries allows for each state' own national characteristics, this leaves an imprint on the decentralization process. Since the beginning of the second half of the 20th century the decentralization of power was secured as the basis of the constitutional system in the constitutions of EU member states [17, P. 34]. This also applies to the constitutions of the EU member countries that were chosen for analysis, namely France, Portugal and Poland. Choosing these states is not accidental. From the point of view of orientation towards regional separations in the state itself and the creation of certain autonomies at the regional level, France, Portugal and Poland belong to the same group – unitary countries that are at the stage of the decentralization reform's implementation. Poland has the most successful result, Portugal, on the contrary, was overtaken by stagnation in the process of decentralization, and France occupies an intermediate position among the states of this group, which are at the stage of implementing the decentralization policy [22].

So, the Declaration of the Rights and Freedoms of Man and of the Citizen, which was adopted by a resolution of the French National Assembly on August 26, 1789 and is part of the Constitutional Acts of the French Republic, secures the separation of powers in the state. Article 16 of the Declaration notes that if there is no separation of powers in society, then it does not have a Constitution [11, P. 10].

Another example is Portugal. In part 1 of article 111 of the Political Constitution of the Portuguese Republic, dated April 2, 1976, defines the principle of separation of powers and interdependence of state authorities [2]. Independence of the authorities from various functional branches is secured owing to it. And a dialectical connection can be traced between centralization and decentralization in this form. Moreover, another important principle is stated in part 3 of the same article, which defines the limits and conditions of decentralization of power according to the order of delegation. It is noted that only in cases foretold by law and the Constitution, state and local government bodies, as well as autonomous regions can delegate their own powers to other government bodies. In all other cases, these actions are prohibited [2].

In Poland, as a state member of the EU, the principle of separation of powers is contained in part 1 of article 10 of the Constitution, which secures that the

state system of the Republic of Poland is based on the principle of distribution and balance of three branches of power: legislative, executive and judicial. And the state provides organizational support for the implementation of this principle [9, P. 5].

From the examples above, it can be seen that each of the states in varying degrees, ranging from mentioning some elements to dense detail, has secured strategic issues of state's power decentralization in its law. At the same time, the diversity of presentation and sometimes the vagueness of the existing decentralization criteria, which are specified in the constitutional acts, in no way indicate the superficiality or denial of this process in general [12, P. 36]. Supplementing the existing legislation with additional normative legal acts in matters of implementing the decentralization process helps to practically realize its key principles and to concentrate state power around socially significant issues [13, P. 308].

As for the distribution of powers between state and local authorities, in the countries selected for analysis, decentralization according to the vertical principle is widespread, characterized by the expediency of moving individual state powers from the national level to the regional or local level. Such changes are confirmed by the constitutional backing of the state's exclusive powers on certain priority issues within the framework of entire country [19, P. 23]. And organizational moments are accompanied by the actions of legislative and executive bodies, whose capacity includes the solution of one or the other problematic issue [10, P. 141].

For example, Chapter 12 of the French Constitution lists the territorial unions that can receive capacities transferred by the state for solving local issues. Among them, regions, departments, municipalities, unions with a special status are distinguished [7]. It is important that the transfer of any capacity from the state to the territorial union also includes granting appropriate resources and means necessary for the implementation of the specified capacity.

In the Constitution of Portugal, the state power is distributed on several levels, which is recorded and detailed and organized in Chapter 7 "Autonomous regions" and Chapter 8 "Organization of local authorities" [21]. The powers of the autonomous regions, according to which they can make decisions that have legal significance, are regulated by two articles. Article 227 regulates the standard powers of autonomous regions, and article 228 – powers of autonomous regions with hightened government significance. The first group of powers includes both issues of exclusive and residual competence. Moreover, attention is focused on the need to accompany proposals of law bills on the transfering powers with bills of regional legislative decrees regulating power relations, in particular during the transfering part of the powers to localities [14, P. 499]. The second group of powers regulates issues determining the administrative and legislative autonomy of regions [15, P. 11]. The list of these issues remains quite broad and is not exhaustive, as issues that regulate relations exclusively in one separate area or require an individual approach to resolution may be added to it [2].

As for Poland, its Constitution reflects the vertical decentralization of power by transferring part of the powers to territorial self-government and

local government administration bodies. As for the latter, you can see only a partial mention of them in article 184 and article 94 in the context of the competence and powers of the High Administrative Court and acts of local law, respectively [9, P. 48, 71]. The powers and tone of practices of territorial self-government bodies are described in sufficient detail in Chapter 7. Besides the possibility of transferring powers to representatives of territorial self-government to perform other public tasks under the conditions of this urgent need on the part of the state is substantiated [18, P. 12]. At the same time the tone of transferring and performing tasks assigned by central state authorities is regulated by law in accordance with part 2 of article 166 of the Constitution of Poland [9, P. 67].

So varied manifestations of the constitutional consolidation of the decentralization process by the way of clarifying powers and the process of transferring authority to localities in the EU countries is characterized by the influence of legal tradition, national-historical features, past experience of public authorities' functions and features of the administrative-territorial structure of states.

Analyzing the practical aspects of the decentralization reform, it should be noted that the development of local government in the EU member states, namely France, Portugal and Poland, was influenced by the following states' universal decentralization policy processes [1, P. 65]:

– increase in the democratization;

– expansion of territories' economic independence;

– formation of mutual relations between local self-government bodies and the community of territorial communities within the framework of the consumer-balanced model;

– deconcentration of public power;

– deepening the urbanization of territories.

Besides during the process of analyzing the practice of the decentralization reform implementation, it is necessary to take into account the multidimensionality of this process.

The first dimension is political decentralization. It is characterized by the presence of local electoral authorities, including advisory assemblies and executive bodies, the transfer of powers to make political decisions and their further implementation, the active involvement of citizens in the political life of the state, as well as the transparency and accountability of local government bodies [8, P. 168].

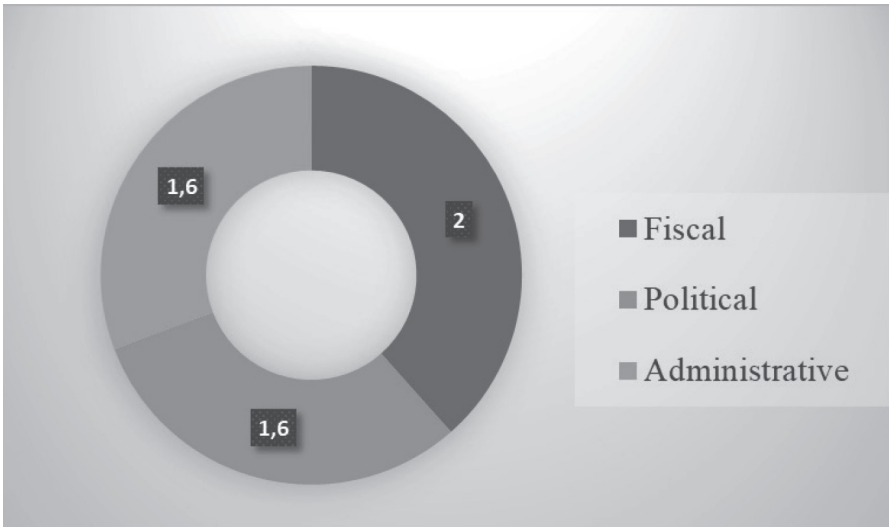
The second dimension is administrative decentralization, which covers general and exclusive responsibilities of local authorities, delegation of authority to perform regulatory, financial and reporting functions to the local level, formation of local personnel potential and accumulation of resources [18, P. 9].

The third dimension is fiscal decentralization. It is provided by the availability of the local budget, the ability to manage one's own expenses and income, sufficient purchasing power, income adequate for the needs of the territorial community, and fiscal rules [6, P. 330].

For a more detailed representation of degree of the decentralization reform's practical implementation in France, Portugal and Poland, it is advisable to refer to the Decentralization Index developed by the European Committee of the Regions as part of the analysis of the division of powers [5], which examines the levels of development of three dimensions of decentralization: political, administrative and fiscal. 27 EU member states are involved in the analysis. The calculation of points for each dimension of decentralization takes place on a scale from 0 to 3. Where 0 is the lowest indicator and 3 respectively is the highest.

So, France, being a unitary state, has 3 levels of subnational government: regions, departments and municipalities, where the latter are the lowest level of self-government. There are a total of 34968 local administrative units in France.

Figure 1. Evaluation of decentralization in France.

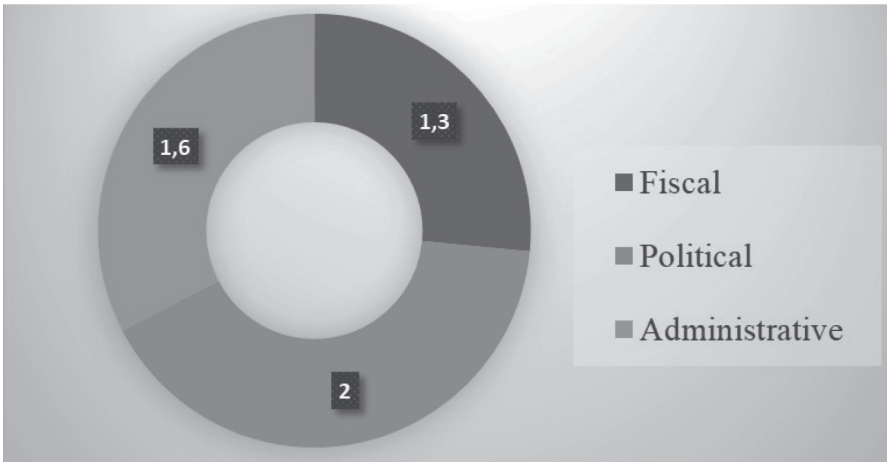


Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

According to the average calculation of the decentralization index, France has 1.7 points (Figure 1) and ranks 12th out of 27 EU member states [4]. The greatest progress in decentralization is observed in the fiscal dimension. While political and administrative still remain a problem area. The infighting of political elites to maintain influence on the regional level of power, the reluctance to transfer part of the powers to the localities, as well as open issues with the transparency of the activities of local government bodies inhibit the completion of the decentralization process in the state.

The next country is Portugal. It is also a unitary state, which includes 3 levels of subnational government in the form of regions, municipalities and parishes, where the latter is the lowest level of self-government. The total number of local administrative units in Portugal is 3092.

Figure 2. Evaluation of decentralization in Portugal.

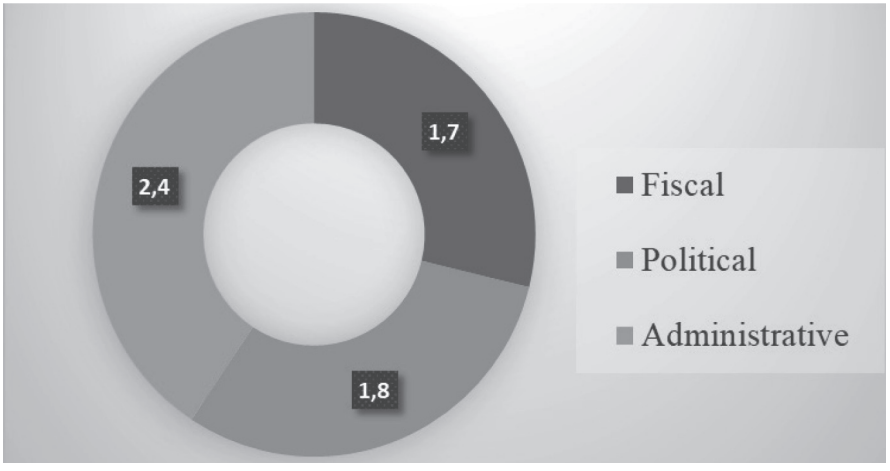


Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

The average score of the decentralization index in Portugal is 1.6 (Figure 2). It ranks 15th among 27 EU member states [4]. The greatest effectiveness is demonstrated by political decentralization. The administrative one is being constructed less successfully. However, the biggest concern is fiscal decentralization, which is tied with financial limitations of local budgets, insufficient independence in matters of their development, and insufficient matching of resources and community needs.

And the last among the analyzed countries is Poland. It is a unitary state with 3 levels of subnational government: voivodships, counties, communes. The commune is the lowest level of self-government. There are a total of 2477 local administrative units in Poland.

Figure 3. Evaluation of decentralization in Poland.



Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

In the ranking of 27 EU member states according to the decentralization index, Poland ranks 8th with an average calculated score of 1.9 (Figure 3) [4]. The administrative dimension of decentralization in Poland is at a sufficiently high level. However, the political and fiscal dimensions need further improvement, although they also show above-average indicators. Given the fact that Poland introduced a decentralized system of power much later compared to other EU member states, its achievements are more significant.

Conclusions. The European experience of constitutional consolidation of the decentralization's principles in the unitary states of the European Union, namely France, Portugal and Poland, demonstrates a certain symbiosis of legal traditions and national characteristics and related interpretations in the field of organizational parameters and the structure of authorities at all levels. The constitutions of the specified EU member states secure the models of state power distribution and the principle of power distribution with a clear constitutional differentiation of powers is determined on the basis of the institutional aspect. Different variations of state's power decentralization are also shown, that can be both situational and carried out on a permanent basis, with the presence or absence of functional limitations in certain local government bodies. The existing variety of constitutional aspects of state's power decentralization once again emphasizes the ability for further development of this phenomenon, its adaptive nature and the possibility of influencing the improvement of the efficiency of self-government processes.

The analysis of the practical aspects of the decentralization reform of the EU member states using the Decentralization Index, developed by the European Committee of the Regions as part of the analysis of the division of powers, showed that the three dimensions of decentralization (political, administrative and fiscal) in each of the studied countries develop asymmetrically. This is due to such universal factors as the reluctance of central state authorities to transfer part of their powers to local authorities, the desire to maintain influence on the regional level of government, the financial limitations of local budgets, the inconsistency of available resources with the needs of the community, and the lack of independence in matters of decision-making by local government bodies. Thus, in France, the greatest progress in decentralization is observed in the fiscal dimension, in Portugal – in the political dimension, and in Poland – in the administrative dimension, although here and in other dimensions of decentralization there is a noticeable efficiency in the functioning of state power and local government bodies.

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SOME ISSUES CONCERNING THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS OF PERSONS WHO ARE SERVING SENTENCES IN THE FIELD OF EXECUTION OF PUNISHMENT OF UKRAINE

Likhovitskyy Yaroslav[1]

Annotation. The article analyzes the content of economic activity of enterprises of the penal institutions of Ukraine as one of the sources of financing for the execution of punishment and the directions of institutions of the correctional and resocialization process of convicts in the colony and correctional institutions.

This is one of the problematic (legal) aspects, which also affects the financial and economic situation of enterprises of the PIs, as well as in general, on the level and efficiency of the economic activity of the State Criminal Execution Service (DKVD) of Ukraine, the incomes of which serve as an additional source the financing of this system along with the expenditures, which are determined for the maintenance of bodies and GDP in the state budget of Ukraine. Inclusion of the proceeds from the labor use of the convicted persons to additional sources of financing of the State Committee of Internal Affairs of Ukraine. The economically important problem is that the State Criminal Execution Service of Ukraine is financed only by 40% annually from the State Budget; this state of underfunding entails a number of factors such as ensuring the legal rights of sentenced persons to serving sentences in penitentiary institutions, poor treatment of sick persons who are deprived of their liberty, lack of prevention and prevention of morbidity among inmates in penal institutions, low effectiveness of prevention activities with hvoryuvanosti also no special medicines and drugs to provide effective health care of prisoners. The State Criminal Execution Service of Ukraine for carrying out measures on correction and resocialization of convicted persons to imprisonment in penitentiary institutions, this issue is not sufficiently investigated, which in turn affects the state of operational and service and financial and

[1] Likhovitskyy Yaroslav, Doctor of Law Sciences, Associate Professor of the Department of Criminal Law and the Process, Law Faculty «Uzhhorod National University», Ukraine, lihovickiy.jo@gmail.com, ORCID ID: 0000-0002-8537-2676.

economic activity of bodies and institutions of execution punishments and determines the relevance, the theoretical and practical significance of this scientific article.

Key words: finance; economic activity; enterprise; penal institution; economy; personnel; condemned imprisonment for a certain period; restriction of freedom.

Introduction. In fccordance with the requirements of Art. 6 of the Criminal-Executive Code (CEC) of Ukraine, socially useful labor refers to the basic means of correction and resocialization of convicts. At the same time, as it follows from the content of Art. Art. 107 of the same Code, the persons serving a sentence have the right, and not the duty to work at the enterprises of the penitentiary institutions (UVP), which does not fully correspond with the theoretical postulates of the correctional-resocialization process, which are deduced at the doctrinal level, namely: the means of correction and re-socialization (the established procedure for the execution and serving of punishment (mode); probation; socially useful labor; social and educational work; general and vocational education and public influence) apply to convicts in obligatory and crucial in applying to them the law-established institutes of law (the unclaimed part is more lenient (Article 82 of the Criminal Code (CC), conditional release from serving a sentence (Article 81 of the Criminal Code), pardon (Art. 87 of the Criminal Code), etc.).

This is one of the problematic (legal) aspects, which also affects the financial and economic situation of enterprises of the PIs, as well as in general, on the level and efficiency of the economic activity of the State Criminal Execution Service (DKVD) of Ukraine, the incomes of which serve as an additional source the financing of this system along with the costs, which are determined for the maintenance of bodies and GDP in the State Budget of Ukraine.

Thus, it should be noted that there is a complex applied problem that requires an urgent solution, namely, to prove the necessity (or to object to it) to further incorporate the profits from the economic and production activities of enterprises of the PIs into the structure of the financing of the system of the Ukrainian SSR, which determined the purpose, and the main task of this scientific article.

At the same time, under the current conditions of the reformation of the Internal Affairs Committee of Ukraine, this issue is not sufficiently investigated, which, in its turn, affects the state of operative-service and financial and economic activity of bodies and penal institutions, which determines the relevance, theoretical and the practical significance of this scientific article.

Formulation of the problem. In accordance with the requirements of Art. 6 of the Criminal-Executive Code (CEC) of Ukraine, socially useful work refers to the basic means of correction and resocialization of convicts [1]. At the same time, as it follows from the content of Art. 8, 107 of the same Code, people serving a sentence have the right, and not the obligation to work at enterprises of penitentiary institutions, which does not fully correspond to the theoretical

principles of the correctional and resocialization process, which are deduced on the doctrinal level [2, c. 26–30], that is: the means of correction and resocialization (the established procedure for execution and serving of punishment (mode); probation; socially useful work; socially-educational work; general education and vocational training and public influence) are applied to convicts in a mandatory manner and are crucial in applying to them the law institutes of law (replacing the unpunished part of the sentence with a milder one (Art. 82 Criminal Code (CC); conditionally pre-term release from serving a sentence (Art.81 CC); amnesty (Art. 87 CC); etc.). This is one of the problematic (legal) aspects, which also affects the financial and economic situation of enterprises of the PIs, as well as in general – on the level and efficiency of economic activity of the State Criminal Execution Service (SCES) of Ukraine, the profits of which serve as an additional source of funding for this system, along with the costs determined for the maintenance of bodies and GDP in the State Budget of Ukraine.

Another problem, which is caused and organically connected with the first one, is that starting from 1991 to the present time, the SCES annually funds from the state budget only 40% [3, p. 187-188]. At the same time, the main source by which there was overfunding of the financing gap on these issues were revenues from the labor use of convicts at enterprises of the UVP. Moreover, this source still remains one of the necessary in the structure of incomes and expenditures for the SCES of Ukraine, which are allocated to the functioning of this system, despite the fact that in 2014, socially useful work became not a duty for prisoners, but a right [4].

Thus, it should be admitted that there is a complex application problem that needs an urgent resolution, that is, the need to prove (or deny it) the further inclusion of profits from the economic activity of enterprises of the Ministry of the Interior in the structure of financing of the system of the SCES of Ukraine from the State Budget, which defined the purpose and main task of this scientific article.

State of research. The analysis of scientific literature has shown that the most active and productive development of issues related to the identified problem of research, is engaged by such scholars as: O. M. Bandurka, V. A. Badyra, T. A. Denysova, I. I. Zhuk, O. H. Kolb, I. M. Kopotun, V. Ya. Konopelskyy, V. A. Merkulova, A. Kh. Stepaniuk, V. Ya. Trubnykov, S. Ya. Fareniuk, I. S. Yakovets and others. At the same time, in the current conditions of reforming the SCES of Ukraine [5], this issue is insufficiently investigated, which in turn affects the state of operative-service and financial and economic activity of bodies and institutions of punishment and determines the relevance, the theoretical and practical significance of this scientific article..

Statement of the main provisions. In order to conclude that it is necessary (or to object to it), the inclusion of incomes from the labor use of the convicted people in additional sources of financing of the SCES of Ukraine, it is very important to analyze the historical genesis of this problem solution in the modern history of Ukraine (since 1991). In this context and in terms of defining the contents of the criminal-executive policy of Ukraine at that time,

the provisions defined in the Basic Directions of the Reform of the Penal Execution System in the Ukrainian SSR which were approved by the Cabinet of Ministers of Ukraine from July 11, 1991 were valuable. No. 88, that is: a) to carry out a gradual transition to the maintenance of the PIs at the expense of the State Budget; b) to abolish central planning and deductions to the State Budget of proceeds from the labor use of convicts; в) at the expense of deductions from enterprise profits, to create republican insurance and investment funds, as well as to expand the commercial intermediary services to enterprises of the UVP by the republican committee; г) leave the entire amount of profits received from industrial activities, as well as incomes from the production of workshops in the disposal of a criminal-executive system for solving social and economic issues [6, p. 11].

The state of affairs on this issue before 1991 can only be imagined, As the main ideologist of the proletariat of the 20th century, Lenin formulated the content of politics in this direction, that is: 1. A dozen rich people, a dozen fraudsters, half a dozen workers who are evading work will be imprisoned in one place. 2. In the second – they will be supplied with cleansing needles. 3. In the third one – they will be provided, after the execution of the warrant, with yellow tickets, so that all people, as long as they are improved, oversee them as harmful people. 4. In the fourth – shot on the spot, one in ten, guilty of parasitism [7, p. 15-16].

Official statistics testifies eloquently what has changed in 1991 – 2017. In particular, in 1991, at enterprises of the Ministry of Economic Affairs and Trade of Ukraine, commodity products were manufactured in the amount of 201.5 million rubles. At the same time, the execution of the plan by the convicts was 111.1% (in comparison with 1990, the growth amounted to 201.6 million rubles.) [8, p. 3], so it can be concluded that there were no problems with financing the Ukrainian criminal-executive system at that time.

In 1992, a number of normative legal acts were adopted in Ukraine to improve the economic activity of the Ministry of Social Security and Labor and the procedure for charging wages for convicts deprived of their liberty, which, of course, could not be reflected in the general state of affairs on the issues raised. In particular, according to the requirements of the Resolution of the Cabinet of Ministers of Ukraine dated February 22, 1992 No. 78 “On changing the procedure for deductions from wages to a special contingent, which is held at the institutions of the Ministry of Internal Affairs”, the wages for persons who were kept in the administrative departments from 01.01.1992. were accrued in full by the tariff rates and official salaries in force in the relevant branches of the national economy. In addition, from the salaries of the sentenced to imprisonment, the personal income tax, the cost of guaranteed food, clothes, footwear, and special materials, as well as services actually provided for them, were deducted. Other deductions from the salaries of these people were carried out on the general grounds in accordance with the current legislation. [8, p. 26]. As a result: only in the first half of 1992, the fall in production compared with the same period in 1991 amounted to 17% [9, p. 4]. At the same time, as a result of the lack of funds from enterprises of IPU in the first half of

1992, 35.8 thousand tons of ferrous metals, 65.5 thousand tons of aluminum rolled products and 4.5 thousand tons of curved profiles and other products were not realized. [9, p. 5].

Similar trends have survived in 1993. Thus, as of October 1, 1993, the volume of production in the GDP decreased with a similar period of 1992 by 5.1% [10, p. 6]. Moreover, during 9 months of 1993, unprocessed products amounted to 73 billion rubles in the warehouses of the PIs, and 2 thousand convicts deprived of their liberty had no work at the enterprises of the UVP; 17% of these people did not meet the established standards of production, etc. [10, p. 6] – and this despite the fact that in accordance with the requirements of the decree of the Cabinet of Ministers of Ukraine of 10.05.1993, number 48 on the use of profits by state enterprises and organizations, the technical re-equipment, the development of new technologies and environmental measures of the enterprise UVP were entitled to leave from 30 to 80% of profits after paying mandatory payments [10, p. 6]. These indicators have not improved significantly and in general for 1993. In particular, the growth rate of production in the administrative departments amounted to only 93% in comparison with 1992, and the amount of unrealized goods accumulated in warehouses – 60% of the total issue (worth 187 billion rubles.) [11, p. 5]. At the same time, almost 2 thousand prisoners remained in the unemployed who were kept in the PIs, and for food of these persons the state was paid 60% of its value [11, p. 6].

In 1994–1997, the situation with the above-mentioned problems did not change, despite the adoption in 1996 of the Constitution of Ukraine [12] and a number of normative acts related to the areas of execution of sentences [13]. In particular, in 1997, the criminal-executive system was financed from the State Budget of Ukraine only by 92.7%, and all was not received from the budget of funds by UAH 18.6 million; the debt of UVP for budget activity amounted to 69.6 million UAH. [14, p. 4], with the fact that production volumes in this year by comparison with 1996 increased by 7.9%, and it was employed by 10 thousand convicts more than in the previous period [14, p. 3]. In addition, in 1997 it was implemented, as in fact, in theprevious years (1991–1996), only 65,8 % of manufactured goods; 37% of prisoners remained in the labor force at the time of unemployment, and another 25,000 were not provided with full employment; 44 million UAH were not received on the criminal-executive system, revenues that should have remained at the disposal of the PIs – and this despite the fact that on December 1, 1996, the Cabinet of Ministers of Ukraine adopted a resolution No. 1454 “On urgent measures for the recruitment of persons serving sentences in places of deprivation of liberty”, in accordance with which was joined by local state administrations and local self-government bodies [14, pp. 73-74]. At the same time, the indicated regional programs were implemented in 1997 by only 59% [14, p. 74].

In 1998, despite an increase of 6.2% of output in UVP, quantitative and qualitative indicators of financial and industrial activity also tended to decrease [15, pp. 5-6]. Thus, the total amount of finished product balances in

the warehouses of the UVP increased by 19% and amounted to 83.7 million UAH as of 01.01.1999. or 4.2 lunar volumes of commodity production [15, p. 45]; the level of barter transactions amounted to 76.4% of the total financial activity; accounts payable of enterprises – 44,8% (195,9 million UAH), and receivables – increased in 1998 in 3,1 times (97,5 million UAH); ungot 42 million UAH of income; etc. [15, pp. 47-48]. The peculiarity of 1998 was the fact that from April the criminal-executive system was partially removed from the subordination of the Ministry of Internal Affairs of Ukraine on the basis of the Decree of the President of Ukraine of 22.04.1998 "On the Establishment of the State Department of Ukraine for the Execution of Sentences" [16]. Nevertheless, neither during this period nor in 1999, when the full withdrawal of the State Department of Ukraine took place for the execution of sentences of the State Property and Human Rights Administration of Ukraine) from the system of the Ministry of Internal Affairs of Ukraine [17], there was no significant improvement in the financial and industrial and economic activity of enterprises of the PIs. Thus, in 1999, the payroll tax on the budget deficit increased by 49% compared to 1998 and amounted to 119 million UAH, of which arrears : a) on wages – UAH 4.2 million; b) for energy carriers – UAH 28.7 million; c) for medicines – UAH 4.2 million; d) for real property – UAH 4.2 million; g ') other debts – UAH 20,9 mln. [18, p. 5]. Besides, at the enterprises of the UVP of 127.3 thousand convicts, who were supposed to go to work, only 59.4 thousand people (46.6%) worked. As of 01.01.2000, the total amount of finished product balances in warehouses exceeded UAH 82 million, or 3.8 monthly production volumes, and, together with the receivables for shipped products, almost 136 million UAH were withdrawn from circulation. Also, in this year, there were 23 enterprises out of 187, which incurred balance losses in the amount of almost UAH 3 million, which were unprofitable in the criminal-executive system this year. [18, p. 8], and a decline in production volumes was allowed in another 45 UVP [18, p. 36].

In 1999, the ratio of sales to output of commodity products, taking into account the balances in warehouses, was 75.6%, and barter transactions reached 80.5% (1998: 76.4%) [14, p. 36-37]. At the same time, receivables increased by 8.7% and amounted to UAH 49.5 million, which exceeded 2.3 per month of output. All this led to wage arrears of production personnel, which, compared with the beginning of the year, increased by 7.9% and as of 01.01.2000 amounted to UAH 11.8 mln. – The 7-month period [18, p. 37]. In the same year, 3.7 thousand convicts reduced their output for paid employment of enterprises of the Ministry of Social Security and Labor and amounted to 59.5 thousand people, of which almost 17 thousand were not provided with work in full, they were not able to comply with the norms of production [18, with. 38]. At the same time, despite the increase in earnings for one spent man-day from 1 UAH. 01 kopecks up to 1 UAH 18 kopecks, the level of fulfillment of the task of receiving income from labor was only 28.3% (financing from the State Budget – 40%), ie 15.3 mln. with a plan of 54.1 million UAH. [18, p. 38]. At the same time, regional programs of labor use of convicts in the form of production of commodity products were executed only by 90%

of the approved amounts (UAH 55.6 million), and at the expense of local budgets – by 45% (UAH 9.7 million). [18, p. 38].

And with such a legal and organizational approach (independence of the Department of Economic Development and Trade), the financial and production and economic activity of enterprises of the PIs until 2010 inclusive (when the Decree of the President of Ukraine dated December 9, 2010 this department was partially subordinated to the Ministry of Justice of Ukraine [20]) did not change substantially and qualitatively: annually the criminal-executive system was financed only by 40% from the State Budget of Ukraine and partially covered its expenditures at the expense of income from labor use of convicts (up to 30% maximum) [37, pp. 226-227]. As it is shown by the results of special scientific studies [21, pp. 317–354], voluntarist in 2011–2014, and, occasionally, adventurist actions of the Ministry of Justice of Ukraine in 2015–2017 in the form of senseless and unsystematic reforms in the execution of punishment [5] with qualitative modification of the content of criminal – the executive legislation of Ukraine in order to bring it into European standards [4], led to the fact that not only did not change the state of affairs, namely: an annual 60% of underfinancing of the State Internal Affairs Committee of Ukraine from the State Budget, but actually led to the collapse of production and economic activity enterprises of UVP in today's conditions [22].

Conclusion. Thus, a brief historical review of the financial and production activities of the enterprises of the criminal-executive system of Ukraine in the present conditions of its independence (1991–2017) shows that, without taking into account the possibilities of other financial sources, including income from the labor use of convicts , who are serving sentences in the PIs, the state is not able to independently provide 100% of their full-fledged life under the existing national legislation in the field of execution of sentences. In addition, there is a logical conclusion on this issue, namely: 1) UVP enterprises can only be competitive if they own the latest technology and resource resources and forces. To do this, each UVP must have a corresponding production base, owned by either the state or a private individual; 2) to ensure legally defined tasks in the field of execution of sentences (Article 1 of the CEC of Ukraine), every UVP should function as a compulsory modern vocational and technical school, which should train specialists for the implementation of the latest technological programs; 3) having the right to work activity, fixed in the law (Article 8, 107 CEC), the convict is obliged to carry out his maintenance in the administrative department and at the expense of his own capabilities, including production skills, which does not contradict the content of the corrective-re-socialization process carried out in relation to him, and the norms of material law (QC, QC), which provide for the use of institutes exempted from punishment or their further serving, taking into account the attitude of the person to work (conscientious, exemplary, responsible, etc.)

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METHODOLOGICAL PRINCIPLES OF MODERN SCIENTIFIC KNOWLEDGE OF THEORETICAL LEGAL ASPECTS OF THE MECHANISM OF NOTARY ACTIVITY

Marzhyna Alina[1]

Annotation. In the work the author analyzed the methodological principles of modern scientific cognition of the theoretical legal aspects of the mechanism of notarial activity. Emphasis is placed on the relevance of the research topic and the modernization of the understanding of the methodology of modern cognition of state-legal phenomena. The features of the subject of knowledge have been defined, on the basis of which the functional capabilities of the components of the methodology of scientific research have been determined.

It is emphasized that the comprehensiveness of the scientific study of the mechanism of notarial activity, taking into account the modern features of the functioning of the notary, requires distinguishing the levels of its scientific study, which include:1) a philosophical (worldview) level of knowledge that will allow, based on the principles of scientific knowledge, guided by methodological approaches of scientific research, to use a complex of scientific research methods, to perceive notarial activity as a special mechanism of human professional activity, which is characterized by the regularities of its implementation and achievement of generally socially and legally significant result; 2) a general scientific level of knowledge that is functionally capable, based on the principles of scientific knowledge, guided by methodological approaches of scientific research, to use a complex of methods, to study the mechanism of notarial activity as a special type of socially useful activity of authorized subjects; 3) a special scientific level of knowledge, within which it is possible to study the mechanism of notarial activity as a complex of theoretical and legal regularities of its origin, formation, development, functioning and improvement.

Key words: notary, notarial activity, functions of notary, mechanism of notarial activity, legal activity, legal practice.

Introduction. Theoretical legal aspects of the mechanism of notarial activity as a cognitive problem are determined by a significant cognitive potential, requiring the study of a complex of regularities of its implementation, namely

[1] Marzhyna Alina, graduate student of the Koretsky Institute of State and Law of National Academy of Science of Ukraine.

the circle of authorized subjects, their active behavior, which includes a clear algorithm for performing notarial actions and providing additional services; legal consequences arising from the results of notarial activity, related to ensuring the rights and interests of legal subjects. From a cognitive point of view, it is important to study the mechanism of notarial activity through the prism of a well-coordinated set of elements, the functioning of which determines the active work of subjects of notarial activity, aimed at achieving a legally significant result, and actually achieving such a result. Taking into account the multifaceted nature of notarial activity as an independent legal phenomenon consisting of a system of interconnected components, the general strategy of scientific research into the theoretical and legal aspects of the mechanism of notarial activity should be based on the formation of a comprehensive scientific understanding of the general patterns of origin, formation, development, functioning and improvement notarial activity as a special mechanism for its implementation. Therefore, the logical continuation of our work should be the clarification of the methodological basis of scientific knowledge of the mechanism of notarial activity, as well as the determination of the functional capabilities of its components, which will be the goal of this scientific work.

Main part. The methodological basis of any scientific research plays an important role, ensuring the integrity, comprehensiveness and completeness of scientific research work, and most importantly – determining its research strategy, forming the vector of the researcher's cognitive activity. In the scientific and legal literature, various approaches to understanding the methodology of scientific knowledge, the order of its formation by the researcher, the content of the elements of the methodological basis and their functional capabilities have developed. We can note that the scientific idea of the methodological basis of scientific research as a whole is one of the most debatable issues both in science and in legal literature. According to A. I. Bezklubyi and L. V. Yefimenko, the methodology of notarial activity research consists of a complex of scientific knowledge methods, which are determined taking into account the peculiarities of the subject of the study itself – notarial activity. In the future, scientists provide a list of such methods, which are the most functionally promising for the study of notarial activity (functional, systemic, prognostic, etc.) and determine the results of the study [1, c. 51–54]. According to O. M. Zolotukhina, the theoretical and legal aspects of the functional purpose of the notary from a cognitive point of view require the researcher to form his own methodological basis, which was later proposed by the author. The scientist comes to the conclusion that the methodological basis of the scientific study of the functional purpose of the notary is determined by the object of scientific knowledge, therefore the author defined the methodological basis of the scientific study of the functional purpose of the notary from the point of view of its systemic dimension as a complex of "scientific principles, methodological approaches and methods of scientific knowledge, which make it possible to form the provisions, ideas and concepts on which scientific research is based" [2, p. 84–85]. This approach deserves attention, as it quite comprehensively and systematically reveals the cognitive potential of the methodological basis of scientific research, and the most important thing is that

the methodological basis is formed by the scientist individually, based on the peculiarities of the subject of knowledge. In the scientific literature, scientists mainly provide a system-structural characteristic of the methodological basis of scientific research, which is characterized by several blocks of methodological tools, as well as the method of its combination and use in the process of realizing scientific knowledge.

However, the names, content and characteristics of such blocks of methodological tools and methods of their combination and use are presented differently in the views of scientists. In particular, the methodology of scientists includes directions of scientific research, which are divided into philosophical, scientific and special scientific knowledge about the subject under study, and at each such level, the researcher uses an appropriate set of methods, which is chosen at his discretion, taking into account the complexity of the subject of research and the comprehensiveness of scientific knowledge [3, p. 119]. Also, scientists traditionally include methods, techniques and means of knowledge as part of the methodology of scientific research [4, p. 140–141], hermeneutic, phenomenological, anthropological, axiological methodological approaches [5, p. 76] etc. Separate attention should be paid to the approach that is most recently used by scientists in the implementation of theoretical and legal research, which is based on the idea of combining the principles of scientific knowledge, methodological approaches and methods of scientific research [6, p. 17]. In our opinion, the principles of scientific knowledge and methodological approaches are more stable and unified, which are used in the research process as a standard, since the study of any phenomenon or process of legal reality is based on them. In this regard, it is worth noting that important for learning the theoretical and legal aspects of the mechanism of notarial activity will be:

– firstly, the principles of scientific knowledge, which are generally intended to contribute to the integrity and internal unity of research work, to determine the purpose of cognitive activity, to obtain true and methodologically justified research results. Since the circle of principles of scientific knowledge is quite established [7, p. 24-25], in this work we will only list them and provide a general description of the study of theoretical and legal aspects of the mechanism of notarial activity. Thus, the principle of the truth of scientific knowledge determines the targeting of scientific research into theoretical legal aspects of the mechanism of notarial activity to obtain reliable, scientifically based research results. The principle of comprehensiveness aims to provide a methodologically competent study of the subject of this dissertation, to cover the entire range of theoretical and legal aspects of the mechanism of notarial activity and to form a holistic conceptual vision of the phenomenon of notarial activity as a special legal mechanism. The principle of systematicity is related in its content to the principle of comprehensiveness and is intended to investigate not only the theoretical legal aspects of the mechanism of notarial activity, but also the peculiarities of the relationship between them, thereby forming and justifying a holistic view of the phenomenon under study. Closely related to the principle of systematicity is the principle of professionalism, which involves the involvement in scientific research of subjects who have experience and possess the necessary knowledge

and skills of scientific cognitive activity, are able to correctly distinguish the purpose of research, set tasks, form the methodological basis of scientific knowledge and obtain scientific results that will be characterized by novelty. Separately, it is worth paying attention to the cognitive significance of the principle of objectivity, which requires the establishment of theoretical legal aspects of the mechanism of notarial activity as a circle of general laws that characterize it, their perception and research as a real existing, objectively formed phenomenon;

– secondly, methodological approaches of scientific research, which, on the one hand, are able to determine the general perception of the researcher of the phenomenon or process being studied, and on the other hand, to form a cognitive strategy of scientific research from the point of view of the format in which the scientific research itself should take place research (in historical-legal, comparative-legal, functional-legal, systemic-legal, etc.). In this regard, it is necessary to support G.O. Dubov's point of view that "the methodological approach is a synthesis of worldview-philosophical and specifically scientific level knowledge, fulfilling in its essence the role of general methodological and methodical directives for the study of state-legal reality from certain worldview and value positions" [8, p. 23]. The list of methodological approaches in legal science is also quite established [6, p. 24-25; 9, p. 37], therefore, we will focus on determining their advantages regarding the study of the theoretical and legal aspects of the mechanism of notarial activity.

An important role for the study of theoretical and legal aspects of the mechanism of notarial activity is played by the mechanistic approach, which in scientific sources [10, p. 45] is defined as an interdisciplinary methodological approach that considers research objects as a special mechanism. That is, the specified methodological approach allows reducing the features (information about these features) of the research object to a mechanistic model. Such a mechanistic model should be a complex of interacting elements, the functioning of which will characterize (allow to form an idea of) the object of research as a phenomenon, process, complex of procedures, the content of activities, etc. It is also worth noting the important role of the hermeneutic methodological approach, with the help of which it is possible, based on the analysis of legal norms, notarial acts and acts of judicial practice, which relate to notarial activity, the content of draft laws and official statistical data to characterize the state of legal support of notarial activity, prospects for its improvement, as well as the peculiarities of the practice of notarial acts, their mechanism and legal significance.

The third component of the methodological basis of the scientific study of theoretical legal aspects of the mechanism of notarial activity is the methods of scientific knowledge, which are used in a relationship, and their methodologically competent combination allows the researcher to focus on the complex of theoretical and legal aspects of the phenomenon under study. Taking into account the peculiarities of the subject of our dissertation work, the relevance of the topic and the tasks set, it will be scientifically promising to use a wide range of methods of a global, general scientific and special scientific nature. The dialectical method will allow to investigate the mechanism of notarial activity in dynamics, to take into account its changeability, dependence on various factors, to establish

the peculiarities of meeting the needs of society in the functioning of the notarial system and the implementation of notarial activity. The combination of the dialectical method with the materialistic, metaphysical, and idealistic method will allow us to consider the mechanism of notarial activity as an independent object of world perception, which is endowed with cognitive regularities, including theoretical legal aspects, which are objectively existing, integral, can be perceived by the researcher, understood and in relation to which an appropriate outlook can be formed. The complexity and multidimensionality of the theoretical legal aspects of the mechanism of notarial activity determines the expediency of using other groups of methods, which are general scientific and specially scientific. Potentially promising is the use of the comparative legal method, which will contribute to establishing the independence of the mechanism of notarial activity in the system of: a) objects of scientific research; b) objects of legal support; c) component of teaching activity in institutions of higher education in specialty 081 – Law.

The historical-legal method will contribute to the analysis of the history of the development of legal support for the mechanism of notarial activity in Ukraine, as well as its scientific research, establishing the prospects for the development of scientific knowledge, as well as strengthening its legal support.

The special legal method will be important for substantiating the independence of the mechanism of notarial activity in the system of the conceptual and categorical apparatus of legal science, distinguishing it from other related concepts and categories of jurisprudence, distinguishing its features and providing their characteristics. In addition, the specified method will be able to establish prospects for strengthening the terminological support of legal regulation of notarial activity.

It should be noted separately the perspective of the system-functional method, which will allow establishing the functional purpose and role of the mechanism of notarial activity, as well as distinguishing and revealing the content of the functions of the mechanism of notarial activity in their systemic combination.

The application of the cognitive capabilities of the prognostic method will contribute, first of all, to the analysis of the features of the legal support of the mechanism of notarial activity, regarding the prospects for its improvement, ensuring the compliance of the mechanism of notarial activity to modern standards, which are inherent in the Latin-type notary. The functional possibilities of the prognostic method should be combined with the functional potential of the legal modeling method, which will contribute to the identification and generalization of the shortcomings of the legal provision and the practice of functioning of the mechanism of notarial activity in Ukraine, on the basis of which to justify the directions of their improvement.

We believe that the methodological basis of scientific knowledge is a complex and important category of any scientific research, which requires the development of an individualized approach to its formation, as it will determine its strategy in the future. It is worth supporting the views of scientists about the possibility of distinguishing such components of the methodological basis as the principles of scientific knowledge, methodological approaches and methods

of scientific research, which we have discussed above. However, the methodological basis of the research is not limited to the specified components, since it should also include the methodology of their use, which, in our opinion, is presented within the limits of the levels of scientific research – global, general scientific and special scientific. V. V. Kopeichikov, M. I. Kozyubra, S. L. Lysenkov, O. F. Skakun and others noted the existence of methodological levels of scientific knowledge, within which the functional purpose of the cognitive tools of legal science should be realized. [11, p. 22–24; 12, p. 78].

Conclusions. Taking into account the above, taking as a basis the functionality of the principles, methodological approaches and methods of scientific knowledge, we believe that their use can be ensured within the limits of the relevant levels of scientific research. Traditionally, such levels of scientific research include:

1) philosophical (worldview) level of knowledge, which will allow, based on the principles of scientific knowledge, guided by methodological approaches of scientific research, to use a complex of scientific research methods, to perceive notarial activity as a special mechanism of human professional activity, which is characterized by regularities of its implementation and achievement of general social and legally significant result;
2) a general scientific level of knowledge, which is functionally capable, based on the principles of scientific knowledge, guided by the methodological approaches of scientific research, to use a complex of methods, to study the mechanism of notarial activity as a special type of socially useful activity of authorized subjects, which ensures the onset of political, economic, social and legal effect;
3) a special scientific level of knowledge, within which, based on the principles of scientific knowledge, guided by the methodological approaches of scientific research, to use a complex of methods, it is possible to study the mechanism of notarial activity as a complex of theoretical and legal regularities of its origin, formation, development, functioning and improvement.

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CULTURAL TRADITION AS BASIS AND POTENTIAL FOR THE CIVILIZATIONAL DEVELOPMENT

Matvieieva Kateryna[1]

Annotation. The article researches the essence of the concept of "tradition" and "cultural tradition", provides examples of traditions in theatrical culture, explains the concept of "Ukrainian tradition", as well as presents existing types and structures of tradition. Approaches and the depth of understanding of the aforementioned terms by scientific representatives from different nations living in different cultural and historical times have been investigated. The relevance of the article lies in thorough understanding of tradition and its role in the civilizational development, as the past is always connected with the present with Ukrainian theatre being one of the manifestations of such connection. Traditions found in theatre are exemplary of how national culture is preserved and developed.

The aim of the article is to cover the scale and relevance of the question of culture in learning about the development of society as well as specific cultural objects.

Research methodology: The method of cultural concepts, comparative-historical and systematic methods, as well cross-disciplinary approach have been applied in the given work.

The cultural innovation of the research is based on the fact that the materials of the article allow us to trace a necessary cultural object (e.g. theatrical culture, music culture, technical culture among others), distinguish its specific elements, and in the process of the investigation rediscover peculiar features, which are a repeated succession. Thus, the article outlines traditions that have characterised a chosen object throughout its existence, as well as reveals moments of innovation.

Key words: cultural tradition, tradition, "the soul" of the nation, the structure of tradition, traditionalism.

As a result of thorough analytical research of scientific literature and materials from archives of different countries, it is possible to distinguish the following categories: Definitions of traditions, suggested by scientific representatives from different cultures in different times; types of traditions outlined by re-

[1] Matvieieva Kateryna, PhD student, Chairman of the Council of Young Scientists, Kyiv National University of Culture and Arts Member at Young Scientists Council at the Ministry of Education and Science of Ukraine, ORCID: 0000-0002-9245-5373, kmatvieieva@gmail.com.

searchers, and definitions of these terms in the Ukrainian and foreign dictionaries.

Studying the definition of traditions, it is important to research them thoroughly under different time and space conditions. Thus, works by representatives of various humanitarian and social sciences, such as culturology, philosophy, sociology, ethnography, anthropology among others, have been analysed in the given research.

Italian philosopher G. Vico and German historian J. G. Herder studied tradition as following spiritual values. Vico is believed to have been the first to analyse traditions, in what is now thought to be cultural research. The philosopher insisted that the potential of traditions is an underlying way to preserve cultural heritage. Meanwhile, Herder, who studied cultures, considered tradition to be "the main driving force of history and a genetic code of the preserved archaic tribes and nations, as well as civilizations, which Ukrainian one is part of" [1, c. 9].

American historian and philosopher H. Kohn saw the manifestation of national identity in traditions. He studied the question of "nationalism", which at the beginning of the 21st century was known as "cultural nationalism", since it manifested itself in moulding national spirit, in literature, folklore, mother tongue, and history. In his research dedicated to traditions, Kohn considered Herder to be the first to have studied this phenomenon, he "identified the human civilization not in its universal manifestation, but rather in its national and unique ones." Sharing Herder's ideas, Kohn states that "people are, first and foremost, members of national communities, and only in this role they can be true artistic personalities: consolidating through national languages and national traditions" [1, c. 9]. It is worth noting that there is a certain discrepancy regarding who is considered to be the first.

American sociologist E. Shils states that "tradition (traditions) functions as a regulatory ideal (ideals). It can be explained by the fact that the past is passed down on as heritage to the next generations, and it is thought that what is passed on from the past requires an element of norm, and thus cannot be dismissed" [12, c. 155]. Shils differentiates "tradition" and "traditionalism", attributing to "traditionalism" support of traditional rules and beliefs coming from sacred sources. Shils believes that traditionalism is all-embracing in its ambition regarding society, and authoritarian, violent, and intolerant by its nature" [10, c. 160]. The tradition itself he sees as the main "source of constant and repeated occasions that social life depends on" [10, c. 162].

The notion of ideas is central to conservatism as well. Let us consider the definition of this term: "conservatism (Fr. conservatisme, Lat. conservo – preserve, protect) is a political teaching and socio-political stream aimed at preserving historical traditions, forms and principles of social and political order, as well as deterring radical reforms and gentle handling of any changes in general" [7].

According to German philosopher H.-G. Gadamer "...there isn't an unconditional difference between tradition and mind… Tradition is always, in fact, an

intersection point of liberty and history as they are. Even the most genuine and solid tradition forms not only naturally thanks to the ability of self-preservation of what is available, but requires agreement, acceptance, and care… Such preservation is an act of mind… Thus, preservation of the old is no less a free attitude than upheaval and restoration" [6, c. 44]. Examples of traditions in theatrical culture could be programmes of the events which we consider as a tradition of announcing a performance, as well as an element of notifying a spectator, which is "an original advertisement."

Maltese researcher C. Mangion studies the dynamics of tradition (traditions) that functions as a precondition to restoring society. The term "restoration" is used to cover stability and transformation of society.

A score of American researchers studied tradition in close connection with folklore. S. Thompson, a folklorist and culturologist, mentioned that "the idea of traditions touches upon everything that is described by the term "folklore" [3, c. 89]. Later, a researcher of folklore Richard Bauman noted that "there isn't a single more important central idea in the concept of folklore than tradition" [3, c. 89].

American researcher of tradition E. S. Hartland proclaimed folklore a science that studies tradition, and noted that methods and theories changed with time, but the "the flag of tradition kept flapping over the territory of folklore" [3, c.89]. Traditions themselves Hartland saw as a "process of transmission, typical to the level of "barbarism" among illiterate, isolated groups surviving in the civilization" [3, c.91]. Judging from this statement, it could be assumed that there are certain laws in the world that help to survive without losing originality. Civilizational processes of progress continue to move while originality remains and is passed on through traditions.

Another American culturologist, Michael Owen Jones, as a result of his research, comes to the conclusion that the study of traditions is a process that involves everyone, at all times, and everywhere. It is worth quoting here a German philosopher Herder who stated that, "Tradition exists whenever a human exists", which is hard to disagree with [1, c.9]. Given the fact that traditions do not appear by themselves, since they are created by humanity throughout its historical existence and appear to be a way of passing on spiritual and material values, experience, knowledge, as well as traditions, norms and rituals.

In his works, S. Bezklubenko, a Ukrainian philosopher, historian, and culturologist, sees traditions as an "essense" of folk wisdom and interprets the notions through verbal formulae. He breaks the word "tradition", which comes from Latin "tradition", consisting of a prefix "trans-" and a verb "do", which means "to give". Originally, it meant "passing", "retelling", "bequeathing", and "teaching". Tradition is something that is passed down by the previous generations to the current and the future ones. It is a kind of heritage. What is meant here, is not a vault with material treasures, but rather cultural treasure of the nation, and "essense" of the folk wisdom. It is heritage, not devoid of material artefacts of our generation, which is exclusively spiritual in its contents: cultural objects inherited by our gen-

eration, following naturally the lifestyle paths defined for a certain people (ethos) in society" [2, c. 217].

In Culturology Dictionary by a Ukrainian researcher R.Shestopal the term "cultural tradition" is defined as "passing on from generation to generation, preserving the stability of achievements, values, templates and norms of culture" [16, c. 160].

A similar interpretation of the term "tradition" is given in the Dictionary of Modern Ukrainian Language compiled by Viacheslav Busel [4, c. 1467].

In the Lithuanian Dictionary, V.Kvietkauskas interprets tradition on a par with religion: "1. Passing on of historically formed and stable cultural forms (customs, images, symbols, and ideas) from one generation to the other; the form per say that guarantees stability and union of cultures; 2. In Catholic theology, it is the second – together with the Bible – source of God's revelation; church attributes to it works of holy fathers, theologians, early Christian authors, church statements and Papal encyclicals" [11, p. 528]. Thus, not only the cyclicity of human activity, but of various areas of life, including religion, can be observed.

To complement the aforementioned, it is worth mentioning the views of an American theologian J. Piper who sees tradition as a "holy tradition" (as a reflection of the notion of God). Piper considers "holy traditions" as the only "genuine tradition, because they (a) return to the transcendental origin, and (b) they carry authority and power to create commitments", although Piper does not deny secular traditions, because both types of tradition are similar in extrapolating the past to the present" [12, c. 158]. Secular tradition is regarded as a cultural form occurring in a socio-cultural environment, of which theatrical tradition is a part.

Authentic traditions were "holy" for Richard Dorson, the director of the Folklore Institute at Indiana University. He saw "tradition" as antiques, and punished "young folklorists for introducing changes to the authentic traditions" [3, c. 95].

T.S.Eliot, an American modernist poet, playwright, and literary critic, had a different opinion, which he shared in his essay "Tradition and the Individual Talent". He argued that true originality is possible only in a tradition, a living presence in the modern world, not a museum relic. It could be assumed that if people cease to comprehend the meaning of tradition, it becomes a museum object, an antique.

There is yet another point of view held by an American ethnographer and anthropologist Melville J. Herskovits, who stressed that the notion of "tradition" is one of the synonyms of culture.

Not everyone, however, considered traditions as a process of transferring knowledge or a resource of civilizational development. For example, W.J.Thomas studied traditions in a more narrow context – as a genre rooted in the past rather than the concept of process or transmission [3, c. 90].

Polish sociologist and historian Jerzy Szacki distinguished the following types of the notion of tradition:

1. Functional. Revealing the functions of transferring the values of a certain community from generation to generation.

2. Objective. Shifting the focus of a scholar from the process of transferring values per say to the characteristics of the values being transferred.

3. Subjective. The main function is the attitude of the modern generation to the past and their consent, following or objection.

Thus, the general understanding of tradition is one-sided, detached from certain existing characteristics of traditions. Traditions, like complicated processes, have different directions (cultural, political, religious among others), and consequently there is a need to form a notion that will be typical for a particular area in which traditions are formed.

Ukrainian traditions are, first and foremost, songs, musical works, dialects, fairy-tales and proverbs – wisdom embedded in words and sounds, and passed down through the national language from one generation to the other. Thus, the importance of the national language can be observed. Folk dancing has characteristic movements and behaviour of the Ukrainians, artistic works aim at beauty and freedom, which reflects the outlook and immense artistic potential of the whole nation. Complex patterns reflect perseverance and determination of the Ukrainians, as well their understanding of the world's order.

Tradition is one of the central ideas of culture. It is not stable or constant, and its existence is a dynamic process which entails certain stages of development: from its emergence (roots), becoming, loss of stability and destruction, which can be accompanied by the establishment of innovations, and later new traditions.

"In culturological sense, innovation is a process of bringing a scientific and artistic idea or a technological invention to the stage of its practical usage, which can rear profit, and all the artistic as well as other changes in the social environment" [15, c. 246].

In his research, a Soviet ethnologist S. Arutiunov stated that "Any tradition is a former innovation, and any innovation is potentially a future tradition. In fact, no traditional trait is inherent to any society forever. It has its origin, somewhere it came from, and so it once used to be something special. What we see now as innovation, will either not remain in the culture, die out and be forgotten or will take root and will soon cease to seem like innovation, and thus will become tradition" [8, c. 42]. In theatre, this can be observed in the creative works by a reformator of Ukrainian theatre, Les Kurbas (1923): In his staging of "Jimmie Higgins", based on the novel by Upton Sinclair, he used a screen in the theatre referring to silent films. It was considered innovative at the time, at present, the use of multimedia tools is no longer seen as innovation, thus the combination of cinema and theatre can be considered a theatrical tradition.

Chinese culture offers a very interesting view regarding traditions. "Tradition is culture left from the previous epoch, a flawless model of ideas and behaviours found in one epoch, and a widely accepted issue in the following epoch" [17].

Dean of the College of Chinese Ancient Studies at Tsinghua University, philosopher Chen Lai distinguishes the following aspects of cultural traditions.

1. "Cultural traditions have to possess the signs of the nation, spiritual aspiration of the nation, a source of vitality of the nation, its roots and soul". [5];

a notion of "the soul of the nation" is understood as a combination of in-depth values, characteristic traits, feelings, senses close to the majority of the nation's representatives;

2. "Cultural traditions encourage the inheritance and development of culture, shape the succession of history and culture;

3. The most important function of tradition is providing sense, preserving values of the culture and creating the originality of the culture;

4. The cornerstone of cultural tradition is its system of values. It provides the society with valuable norms, valuable concepts, valuable aspirations and valuable ideals as well as major values" [5].

Investigating various definitions of the notion of "tradition", it is deemed important to highlight types and structures suggested by scholars.

Researchers Filippiev M.H. and Filippieva O.A. in their study of traditions differentiate between rigid and agile traditions. The former do not accept innovations and deviations in their reconstruction, thus remain unchangeable. A characteristic feature of these traditions is their lengthy existence and passing down to the next generation unchanged. The latter type, agile or moving traditions, can transform with time, be complemented with new norms, rules or methods, although remaining unchangeable at its core. Such traditions tend to be more flexible granting more freedom of choice under different circumstances. For example, a "rigid tradition" in theatrical culture – applause, ovation, shouting "Bravo" as a sign of admiration of actors' performance or the technical means of a theatre (lighting, curtains, or bar- bells). "Agile" traditions can include length of a performance, position of the audience, appearance of actors on the stage or among spectators.

Similarly to the division of traditions into rigid and agile, T.S.Eliot distinguishes traditions (classics) he calls "alive" and "dead". Classic tradition is about something that "has stood the test of time and is a source of constant references and hints". "Dead classics" or "dead tradition", according to Eliot, includes "performing with a rigid programme" [8]. The author uses religious tradition, namely Gregorian Chant, as an example. "Alive" tradition (classics) is evolving and transforming creative art.

"Y.Oborotov distinguishes between big and small traditions. Big tradition is synonymous to high culture, it is consciously cultivated, systematised and passed on from generation to generation. Small tradition is synonymous to everyday culture, it is transferred by special means and does not undergo thought-through changes. Small tradition includes tales, beliefs, folk wisdom and creative arts used by a people" [8]. Drawing parallels with theatrical culture, professional Ukrainian theatre can be regarded as a manifestation of big tradition and the emergence of amateur theatrical troops as small tradition."

Ukrainian philosopher, historian, and culturologist Serhii Bezklubenko outlines three "aspects" of tradition:

1. "It is a holistic system of ideological beliefs which recreates a certain folk (national, ethnical) outlook.

2. A realm of feelings directed at these beliefs, such as stereotypes regarding attitudes to the environment (or some of its parts) on a "scale" of: good-evil, nice-terrible, or harmless-harmful.

3. An area of practical actions – gestures, movements, ceremonies, manipulations, rituals which reflect ideological beliefs and aim at satisfying the feeling accompanying these beliefs and their support and expansion as well as development of behavioural stereotypes" [2, c. 218].

Professor S.Bezklubenko is believed to have found an unconventional approach to analysing traditions from the point of view of culture studies, which covers the whole scope and the whole list of philosophical values of Ukrainian society.

Traditions can also be studied from either a vertical or a horizontal perspective. The vertical one is about consistent generational changes during the historical time of a certain epoch, which enables to reveal a holistic picture of the cultural heritage. The horizontal approach helps to research the co-existence of the generation and its surroundings.

Linguistic research uses diachronic and synchronic analysis. It can be assumed that the existence of diachronic and synchronic traditions could be studied not only in the context of language transformations in space and time, but also in the context of other cultures, in particular the theatrical one. This could become a topic of further research.

A British historian Eric Hobsbawm notes that the aim and peculiarity of traditions, including the newly-formed ones, are their stability. Meanwhile customs cannot remain unchangeable since the condition of living in society, as well as in the world, transforms. Thus, the ability to pass on traditions and folk wisdom have defined the existence of a nation, mostly through the language, and traditional Ukrainian theatre is not only a visual art, but a vernacular one as well. In this way, the country is developing and national culture is being preserved, which can be observed on the example of Ukrainian drama theatre.

"Traditions bestow upon us special qualities which distinguish us among others, form our cultural memory and make us who we are and not somebody else. They bind us with the long history of our nation and give us a feeling that we are leaves growing on the same big tree with roots, and not duckweed following modernisation, wheels on the train of globalisation" [17].

Conclusions. The question of traditions emerged deep in the history of mankind with its source being philosophy and human beliefs. It is the moment of recognising oneself in one's ancestors, children and grandchildren through similarities in character, and behaviour. It is also the ability to reconstruct an action or an object in the same way our ancestors did, being able to feel nature and our capabilities of discovering it. In the process of historical development, various approaches to studying different aspects of culture, including traditions, have appeared.

Results of research conducted by different scholars from various countries in different cultural and historical times have been analysed, in particular the questions regarding the notion of traditions and their role in the civilizational development. There can be observed a keen interest in the topic from researchers. The notion of "tradition" has been provided definitions for from different angles. It has been presented as the main driving force of history, following spiritual

values, manifestation of national identity, a process involving everyone at a given time and place. Some scholars have studied "tradition" in close connection to folklore.

As a result of thorough analysis of the notions "tradition" and " cultural tradition", a conclusion can be made that they possess identical character, and since tradition can be considered a synonym to "culture", then cultural tradition becomes the culture of culture. Studying the notion of "tradition" further, it becomes obvious that its scope covers not only the activity of a certain ethos, but also expands to cover the religious aspect and more. Thus, tradition has its own stages of development – repetitiveness, transformation, oblivion and restoration into a new form.

The above mentioned information can be used to trace a necessary object of culture (theatrical culture, musical culture, technical culture among others) and distinguish its specific elements, namely traditions.

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PECULIARITIES OF JUDICIAL PROTECTION OF ENVIRONMENTAL HUMAN RIGHTS

Mykytyuk A.[1]

Annotation. The scientific article is devoted to the issue of the specifics of the judicial protection of human environmental rights, the description of the characteristics of the judicial protection of human rights with the definition of economic rights. The scientific article pays attention to the study of environmental rights, their main features and features of people's environmental rights. The article contains a study of practical aspects of the protection of environmental human rights, in particular, in the context of the consideration of court cases in the relevant field. The scientific article proposes the peculiarities of improving the judicial protection of environmental human rights in Ukraine.

Key words: Judicial protection, environmental rights, judicial protection of environmental rights, human rights, environmental human rights.

Formulation of the problem. Judicial protection plays an important role in the protection of environmental rights due to the obligation to execute court decisions. At the stage of entry into force of the court decision, environmental rights are not only protected, but also restored. In general, ensuring environmental safety, as well as its maintenance on the territory of Ukraine, is a state duty. In accordance with Article 50 of the Constitution of Ukraine, public authorities and their officials must ensure citizens' right to an environment safe for life and health and to compensation for damage caused by violation of this right [1].

At the same time, Article 11 of the Law of Ukraine "On Environmental Protection" guarantees that the violated rights of citizens in the field of environmental protection must be restored, and their protection is carried out in court in accordance with the legislation of Ukraine [2].

Presenting main material. The judicial practice of protection of environmental rights in Ukraine and in international courts forms legislation, even in the absence of precedent law as such, because it creates problematic issues that are gradually being resolved legislatively. A small amount of case law only slows down the development of environmental legislation or legislation in the field of protection of environmental law.

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[1] Mykytyuk A., graduate student of the National University of Bioresources and Nature Management.

Environmental rights of citizens are divided into those that are implemented mainly at the sectoral level (sectoral); as well as on the environmental rights of citizens, which are implemented at the inter-sectoral level (inter-sectoral).

Environmental rights are classified by legal meaning into constitutional rights; others provided by current legislation; according to the form of implementation for individual; collective; according to the degree of interaction with the surrounding natural environment, to those that involve the actual ownership of environmental benefits; those that are indirectly related to the environment; those that do not include direct interaction with natural objects; according to social and branch affiliation to ecological and economic; environmental and political; environmental and educational.

In general, the system of protection of environmental rights is not only a normative consolidation of the protection of environmental rights, but also legal responsibility as a result of a violation of the right, the restoration of such a right through the implementation of certain measures and, in general, the availability of procedural guarantees for the protection of environmental rights.

Guarantees for the protection of environmental rights are understood as legal means of ensuring the implementation of environmental rights [3, p. 12].

Today, Ukraine has a certain legislative framework for the practical implementation by citizens of the right granted to them by the Constitution of Ukraine to appeal to public authorities and their officials, including to appeal decisions, actions or their inaction, but it is practically difficult to find information in available sources about the responsibility of state bodies or officials as a result of violations of environmental rights, which indicates isolated cases of the realized right to protection.

It is important to define the concept of "judicial protection" in order to reveal the category, its essence and content in order to correctly further define the concept of "judicial protection of environmental law".

According to I. O. Bakirova, there is practically no right in modern Ukraine that is not violated to one degree or another, and every year the number of violations of rights, freedoms, and legitimate interests increases. According to their mentality, citizens of Ukraine are not yet accustomed to the possibility of judicial protection of their rights, freedoms and legitimate interests, and therefore do not use this method of protection to the full extent.

The above is due to the fact that ordinary citizens have distrust of judges in particular and the judicial system in general, which is confirmed by a large number of relevant examples. In addition, the inability of a person to pay for the services of a lawyer, the presence of conflicts in Ukrainian legislation and the instability of the current legislation complicate the already difficult situation with the practice of protecting environmental rights in courts [4].

According to the decision of the Constitutional Court of Ukraine dated May 23, 2001 No. 6-рп/2001, the right to judicial protection is one of the basic, inalienable rights and freedoms of a person, and in accordance with the second part of Article 64 of the Constitution of Ukraine, it cannot be limited even in conditions of war or a state of emergency , and the imperfection of the institution of judicial control over the pre-trial investigation cannot be an obstacle for challenging the acts, actions or inaction of officials of state authorities [5].

The functions of the state to ensure the judicial protection of citizens' environmental rights are characterized by the principles and legal tools of guaranteeing the freedoms, realization of the rights and interests of citizens, which includes a wide range of organizational and legal activities of authorized bodies of public power, called to ensure the rights and legitimate interests of participants in environmental legal relations.

Such activity includes legal and non-legal forms, as well as legal methods and procedures by means of which the state influences environmental legal relations. Environmental legal relations are subject to legal protection, where the legal protection function is aimed not only at protecting the rights and legitimate interests of the participants in environmental legal relations, but is also designed to ensure the law and order in the environmental field as determined by the law.

According to V. Andrusiak, the human rights system is a set of state and non-state institutions formed as a result of the interaction of the state and civil society, whose activities are aimed at protecting the rights and freedoms of a person and a citizen.

The functioning of the human rights system consists in the implementation of professional activities related to the emergence, termination, restoration of human and citizen rights and freedoms, their protection from unlawful encroachments by preventing and terminating them, as well as taking measures to restore violated rights. The most important components of the mechanism that ensures human and citizen safety are human rights and law enforcement bodies and institutions [6, p. 9].

The law enforcement function is the direction of the state's activity to ensure the accurate and consistent implementation of the provisions of the law by all citizens, organizations, state bodies and officials. The fight against crimes is an important component of law enforcement activities of the state, which is carried out with the help of the entire system of law enforcement agencies. The scope of this function includes, in particular, protection of all forms of activity; protection of rights and freedoms of citizens; maintaining law and order, fighting crime, and maintaining the regime of constitutional legality [7, p. 58-59].

The above-mentioned approaches involve different forms of implementation of the law enforcement function of the state. In particular, the protection of environmental rights of citizens and legal entities can be carried out both in the bodies of executive power and local self-government bodies, as well as through the administration of justice. The constitutional principle of dividing state power into legislative, executive and judicial powers guarantees the protection of constitutional rights and freedoms of a person and a citizen directly in court.

In order to perform their functions, judicial bodies operate in the state, whose activities are implemented in the form of justice, which is a special power function of the state and is carried out on its behalf during the proceedings of civil, administrative, economic, and criminal cases. This function follows from the provisions of Articles 50, 55, 56, 64, 124, 125 of the Constitution of Ukraine, Articles 1, 2, 7, 8, 9, 11, 13, 14 of the Law of Ukraine "On the Judiciary and the Status of Judges", Article 5, Clauses "z", "y", part one of Article 9, part four of Article 11, points "j" of part one of Article 20-2, point "g" of part one of Article 21, part

three of Article 50 of the Law of Ukraine "On Environmental Protection "; Articles 33, 34 of the Law of Ukraine "On Atmospheric Air Protection"; Articles 8, 19, 63 of the Law of Ukraine "On the Animal World"; articles 25, 26, 40 of the Law of Ukraine "On Plant Life"; Articles 32, 33, 34, 42, 43, 44 of the Law of Ukraine "On Waste"; Article 25 of the Law of Ukraine "On the Ecological Network"; Clause 4, part one, Article 29-2, Clause 4, Part Four, Article 78, Clauses 13, 14, Part One, Article 91, Articles 103–107 of the Forest Code of Ukraine; of the Land Code of Ukraine (Part 1 of Article 30, Part 4 of Article 60, Part 13 of Article 79-1, Clause "c" of Part 5 of Article 83, Clause "d" of Part 1 of Article 87 , Part 1 of Article 88, Part 5 of Article 89, Part 5 of Article 97, Part 1 of Article 100, Clause "c" of Part 1, Part 2 of Article 102, Part 2 of Article 111, part 10, 11 of article 118, part 15 of article 123, part 10 of article 128, article 140–145, 148, 149, part 12 of article 151, part 3 of article 153, article Articles 154–158, Article 161, Articles 210–212); Water Code of Ukraine (part 7 of article 11, part 3 of article 55, article 57, part 14, 15 of article 88, article 95, 109–111); of the Code of Ukraine on Subsoil (Parts 4, 5, 6 of Article 26, Article 27, Article 56–59, Part 1 of Article 64, Article 65–67) [9].

In accordance with the specified provisions of the regulatory legal acts, the state establishes specific rules of conduct and coercive measures that may potentially be imposed on the subject of law for non-fulfillment or improper fulfillment of these legal regulations. And the potential possibility of negative consequences for non-fulfillment of this or that rule of law, in our opinion, has an informational-psychological, educational, stimulating and coercive effect on the legally significant behavior of legal entities [10, p. 21–30].

Violation of legal guarantees of legal protection of environmental rights and interests of citizens entails the application of measures of legal responsibility and the use of state coercion.

Emphasizing the regulatory function, including environmental relations, M. Korkunov notes that one of the main tasks of law in society is the establishment of social law and order, which is impossible without the implementation of the function of regulating social relations and the function of protecting social order. At the same time, in the course of implementing its regulatory function, the law does not so much imperatively determine certain mandatory norms for individuals, as it reflects those subjective individual ideas that contain the image of the necessary order of social relations.

The regulatory function can be recognized as the direction of legal influence determined by its social purpose, which is expressed in the establishment of positive rules of behavior, the granting of rights and the imposition of legal obligations on legal subjects.

Ensuring judicial protection of citizens' environmental rights is impossible without the regulatory function of law and is carried out in accordance with legal norms inextricably linked to the regulation of social relations.

Legislative acts defining the environmental rights of citizens and guarantees of these rights (appeal of citizens to court for the protection of environmental rights and the mechanism of protection of these rights); organization and activity of executive power bodies and local self-government bodies; the right to apply for the protection of violated and contested environmental rights to executive

authorities (administrative protection); the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officials; the right to apply to the court for the protection of one's personal non-property or property right and interest constitute a regulatory function of law [11, p. 202–211].

Relations regarding access to environmental information in Ukraine are regulated by a number of regulatory and legal acts. In the modern information society, the constitutional consolidation of the right of citizens to free access to environmental information is of particular importance. National legislation refers to environmental information as one of the important functions of the state, and the provisions of Article 50 of the Constitution of Ukraine guarantee everyone the right to free access to information about the state of the environment, as well as the right to its dissemination. Such information cannot be classified by anyone [1].

Implementing its function of information provision of environmental rights, the state, in the form of authorized bodies, their officials and officials, guarantees citizens and legal entities free access to environmental information not prohibited by law, the right to public participation in the decision-making process and access to justice on issues relating to the environment.

One of the most important functions of the state to ensure judicial protection of citizens' environmental rights is the international function. Realizing citizens' right to access to environmental information and access to justice, on July 6, 1999, Ukraine ratified the Aarhus Convention on Access to Information, Public Participation in the Decision-Making Process, and Access to Justice on Environmental Matters [12].

By implementing an international function, the state, through international cooperation, solves existing problematic issues of environmental relations, and also gives citizens the opportunity to exercise judicial protection of environmental rights in the European Court of Human Rights.

Thus, the most global functions of the modern state to ensure judicial protection of citizens' environmental rights is the social function; law enforcement function; regulatory function; information function and international function.

Conclusions. The functions of the state to ensure judicial protection of the environmental rights of citizens are understood as the granted and guaranteed right of access of citizens to domestic and international judicial proceedings for the purpose of protecting rights and freedoms in the field of the environment and nature management.

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SELF-ORGANIZATION AS THE BASIC FORM OF THE CIVIL SOCIETY GENESIS

Nechitailo Iryna[1]

Boriushkina Oksana[2]

Annotation. The article is devoted to consideration of self-organization as a basic form of civil society genesis. It is noted that the civil society institutions allow citizens to jointly develop goals and achieve them, combining their own efforts, entering into a dialogue with government and public structures, defending their principles. The fragmentation of scientific knowledge about civil society is noted. Such a situation, according to the authors, requires a deeper understanding of the civil society genesis, which is necessary for explaining the problems and contradictions of its formation. Civil society is interpreted, first of all, as the practice of socially solidary life, which is realized in the public sphere of public interactions and communications outside of state-administrative, market, and family-private relations and is represented by a network of non-state voluntary public associations and unions whose activities are self-organized. Self-organization is interpreted as the process of ordering elements of one level of the system due to internal factors, without external influence on the system. It is concluded that the necessary external conditions for the institutionalization of civil society are: the presence of legal forms for the realization of the rights and freedoms of individuals. The authors emphasize that the role of law is to exclude the possibility of negative self-organized institutions (such as totalitarian religious sects, terrorist and others). According to the authors, the phenomenon of quasi-civil society and measures to prevent its formation require detailed study.

Key words: state, civil society, democracy, self-organization, social order, traditional and modern societies.

Introduction.

Actuality. The key to the successful development of the state is its ability to make structural changes in all spheres of social life while maintaining the relative stability of society. Equally important is the inclusion of broad masses of people in key processes (in particular, political ones) taking place in the state.

[1] Nechitailo Iryna, https://orcid.org/0000-0002-0656-0370 e-mail: nechit@ukr.net .
[2] Boriushkina Oksana, https://orcid.org/0000-0002-6726-5113 e-mail: psuh@ukr.net.

Full democratization of society is impossible without the active participation of citizens. Ukraine, which has chosen the path of democratization, is making great efforts to become an equal partner of the member states of the European Union. This circumstance actualizes the problem of the fastest and most effective achievement of the relevant standards in various spheres of life. And one of them is a really active, viable and strong civil society.

The methodological basis of the study. The phenomenon of civil society attracted the attention of H. Grotius, T. Hobbes, J. Locke and others. After them theoretical ideas about civil society were significantly developed thanks to the scientific works of Zh.-Zh. Rousseau, Sh. L. Montesquieu, V. Humboldt, R. Koas, K. Popper, F. Fukuyama and others.

Among modern scientists, such as V. Kovalchuk, A. Kolodiy, S. Kravchenko, Yu. Levenets, V. Muzh, M. Tsymbalyuk, O. Skrypnyuk and others are devoted to the questions and problems of civil society formation [8; 11; 15; 22]. These scientists draw attention to the legal aspects of civil society functioning.

The essence of civil society as an important factor of democratization, a decisive component in repelling external aggression, and the social basis of radical reforms is revealed by such Ukrainian scientists as I. Bekeshkina, S. Dembitskyi, N. Kostenko, O. Kutsenko, O. Reznik, A. Ruchka, O. Stegnii, V. Stepanenko and others [3; 12; 19; 20]. Based on the generalization of modern theories and the analysis of the data of many empirical studies, the listed scientists consider civil society through the prism of its sociological dimensions – the spread of civic values, membership in public organizations, volunteer self-organization, environmental movement, etc.

V. Astakhova, K. Astakhova, A. Bukhun, Yu. Yivzhenko, L. Sokuryanska and others are devoted to the study of the civic positions of modern youth and the methods of their (positions) formation [1; 5; 6; 14].

The unsolved part of the general problem to which the article is devoted. Despite the fact that the phenomenon of civil society attracts more and more attention of representatives of various humanitarian and social sciences, today it is hardly possible to draw a conclusion about its sufficient study and full scientific validity. Against the background of a variety of scientific and methodical publications devoted to the creation of programs of civil society development and formulation of recommendations for the stimulation of civic activity (in particular, youth), the results of sociological research state a low level of civic activity and the lack of civic consciousness of Ukrainians.

In addition, the analysis of modern scientific literature reveals the fragmentation of scientific knowledge about civil society, the lack of a coherent scientific vision of this phenomenon, the blurring of relationships between sociological, philosophical, pedagogical, legal and other approaches to its study.

Such a situation, in our opinion, requires a deeper understanding of the genesis of civil society, which is necessary both for explaining the problems and contradictions of its formation, and for further determining the ways of solving these problems and contradictions.

In view of the above, the purpose of this article is to theoretically comprehend, scientifically interpret and conceptualize self-organization as a basic form of civil society genesis.

Presentation of research results.

The term «civil society» was first used by the German philosopher H. V. F. Hegel, who concluded that civil society is a special stage in the «dialectical movement from the family to the state» [4, p. 169]. In his opinion, social life in civil society is significantly different from the ethical foundations of the family and from the public life of the state. According to his scientific views, civil society consists of a system of needs that is based on private property, as well as on the administration of justice, the police and corporations.

In general, the concept of civil society is interdisciplinary and has many different interpretations, which can be reduced to the following: «public organizations independent of the state, the so-called «third sector»; «a social structure that coordinates its actions through a series of voluntary associations»; «a set of pressure groups and other subjects of influence on the political process in society». According to the state and law theory, civil society is considered as «a system of independent social institutions and relations that provide conditions for the realization of private interests and needs of individuals and social groups for the vital activities of the social, cultural and spiritual spheres, their reproduction and transmission from generation to generation» [21, p. 187]. Ukrainian scientist V. Pohorilko notes that civil society is a community of free and equal people, each of whom the state provides legal opportunities to be an owner and take an active and comprehensive part in political life [10, p. 88].

In this article, we will use the concept proposed by the domestic researcher V. Stepanenko, as it synthesizes important aspects of many definitions of civil society. Thus, civil society is «the practice of social solidarity life, which is realized in the public sphere of public interactions and communications outside of state-administrative, market, and family-private relations and is represented by a network of non-state voluntary public associations and unions whose activities are self-organized» [20, p. 40].

Based on the above definitions, the main features of civil society can be distinguished, namely, the following are meant: freedom, justice, equality. In addition to the above, modern scientific literature emphasizes the inextricable connection between the functioning of civil society and the processes of social self-organization [2; 12; 18; 20].

Ukrainian society has its own contextual and sociocultural features that influence the process of institutionalization of civil society. In this article, Ukrainian society will be considered as a certain type of «modern» society. It necessary to emphasize that considering Ukrainian society as «modern», we do not mean «modernity», which distinguishes it from post-modern (post-modern, post-industrial, etc.) societies. In this case, we consider «modern» society is the one that exists in the present time, that is, the society in which we live now.

T. Parsons contrasts modern and traditional societies. Both the first and the second can exist (and do exist) at the same time, but they have fundamental differences, that is, they differ according to the following principles: 1)

«inclusion/achievement» – in traditional societies, the role and position of an individual are largely determined by ascriptive features (age, gender, origin, etc.), that is, circumstances independent of the individual; in modern societies, the role of an individual and its social position are determined, for the most part, by the results of its own activities, achievements that receive recognition; 2) «particularism/universalism» – in traditional societies, the attitude towards a person largely depends on its social origin, as well as belonging to certain social units (family, clan, etc.); in modern societies, all people have equal rights, regardless of their origin and affiliation; 3) «diffusion/specificity» – traditional societies are characterized by role diffusion; specialization and differentiation of roles is constantly taking place in modern societies; 4) «affectiveness/ affective neutrality» – in traditional societies, the basis of interpersonal interaction has a pronounced affective (sensory-emotional) character; in modern societies, interactions are built mainly on a reasonable and rational basis; 5) «collectivism/individualism» – in traditional societies, the activities of people and the motives of these activities are tied to collective patterns, norms, and general goals; in modern societies, people's activities are oriented to a greater extent towards the achievement of individual goals and depend on self-esteem [16, p. 15].

As we can see, according to Parsons, traditional and modern societies differ, first of all, in the role of man in these societies, which we will emphasize when analyzing the changes taking place in Ukraine.

We consider the transition from traditional to modern societies as a change in the social order, or rather, a qualitative change in its foundations. Modern society, as a phase of general social development tied to the present time, is fundamentally different from all previous phases of social development and is characterized by processes completely opposite to those observed in previous phases. As O. Peshkova writes, «centralization today is replaced by decentralization (regionalization), hierarchization and bureaucratization are replaced by democratization; standardization and collectivization are replaced by individualization. Traditional societies are organized and ordered as a «rigid whole» that exerts irresistible pressure on its parts (including the individual) ...» [17, p. 126]. In modern socio-philosophical thought, it is emphasized that the individual becomes «partial», feeling himself a part of something big, something that puts pressure on all its parts. «Partial» individual strives for combination, addition and fusion, and not for isolation, selection, a peculiar manifestation. In traditional societies, the significance of a person is determined by its contribution to the «whole», to the realization of goals of the «whole», by the degree of satisfaction of the needs of the «whole» [17, p. 128].

The transition from traditional to modern societies is accompanied by a transition from rigidly hierarchical structures to flexible, horizontal, network-like structures. The flexibility of structures contributes to the changeability of society. A changing and unstable society appears to the individual as uncertainty and requires not adaptation (adjustment to uncertainty loses its practical meaning), but transformation and the desire for transformation, based on the awareness of the flexibility of structures. Thus, in modern society, the significance of an

individual is determined by the presence and disclosure of its transformative potential.

The social order of modern society appears to be rooted in the mental layers of the social, in collective cognitive and symbolic formations, according to which the individual attribution of values and meanings, events and situations and, as a result, coordination of the behavior of individual stakes place.

The social order of modern society is an order of self-organization. But at the same time, social order is made possible only by the fact that alongside randomness (no matter how high its degree) there is always non-randomness of social interaction. On this basis, it can be stated that in any society both self-organization and organizational (under the influence of external factors) processes always take place, and the resulting picture, as the Ukrainian scientist L. Bevzenko writes, «is a consequence of the difficult superimposition of organization and self-organization as the main mechanisms of the emergence and change of the social order» [2, p. 160]. According to the L. Bevzenko, all social orders can be distinguished by the degree of their organization/self-organization. Traditional societies are characterized by a high degree of organization of the social order. But there are also such among modern societies. For example, societies with authoritarian and totalitarian regimes, which still exist in the modern world, are also characterized by high organizational order against the background of maximum disorder at the level of self-organization. In democratic, liberal and similar societies, on the contrary, the order of self-organization is high. In fact, the establishment of the order of self-organization leads to real democracy.

Following O. Kutsenko, we interpret self-organization as the process of forming the spatial, temporal and functional structure of the system, which arises spontaneously, is manifested by jump-like transitions with certain characteristics of the system and without purposeful influence from the outside [12, p. 9].

Therefore, not one of the modern societies is not 100% «modern». In each of them, to one degree or another, there are signs of a traditional society. In other words, all modern societies differ from each other by the «degree of modernity». The higher this degree, the more the social order is self-organizing, the higher the degree of involvement of the majority of adult capable members of society and social groups in the development and adoption decisions that are mandatory for all members of society.

Self-organization becomes possible only as a result of coherent interaction of individual human forces, motives, aspirations, goals, etc. We support the statement of N. Milyavska, who writes: «... It can be considered that outside the subject, the social organic system does not create prerequisites and grounds for its transformation, and self-organization, therefore, acts as an important form of manifestation of the subjective side of social development, as a special type of objectivity. Therefore, the inner essence of the social system is the process of self-organization, in which a kind of objectification of the subjective takes place through its integration and coordination...» [13, p. 20].

On this basis, it can be concluded that the development of democracy in Ukraine (as a modern society, according to T. Parsons) brings to the fore the problem of establishing a self-organizing social order (based on the inclusion

of individuals in the processes of creation and transformation of social reality), which is ensured by development civil society.

In the most general sense civil society is a system of non-governmental and non-commercial institutions and organizations. It should be noted that institutions can be conditionally divided into (externally) organized and self-organized according to the nature of their formation and initiation. Self-organized institutions arise spontaneously, functional connections in them are horizontal, management goals can change, the product and result of activity are probabilistic, not known in advance. Theoretically, self-organization is the process of arranging elements of one level of the system due to internal factors, without external influence on the system. However, practically no social system can exist without the influence of the environment. Thus, there is a certain influence on the self-organizing processes of the environmental conditions in which these processes occur. Institutions arising on the basis of self-organizational processes differ from purposefully organized ones in that the goals and tasks of functioning, the initiative for the emergence come from the members of this institutions, and the norms according to which the institutions operate are developed by their members themselves, and not only (and not so much) their founders.

Civil society is formed and functions on the basis of self-organization of its structures, and not on the basis of the organization of certain «founding» measures by the government, imposition of a line of behavior, etc. These will not lead to the formation of a civil society. The loss of the character of self-organization and its replacement by an external organization leads to the formation of a pseudo-civil society which is only an imitation of democracy. If the institutions of civil society did not arise through the true self-organization of socially active individuals and social groups, but were created artificially, initiated by the government, then their presence does not at all indicate the existence of a civil society.

Various forms of self-organization of citizens carry huge reserves of social, economic and cultural development of the state. At the same time, no matter what mechanisms of self-organization arise in modern society, for their relevant and trouble-free functioning, the norms of law (legal norms) are required [9, p. 92]. Legal norms are those important elements of the environment for civil society, which should necessarily accompany the processes of self-organization. Processes of self-organization in the social sphere not regulated by the state can have different vectors of practical implementation. Not all forms of association of people and relations between them, which are the result of self-organization processes and maintain autonomy in relation to the state, are positive in nature. Subjects of civil society should be considered only those associations that contribute to the realization of individual freedom, give it maximum autonomy, contribute to its spiritual and moral improvement, that is, have a socially positive character. In addition, they function within the framework of normal public legal awareness and legal norms.

Totalitarian religious sects, terrorist and other similar organizations, which profess the principles of violence, despite their self-organizing nature, are certainly not components of civil society. These organizations function within the framework of criminal law. Thus, according to the words of I. Klyamkin and

L. Timofeev, such organizations form a «quasi-civil» society [7, p. 128]. The phenomenon of quasi-civil society is also based on self-organizing processes.

Conclusions.

Summing up, it should be noted, that the necessary external conditions for the institutionalization of civil society is the presence of legal forms for the realization of the rights and freedoms of individuals. The role of law is to exclude the possibility of the negative self-organizing institutions. Modern civil society is a society of free self-organization of individuals. The role of civil society institutions is that they allow citizens to jointly develop goals and achieve them, combining their own efforts, entering into a dialogue with authorities, other public structures, defending their principles in public space. As already noted, institutionalization, development, functioning of institutions of civil society is possible mainly in legal forms. Despite this, in modern society the phenomenon of a quasi-civil society is quite widespread. We are convinced that this phenomenon requires further in-depth scientific analysis, as well as the search for ways to prevent its formation.

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INDIGENOUS RIGHTS IN CANADA: FROM DIVERSITY TO UNITY

Opanasenko Anton[1]

Annotation. The article is devoted to the issue of the legal status of Canada's indigenous peoples. The historical process of formation and development of legal regulation of relations between indigenous peoples, the state and the British Crown on the territory of Canada is analyzed. On the basis of a comparative analysis, two main branches of Canadian law dedicated to the researched issues are defined: Indigenous law and Aboriginal law. The study also provides a detailed description and analysis of the three main groups of Canada's indigenous population: First Nations or Indians, Inuit or Eskimos, and Métis. On the basis of the current Canadian legislation and judicial practice, the peculiarities and specifics of the legal status, special rights and procedure of representation of all three above-mentioned population groups have been clarified. The main reasons and features of the creation of a number of autonomous Inuit territorial formations, in particular, the province of Nunavut, which was separated from the Northwest Territories, are determined. The article also acquaints the reader with the features of special rights and features of the representation of First Nations, primarily through the conclusion of Numbered Treaties, the creation of Indian reserves and the maintenance of the Indian Register. An explanation is provided as to why the Métis are recognized as indigenous people in the framework of Canadian legislation despite their mixed American-European origin and why such recognition is based primarily on belonging to the relevant ethno-cultural community and not simply on the fact that a person is of mixed origin. Also, the study mentions individual communities, representative bodies and organizations, describes the order of their interaction with state authorities and local self-government, along with the order of recognition by one or another community of the indigenous population of its special rights arising from such legal status. In addition, the article identifies the main trends in the process of state recognition of the rights of indigenous peoples, the expansion of understanding of the rights of indigenous peoples, and the extension of these rights to an increasingly wide circle of both individuals and population groups.

Indigenous Rights in Canada: From Diversity to Unity.

[1] Opanasenko Anton, 3rd year PhD student, Institute of Law of the Taras Shevchenko National University of Kyiv (Department of Theory and History of Law and State), https://orcid.org/0000-0003-4373-5181, opanasenko987@gmail.com.

The current stage of the development of international law is characterized by a significant shift and rethinking of the understanding of collective rights, in particular the rights of minorities. More and more attention is paid to their protection and protection during the preparation of acts of international and national legislation. At present, it is worth acknowledging the fact that the latest trends in this field are increasingly taking on a completely opposite characteristic than before. If in the past legislators paid more attention to ensuring the equality of certain groups within society and preventing their discrimination, now, with the formal establishment of equality, the insufficiency of such an establishment to actually ensure it becomes obvious.

As a result of discrimination during different periods of time, some groups found themselves in a disadvantageous position, which in turn creates significant obstacles for the opportunity to realize their rights and interests for their representatives, despite their formal equality. Taking into account the previous narrowing of the rights of certain elements of society in view of their certain characteristics, i.e. negative discrimination, we are currently increasingly facing with cases of expanding rights or granting special rights to the bearers of such characteristics, i.e. positive discrimination.

Positive discrimination, by its very nature, is a transformational process designed to ensure a gradual transition from formal to real equality within the state and society. The groups that currently become the subjects of positive discrimination can include various types of communities: representatives of ethnic groups, religions, social strata, etc.

Key words: Canada, First Nations, Inuit, Métis, Indigenous, Aboriginal

Within the framework of the issue of granting special rights to a collective subject that was previously discriminated, a special place belongs to ensuring the rights of representatives of ethnic groups that have been negatively affected and persecuted by other elements of society. First of all, such ethnic groups should include indigenous peoples who, due to historic circumstances, found themselves in the composition of other state entities, which turned out to be incapable of ensuring their dignified existence as groups and as individuals.

The experience of the developed countries of the West, in particular the countries of Scandinavia, Canada, the USA, New Zealand, etc., shows their recognition of responsibility for the violation of the inherent rights of representatives of indigenous peoples and national minorities and their readiness to take all necessary measures to face the consequences of their own discriminatory policies by accepting obligations regarding protection of previously persecuted groups.

The Canadian experience in this regard is unique, because in this country the representatives of the indigenous population not only have the right to representation, but are also divided into three separate unique groups, which in turn determines the scope of their collective rights. Such a classification follows from the specifics of the culture of indigenous population groups, as well as the degree of influence of colonization and assimilation state policies that were previously directed at these groups.

In view of the above-mentioned, the purpose of this study is to analyze the current legislation of Canada in the field of ensuring the rights of indigenous peoples, an overview description of the main stages of its formation, to provide a definition and classification of all groups of the indigenous population of Canada, as well as the peculiarities of the realization of their collective and individual rights arising from from their special legal status as representatives of indigenous peoples.

As of today, Canadian legislation distinguishes First Nations, Inuit and Métis communities. The terms «Indian» and «Eskimo», previously used to refer to indigenous peoples, although still retained in a number of Canadian regulations, are now used less and less and are seen as somewhat pejorative. The collective terms «Aborigines» and «Aboriginal Peoples», delineating representatives of all three aforementioned groups, also, despite their wide use in the framework of legislation, can be considered as inappropriate and outdated remnants of colonization policy.

The term "First Nations" currently refers to the indigenous peoples of Canada living south of the Arctic Circle. The peculiarity of this population group, in addition to the territorial distribution of their cultures, is also the time frame of their formation. First Nations definition can be attributed exclusively to those communities that lived in the territory of modern Canada and had a formed culture and group identity before the arrival of European colonizers. As of today, 634 First Nations self-governing bodies are recognized by the state. Most of the representatives of this group live in the provinces of Ontario and British Columbia. Previously, the term «Indians» was used to define First Nations.

The Inuit are representatives of the indigenous peoples of Canada living north of the Arctic Circle. In historical retrospect, the main criterion for defining the Inuit was the territorial distribution of the respective cultures. The formation of the culture and group identity of the Inuit communities, like the First Nations, took place before the colonization of the North American continent. It should also be noted that the interaction between the Inuit and the European colonizers was somewhat limited due to the climatic features of the area where the Inuit culture spread, in contrast to the contacts between the First Nations and the Europeans. The term «Eskimos» was also used to refer to the Inuit.

Representatives of the mixed population, originating from both representatives of the indigenous American peoples and European colonists, are currently called Métis. This term is quite ambiguous, as it can mean all persons of mixed American-European origin, as well as individual communities that have their own unique syncretic culture. Regarding the latter, the definition «Métis Nation» is also used to emphasize the individuality of these communities, their special group identity and cultural unity. Métis nations are not simply a community of people of mixed descent, but rather communities of descendants of the first European colonists and the indigenous peoples of Canada who, through interaction and cohabitation, have formed a syncretic culture that is distinct from both European and Aboriginal cultures. In order to avoid controversial statements within this article, the term «Métis» will be used hereafter specifically to refer to the

respective mixed-descent communities with their own group identity, as is the case in Canadian law.

According to the 2016 Canadian census, representatives of all three of the above-mentioned groups (indigenous peoples) make up 4.9% of the country's population, or 1,673,785 people. 58.4% of the indigenous population or 977,230 people are First Nations, 35.1% or 587,545 people are Métis, 3.9% or 65,025 people are Inuit. Thus, of the total population of Canada of 35,151,728, 2.8% are First Nations, 1.7% are Métis, and 0.2% are Inuit. It is also worth noting that, as of today, self-identification with three indigenous groups is quite popular and widespread. An increasing number of persons of partial indigenous descent are inclined to adopt the identity of the respective indigenous people. The fact that among the youngest generation of Canadians (under 14), as of 2016, 7.7% of people identified themselves as representatives of indigenous peoples can serve as a clear confirmation of the above-mentioned trend, in contrast to the average figure of 4.9% among all age groups of population of Canada [16].

The fact that within the framework of the Canadian legal system, two separate sub-branches of law can be distinguished, designed to regulate the legal status, collective rights and peculiarities of the representation of indigenous peoples, is definitely noteworthy. The first of the two subfields is the so-called Indigenous Law, which is defined as a set of legal traditions, customs and practices of indigenous peoples and groups. The second of the aforementioned subfields is Aboriginal Law. Aboriginal law is primarily based on codified sources – the Constitution of Canada, laws and treaties of indigenous peoples with state authorities and local governments. Within the framework of Aboriginal Law, the constitutional rights of indigenous peoples (mostly the right to land use and traditional livelihood) are regulated. Thus, Aboriginal Law determines the order of interaction of indigenous peoples with the state and its bodies, while Indigenous Law is designed to regulate legal relations within indigenous groups that arise between their representatives [7, p. 196].

The rights of Canada's aboriginal peoples are mentioned in the Canadian Constitution, particularly in Part II (section 35) of the Constitution Act, 1982.

Subsection 35(1) declares the full recognition of Aboriginal and treaty rights of Aboriginal peoples. Subsection 35(2) defines collective entities that, according to the Constitution, are recognized as aboriginal peoples. Indians (First Nations), Inuit (Eskimos) and Métis are recognized as such communities. Subsection 35(3) interprets the concept of treaty rights mentioned in Subsection 35(1). Treaty rights, in this case, are considered to be indigenous land rights that were previously regulated by a series of treaties, also known as Numbered Treaties or Post-Confederation Treaties. Subsection 35(4) also proclaims the principle of gender equality in the process of realizing the above-mentioned rights, these rights are guaranteed to representatives of both genders.

Subsection 35(1) of the Constitutional Act of 1982 promulgates a special procedure for the protection and coordination of a number of issues concerning Aboriginal peoples and their rights alongside their representation. Therefore, the Government of Canada and its provincial governments are required to adhere to the principle that any amendments to Subsection 24 of Section 91 of

the Constitution Act 1867, Sections 24, 35 of the Constitution Act of 1982 are made in accordance with a special procedure, which provides for the fulfillment of two conditions. The first condition is the requirement to involve the Prime Minister of Canada and the first ministers of the provinces in the constitutional conference, which is called by the Prime Minister, if its agenda involves making changes to the above-mentioned normative provisions. The second requirement is the involvement of representatives of aboriginal peoples by the Prime Minister of Canada in the discussion of relevant legislative initiatives [3].

Section 25 of the Constitution Act of 1982 guarantees the inadmissibility of abrogation or limitation of the scope of rights of an aboriginal, treaty or other nature relating to the Aboriginal Peoples of Canada, in particular the rights proclaimed by the Royal Proclamation of October 7, 1763, as well as the rights and freedoms acquired (already acquired and the ones that may be acquired) as a result of treaties regarding the rights of Aboriginal Peoples to land.

Subsection 24 of Section 91 of the Canadian Constitution Act of 1867 states that full and exclusive legislative competence with respect to Indians and lands reserved for Indians is reserved for the Parliament of Canada [2]. In addition, the provisions of the Section contain a direct ban on referring the above-mentioned range of issues to local or private jurisdiction, in particular to the jurisdiction of provincial legislatures.

In historical retrospect, the Royal Proclamation of October 7, 1763, promulgated by King George III, was the first legal act regulating the relations between the state authorities of the British Empire, and then of Canada. Although agreements with representatives of indigenous peoples were concluded by the British Crown earlier (the first such agreement was concluded in 1676), after the American Revolution and the War of Independence, such acts remained in force only in Canada. The above-mentioned Proclamation is regarded as containing legal obligations imposed not only on the British Crown, but also on Canada as a state. At one time, it was in the Proclamation that the division of the North American possessions of the British monarchy into those belonging to European colonists and those belonging to First Nations was established [11]. In this way, the status of indigenous peoples was established for the peoples of North America, which resulted in their proper ownership of the lands of their traditional residence. These communities were recognized as autonomous political collective subjects of law alongside other non-indigenous community governments. The monarch assumed the role of mediator in communication between indigenous peoples and colonists [1]. The proclamation established the constitutional and moral basis of the legal relationship between indigenous Canadians and the state represented by the monarch. The constitutional duty to ensure the implementation of the guarantees of the rights of Aboriginal Peoples was entrusted to the British Crown.

A similar view of the Crown's duty was further confirmed in the Supreme Court of Canada 1990 R. v. Sparrow decision. This case concerned the rights of representatives of First Nations to use water resources. In 1990, Ronald Edward Sparrow, a representative of the Musqueam Indian Band, was caught

fishing with a net 82 meters long. According to Canada Fisheries Act of 1985, the maximum length of a net for fishing under a license granted for Musqueam could not exceed 45 meters, so Sparrow's net was 37 meters longer than the maximum allowed.

Sparrow acknowledged his use of the 82 meter long net, but claimed that under Section 35 of the Constitution Act 1982, he was exercising his constitutionally guaranteed aboriginal right. The trial court found that Article 35 protects only treaty codified and recognized rights, and therefore the right to fish is not guaranteed. The appeal against the decision of the court of first instance was rejected, which was motivated by the lack of evidence base. Sparrow eventually appealed to the Supreme Court of Canada to protect the right guaranteed to him as an aboriginal Canadian by Section 35 of the Constitution. The decision was delivered unanimously by the Supreme Court, with Justices Brian Dixon and Gérard La Forest, in particular, noting that Sparrow was exercising an inherent right that existed long after the legislation of Canada and its individual provinces, and was therefore guaranteed and protected by Article 35 of the Constitutional Act of 1982 [3].

As a result of the consideration of this case, the currently widespread practice known as the Sparrow Test was initiated. This test should be considered as a procedure for determining one or another right of representatives of the aboriginal population as inalienable and guaranteed. This procedure involves providing answers to three clauses. According to the first paragraph, it is determined whether a certain practice, custom or tradition is one that has existed continuously since the time preceding the colonization of the relevant territories by Europeans (existing law). If the answer is yes, the second point determines whether the restrictions imposed by national or provincial legislation are actually restrictions of aboriginal law. If the answer to the second question is also affirmative, then it is necessary to find out whether the legally established restriction is justified and necessary. The Supreme Court of Canada has also clarified the meaning of the phrase «existing right». The existing right refers to the practice that was continuously implemented at the time of adoption of the Constitutional Act in 1982. The Fisheries Act of 1985, in turn, was not intended to abolish but only to regulate the process of fishing, and therefore the right to catch fish belonged to Sparrow.

Also, Sparrow's right was declared to be «recognized and affirmed» along with other rights of aboriginal Canadians. This phrase also recognized the honorable duty of the Government of Canada and the Crown to limit their own powers and refrain from actions that narrow the scope or procedure for the exercise of aboriginal rights. The Supreme Court emphasized that the «honor of the Crown» is at stake in the process of considering cases related to the implementation of the above-mentioned range of rights.

At the same time, aboriginal rights were still not recognized as absolute, but their legislative limitation requires sufficient grounds for this. Among such grounds were stated: acceptable legislative purpose (including preservation, protection and management, against excluding «public interest»), the minimum level of restriction of indigenous rights, the need for consultations with the

aboriginal community whose rights may be limited, the need for compensation in the event of expropriation.

Following the Supreme Court of Canada Sparrow v. Crown case, federal and provincial legislation may limit the rights of aboriginal communities only if such steps are sufficient, reasonable and necessary, as aboriginal rights have been recognized as having a legal nature distinct from other categories of rights.

A logical extension of the Sparrow case was the 1996 R. v. Van der Peet case, which developed another test for whether a particular right is intrinsically linked to the traditional practices of indigenous peoples. This case also concerned fishing.

In 1987, Stephen and Charles Jimmy fished under a license that gave them the right to engage in this activity in the territory of the state of British Columbia. This license was based on the right of indigenous peoples to use natural resources, as both men belonged to the respective communities. After catching the fish, Charles Jimmy gave it to his partner Dorothy van der Peet, who belonged to the Stó꞉lō indigenous people. Van der Peet, having previously cleaned and frozen the fish, offered it to her acquaintance Marie Lugsdin for a total price of 50 Canadian dollars (5 for each of 10 fish). Lugsdin, in turn, was of European descent, and therefore could not have legally obtained the fish caught by Stephen and Charles Jimmy. As a result, a case was brought against Dorothy van der Peet, because the right to exchange or sell fish, according to the court, was not included in the rights of indigenous peoples to fish. The court of first instance took a similar view of the rights of aboriginal Canadians, a decision that was later overturned by the Court of Appeal, but was again recognized as valid by the British Columbia Court of Appeal.

The case was subsequently reviewed by the Supreme Court of Canada, which upheld the previous decision and provided detailed clarifications, which later became known as the «Van der Peet Test». This test consists of 10 clauses and in its essence is mostly a detailing and interpretation of the provisions of the previously mentioned Sparrow test, but it contains some fundamental innovations.

Clauses 3 and 7 of the Test declare that the rights of the aboriginal population are primarily those practices that are integral to the cultures of the respective peoples and are independent of other external practices and influences. It is emphasized that such practices may not be unique, i.e. common among several peoples, but they should occupy a central place within the framework of traditional livelihood of the indigenous people [14]. Thus, fishery must be an element of the unique culture of an indigenous people, but this does not mean that fishery is practiced only by one indigenous people.

Clause 10 establishes the possibility of recognizing as the right of the indigenous people also the practices that arose after the colonization of the territories of modern Canada by Europeans, however, in order to recognize such an influence, a direct cause-and-effect relationship must be established between the influence of European culture on the indigenous Canadians, as well as the emergence of a corresponding livelihood as a result of such impact. Thus, the European influence is considered relevant only in the case of its determining

role in the formation of certain livelihoods of representatives of the indigenous population of Canada.

Another of the most significant court cases in the field of the rights of the indigenous peoples of Canada is rightfully considered the case of R. v. Powley in 2003. This case concerned Canada's recognition of the Métis rights as the indigenous population of the country, as well as other rights belonging to such a population, in particular, the right to use natural resources in the places of traditional residence of the community. Such a move was logical within the wider recognition of Métis as an indigenous population of Canada along with First Nations and Inuit.

It is also worth noting the fact that at first only communities of exclusively Native American origin were recognized as the indigenous population of Canada. Such logic did not apply to the Métis, because these communities are the result of the synthesis of both American and European ethnocultural elements, the emergence and formation of which, however, occurred in the times that preceded the large-scale colonization of the territories of modern Canada by Europeans. The presence of the European component in the process of formation of the Métis caused a certain skepticism and reluctance to recognize them as an indigenous population.

Let's go back to the case of R. v. Powley. In 1993, Métis Steve Pawley and his son Roddy Powley were hunting moose in Ontario. Both men belonged to the Metis community and did not have a hunting license, which gives the right to shoot moose. It's also worth noting that the hunt didn't take place during hunting season, when shooting moose can be permitted under license. Father and son were accused of poaching and a case was initiated against them. The Powleys pleaded not guilty, citing the fact that they are Métis and therefore, as members of the aboriginal community, have a right to hunting that cannot be restricted by Ontario's hunting laws. The court of first instance issued a decision in which it confirmed Powleys' right, noting that the Métis people belong to the indigenous population of Canada, and therefore have the right to the traditional use of natural resources and traditional livelihood for their community. Subsequently, the prosecutor filed an appeal, which was rejected by the court of appeal, a similar fate befell the prosecutor's appeal to the Ontario Court of Appeal.

Ultimately, the case was considered by the Supreme Court of Canada, which affirmed the decisions of the courts of previous instances, providing extensive reasoning. First, the Supreme Court has indicated that Métis, along with First Nations and Inuit, are indigenous or aboriginal peoples [12]. Regarding the determination of Métis community membership of certain rights, it was decided to apply slightly modified versions of the Sparrow and Van der Peet tests. For the most part, the «Powley test» really duplicates the above-mentioned previous tests for determining the inalienability of certain rights of the indigenous population, but it also has certain differences.

In particular, there are no mentions of the persistence of certain practices from the time preceding the colonization of the American continent by Europeans, which is quite logical, because Métis communities appeared as a result of the mixing of the first Europeans who arrived in the New World with

Native Americans. On the other hand, Métis could not simply be recognized as communities or persons of mixed American-European origin. In view of this, the Court provided an explanation according to which the rights of the Métis to one or another practice or livelihood are recognized as existing, in the case of proof of the continuous realization by the Métis of the corresponding right before the spread in the territory of their traditional residence of the political and legal control of the Europeans (the first Europeans appeared in these areas in small numbers two or three centuries before the beginning of mass European colonization and, by creating families with Native Americans, formed Métis communities).

Métis, as well as representatives of Inuits and First Nations, were recognized as only those individuals who were recognized by the respective communities. On the other hand, the person also had to identify oneself distinctely as Métis, i.e., the bearer of a unique separate syncretic culture, which is different from both the culture of Native Americans and the culture of Europeans. Also, in order to prove belonging to one or another indigenous rights community, it was necessary to prove its distinctiveness from First Nations communities, i.e. the existence of the Métis community itself, which derives from both First Nations and the first Europeans of Canada. In other respects, the procedure for establishing the inalienability of one or another Métis right completely repeated a similar procedure for First Nations and Inuit. It is also worth mentioning that the Métis are the descendants of representatives of the First Nations and Europeans, because as a result of the contacts between Europeans and Inuit, only one stable syncretic community appeared, namely the NunatuKavut or Southern Inuit in the Labrador area. The peculiarity of this community is the fact that the Inuit culture in this case turned out to be dominant, while the Europeans were simply assimilated, their influence on the formation of the ethnos was insignificant. Until 2010, representatives of this community were often called Inuit-Métis or Labrador Métis, but the name was changed, because Métis meant only representatives of mixed European and First Nations communities. There was also no need to distinguish between NunatuKavut and other local Inuit, because this group is the only indigenous ethnic group of the region, and the Europeans were simply assimilated by the Labrador Inuit. The identity of NunatuKavut and their culture is distinctly Inuit. The community is currently in the process of registration and recognition as indigenous peoples and holders of the rights that emerge from it.

Within the framework of this article, the so-called treaty rights were repeatedly mentioned, the codified sources of which are the Numbered or Post-Confederation Treaties. These 11 treaties are agreements concluded between the First Nations and the Canadian Crown between 1871 and 1921 (Treaties I, II – 1871, Treaty III – 1873, Treaty IV – 1874, Treaty V – 1875 (amended in 1908), VI Treaty – 1976-78 (supplemented in 1908), VII Treaty – 1877, VIII Treaty – 1899, IX Treaty – 1905–1907 (supplemented in 1929-1930), X Treaty – 1906, XI Treaty – 1921) [8, p. 3]. The Numbered Treaties enabled the Government of Canada to develop the lands specified in the Treaties and to use the natural resources of the respective territories. Currently, the lands specified in the Treaties are located

in the Canadian provinces of Alberta, British Columbia, Manitoba, Ontario, Saskatchewan and the Northwest Territories. According to these bilateral agreements, Canada expanded its own territories, while at the same time placing upon itself the obligation to ensure and protect the rights of First Nations and their representatives [9, p. 28]. Since First Nations is an umbrella term, we should not be talking about a single, but rather a whole range of collective subjects (in this case – individual indigenous peoples with their own culture, language and representative bodies). Considering the above-mentioned, it is quite logical that Numbered treaties were concluded with separate peoples, the terms of the treaties are also different and individual for each separate document. Treaty I was concluded with the Chippewa and Swampy Cree, Treaty II – with the Chippewa, Treaty III – with the Saulteaux Ojibwe, Treaty IV – with the Cree and Saulteaux Ojibwe, Treaty V – with the Saulteaux Ojibwe and Swampy Cree, Treaty VI – with the Plain and Wood Cree, VII Treaty – with Niitsitapi, Kainai, Piikáni, Tsuut'ina and Nakoda, VIII Treaty – with Cree, Tsa'tinne and Chipewyan, IX Treaty – with Ojibway and Cree, X Treaty – with Chippewyan and Cree, XI Treaty – with Dene Tha, Tłı̨chǫ, Gwich'in and Sahtú.

The main special normative legal act dedicated to the issue of the rights of the indigenous peoples of Canada is the Act to Supplement and Consolidate the Laws Concerning Indians or the Indian Act of 1876. This document has been repeatedly changed and supplemented throughout its long history, but it still retains its legal force and a prominent place in the framework of the regulation of relations between the state and the indigenous population of Canada. The main role of this act is to determine the collective legal personality of indigenous population groups along with the individual rights of individual representatives of such communities.

Let's consider the collective rights proclaimed by the Indian Act. The main definitions used by the Act in this context are Indian reserve, Indian band and band council. A reserve is defined, according to the provisions of Section 2 of the Act, as a plot of land, the legal ownership of which belongs to Her / His Majesty (depending on the gender of the monarch), which was allocated by Her / His Majesty for the purpose of use in the interests of the band. The band is defined by the provisions of the article as a community of Indians, for the satisfaction of the common interest of which a land plot, the legal right of ownership of which belongs to Her / His Majesty, which was allocated by Her / His Majesty. Bands of Indians, in accordance with the Act, can unite in the band councils to make decisions about the livelihood of representatives of First Nations [6].

This document also provides a clear and detailed list of criteria for granting a person the legal status of an Indian. Persons who have received such legal status are accordingly admitted in the Indian Register and are called Registered Indians. It is also possible to distinguish several categories of people of indigenous origin – Treaty Indians and Non-status Indians. Registered and Treaty Indians are united in the Status Indian group [5]. Treaty Indians are representatives of signatory nations of the Numbered Treaties, their rights related to the status of aboriginal inhabitants of Canada derive from these treaties, the criteria for assigning a person to one or another nation are usually determined by the people

themselves. It is also interesting that Indian bands, which are representatives of both signatory nations of the Numbered Treaties, as well as representatives of other nations, can determine their own criteria for admitting a person to their membership, which quite often differ among different groups. Currently, there are more than 600 Unions, more than 200 put forward their own requirements for membership, and the rest accept people into their membership if the person has the status of an Indian according to the Register. Thus, we come to the conclusion that admitting a person in the Indian Register is first and foremost a recognition of the person's belonging to the indigenous people by the state, which does not mean automatic recognition of such affiliation by the indigenous people themselves.

Let's consider the requirements that the Indian Act puts forward for persons who wish to obtain the status of an Indian. These requirements have changed many times, given the fact that the Act has been in force since 1876. Until 1951, the main requirement was ethnic origin, and obtaining status was also linked to the presence of ancestors on the male line [10, p. 589]. The 1951 amendments primarily changed the ethnic concept of status to a registratory one. These amendments also removed a number of discriminatory provisions that regulated the loss of Indian status. In particular, such a status was lost by a person in the case of: obtaining the right to vote, joining the armed forces, obtaining secondary special or higher education or a profession, living outside Canada for more than 5 years. Thus, the status of an Indian de jure and de facto deprived a person of civil rights. In the case of obtaining an education or a profession, a person who had the corresponding status, on the one hand, acquired civil rights, on the other hand, lost this status. Also in 1951, the Indian Register was created. Since 1956, persons entered in the Register have received a special card, which is also an identity document.

The 1985 amendments removed a number of provisions discriminatory against women from the Act. In particular, the norms regarding women's loss of status in the case of marriage to man who did not have Indian status. If such women had children, these children also lost their Indian status. Children born out of wedlock to a mother with status and a father without status could not receive status, although in the opposite situation, when the father had status, the children did receive it. Also, the rule regarding deprivation of the Indian status of persons whose mother or paternal grandmother did not have such status was removed. According to the amendments, all persons whose status was revoked due to the discriminatory provisions of the Act were reinstated in their rights. More than 100,000 people regained Indian status.

Currently, the main criterion for admitting a person in the Indian Register is compliance with the second-generation cutoff rule. The rule primarily proclaims the requirement of the descent of a person claiming Indian status from persons who had such status. A person whose one parent does not have status, and in another line only one of the ancestors (grandfather or grandmother) has status, cannot obtain Indian status [15]. In most cases, this means that individuals with less than 50% Indian ethnic origin are not eligible to claim Indian status. It is also interesting that the Act contains provisions not only regarding ancestors who

had status, but also regarding those who could claim such status, but did not receive it, or were illegally deprived of it. Descendants of such persons can also claim the status of an Indian, however, taking into account the above-mentioned rule, in this case, it is not the presence of ancestors admitted to the Register that is determined, but the presence of the ancestors who could meet those criteria that would allow them to be admitted in the Register.

The most serious of the problems that arose as a result of the adoption of amendments to the Indian Act and the signing of the Numbered Treaties was the fact that these documents regulated the collective and individual legal status of only Indians or First Nations, but not Inuit and Métis.

The regulation of Inuit rights arose from the specifics of Inuit living conditions. As you know, representatives of this group inhabit the territories of the far north. The climate of these lands caused a small number of European colonists to settle there, which eventually led to the fact that the Inuit still make up the vast majority of the population of these regions. The territory of traditional Inuit residence in Canada is called Inuit Nunangat and is located in the north of the modern provinces of Newfoundland and Labrador, Quebec, Nunavut and the Northwest Territories. On April 1, 1999, land was allocated from the Northeast Territories and the territory of Nunavut was created, which became an Inuit autonomy with a self-governing administration. 85% of the territory's population are Inuit, who have special rights regarding the use of natural resources, as well as the preservation and development of their own language, history and culture. The Inuit languages Inuktitut and Inuinnaqtun are the official languages of Nunavut along with English and French.

Also, within the framework of other Canadian provinces and territories, autonomous administrative-territorial units of the Inuit were created, where representatives of this people (peoples) have rights similar to the Inuit of Nunavut. Thus, in 1984, the Inuvialuit (Western Inuit) or Nunangit Settlement Region was formed on the territory of the Northwest Territories, in 2005 the territorial autonomy of Nunatsiavut was formed in the north of the province of Newfoundland and Labrador; the process of recognizing and granting autonomy rights to NunatuKavut Inuit has already started. On the territory of the French-speaking province of Québec, the process of creating the territorial autonomy of Nunavik in the north, where more than 90% of the population are Inuit, is still ongoing. Inuit autonomies are quite broad, because they include the creation and functioning of legislative and executive bodies, and in some places the presence of the post of president (NunatuKavut, Nunatsiavut) and prime minister (Nunavut) of the autonomy.

The system of self-organization and representation of the Métis, who are Canada's third indigenous population group, is somewhat different. Difficulties in regulating their legal status lie, on the one hand, in the absence of a separate register or legally defined status, as is the case with Indians or First Nations, on the other hand, Métis do not have their own territorial autonomy like the Inuit, because they do not constitute population majority in their traditional places of residence. Métis interests are currently represented by two organizations: the Congress of Aboriginal Peoples and the National Métis Council. In its

activities, the Congress of Aboriginal Peoples focuses on Non-Status Indians, that is, persons who, while being native Canadians, live outside the boundaries of reserves, do not have the status of an Indian or Métis. Congress was formed in 1971, and the Métis National Council was formed in 1983 by Métis organizations that were dissatisfied with the Congress's position that it viewed its members as First Nations and Métis simply as descendants of intermarriage. According to the position of the National Métis Council, the Métis are a distinct people with a common history and culture, which was formed around the fur trade in the central-western territories of North America in the 18th and 19th centuries. As of today, the National Metis Council has its territorial branches within the administrative-territorial units where Metis traditionally live. These affiliates are: Métis Nation Secretariat of Ontario, Métis Federation of Manitoba, Métis Nation of Saskatchewan, Métis Nation of Alberta and Métis Nation of British Columbia. The National Métis Council is recognized by the Government of Canada as the representative body of the Métis.

A person's Métis community membership is established at the regional level, the criteria for such membership may differ in certain details, but mostly deal with the necessity of having Métis ancestry and identity. A person applying for recognition by the organization must identify oneself as Métis, be a carrier of the relevant folk culture, and also prove that among one's ancestors there were Métis who came from places of traditional Métis residence. The presence of ancestors among the First Nations or Inuit does not mean that a person belongs to the Métis, because the latter are a separate people, albeit of mixed American-European origin. The criterion of a person's cultural belonging primarily involves knowledge of Metis culture and history, the Métis languages of Michif (a Creole language based on French, Cree and Dene), Bungi (a Creole language based on English, Scottish languages: Scots, Gaelic and Norn, as well as Cree and Ojibwe) and the Métis dialect of French.

The rights of Métis and Non-Status Indians were clarified by the Supreme Court of Canada's 2016 Daniels v Canada decision. The plaintiffs in the case were Harry Daniels, a Métis activist, and his son Gabriel, Leah Gardner, a Non-Status Indian from Ontario, and Terry Joudrey, a Non-Status Indian from Nova Scotia. They demanded recognition for their communities of the Canadian aboriginal rights then held by Status Indians, including the recognition that Non-Status Indians and Métis are Indians within the meaning of Subsection 91(24) of the Constitution Act of 1867. The plaintiffs argued their claims by the fact that Non-Status Indians were descended from persons who were deprived of such status due to the discriminatory provisions of the Indian Act (which were deleted by the amendments of 1951 and 1985), while Métis, despite their mixed ancestry, at the time of the spread of political and legal control of Europeans to the places of their traditional residence had already formed as a separate ethno-cultural community and generally lived in these areas before the arrival of the main body of Europeans and large-scale colonization.

The Federal Court in 2013 agreed to recognize the claims of the plaintiffs as legitimate, which it justified by the fact that the Indian Act limited its provisions to a broader understanding of the concept of Indians, which is provided for by

the Constitutional Act [4]. According to the Court, the term «Indian» refers to all people of Native American descent, regardless of whether a particular person or group is exclusively Native or partially Native. Miscegenation and mixed descent cannot be a ground for excluding a person or group from the Indian status, whose rights are declared in Subsection 24 of Section 91 of the Constitution Act. In this regard, the Court determined that it was irrelevant whether persons of mixed descent were Non-Status Indians or Métis, since they all belong to indigenous groups, and the term «Indian» acts as an umbrella term to describe all indigenous Canadians, including the Inuit.

The constitutional understanding of this term was extended by the decision of the Court to all three groups of the indigenous population of Canada, regardless of their status and registration as indigenous Canadians. Citing R. v. Powley, the Court held that, within the constitutional framework, the Métis are considered Indians in the sense that they are indigenous, although they may identify as a group separate from Indians or First Nations, but the Powley test applies only in specific cases, when it is established that one or another community has one or another right, taking into account the historical retrospect and the continuity of the realization of such a right.

In the same 2013, the Government of Canada filed an appeal against this decision of the Federal Court. The Federal Court of Appeal upheld the previous decision with respect to the Métis, but reversed it with respect to the Non-Status Indians. The original plaintiffs then appealed to the Supreme Court of Canada, which was upheld in full and the orinigal court's decision was reinstated. In this way, a logical point was made as to which groups should be classified as indigenous in Canada, and the final decision proved to be democratic and anti-discriminatory, because none of the groups of indigenous Canadians were deprived of their proper legal status.

Endnotes.

Summarizing the aforementioned, we come to the conclusion that despite the wide diversity of groups of Canada's indigenous population and the differences in the approaches and methods of regulating their collective and individual rights, there is currently a fairly clear tendency to unify legislation in this area. All three groups of Canadian aboriginal inhabitants, namely: First Nations or Indians, Inuit or Eskimos and Métis, are recognized as the indigenous population of Canada according to current legislation and judicial practice. The only difference in the regulation of the rights of these population groups at present is the creation of territorial autonomies of the Inuit, because the latter constitute the absolute majority of the population in the places of their traditional residence.

The main trend in the development of aboriginal law in Canada is its significant liberalization, which is accompanied by constant rethinking and introduction of changes to it, primarily of an anti-discriminatory nature. In this way, the legislation in the field of indigenous peoples was cleared of provisions that deprived indigenous Canadians of civil rights, discriminated against indigenous women, and also limited the rights of representatives of these population groups depending on whether they have, in addition to Native American, European ancestry. Along with the First Nations and the Inuit, the Metis, a people that

emerged as a result of the syncretism of the culture of the Native Americans and the first Europeans who arrived in North America, also received legal protection and protection.

The Supreme Court of Canada in Daniels v. Canada in 2016 emphasized that Canada recognizes all three communities as Indigenous Peoples of Canada, and therefore has an obligation to protect them under Subsection 91(24) of the Constitution Act. The importance of ensuring and realizing the rights of Canada's indigenous population has been declared, in particular, not only as a duty of the state, but also as a matter of honor for the British Crown. By the same decision, it was recognized that the interpretation of constitutional provisions regarding indigenous peoples should be as broad as possible, and narrowing their content is inadmissible. Limitation of the special rights of representatives of the indigenous peoples of Canada is not allowed, regardless of whether or not a person is admitted to various treaties or registers, because the main criteria for classifying a person as an indigenous Canadian are the origin, which is fully or partially indigenous, as well as the desire of the person to identify oneself with the respective culture or population group.

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HISTORICAL AND LEGAL ANALYSIS OF THE 1922 CIVIL CODE OF UKRAINIAN SSR ON IDENTIFYING NORMS FOR LEGAL REGULATION OF CONTRACTUAL RELATIONS IN THE FIELD OF INHERITANCE

Osokin Andriy[1]

Annotation. This research article is devoted to the study of the emergence of mechanisms for regulating relations in the sphere of inheritance with the help of contracts in the Civil Code of the Ukrainian SSR of 1922. The only norm available in the Civil Code of the Ukrainian SSR of 1922, which provides the possibility of concluding a contract for the purchase and sale of shares in the inheritance, has been identified and analysed. Two norms which indirectly allow the possibility of settlement of inheritance relations with the help of contracts have also been identified. Based on the conducted research, the author of the article offers independent conclusions and opinions that the Civil Code of the Ukrainian SSR of 1922 already admitted the possibility of contractual regulation of certain elements of inheritance relations.

Key words: succession, inheritance, sale of inheritance, inheritance contracts, heirs.

Introduction. Civil law is currently in a state of transformation from post-socialist law to classical civil (private) law, and a re-codification of the Civil Code of Ukraine is envisaged [1]. Along with this, civil legal relations in Ukraine are currently governed by the Civil Code of 2003 and other private legal regulations which do not contradict it. All current legislation, including civil law, was formed on the basis of the Soviet legislation, which originated in the revolution of 1917, when all the achievements of legal science, reflected in the bourgeois legal acts of that time, were abolished and were disregarded by virtue of their belonging to the capitalist rules regulating social relations, and the new communist authorities established completely new rules to regulate civil relations. These processes did not bypass inheritance law either when the right of inheritance was altogether annulled as failing to meet the needs of the working-class and peasant society of that time. However, soon after that, a special section entitled “The Right of

[1] Osokin Andriy, post-graduate student of V.M. Koretsky Institute of State and Law of NAS of Ukraine, ORCID 0000-0002-2756-731X.

Inheritance" regulating inheritance relations appeared in the Civil Code of the Ukrainian SSR adopted in 1922 [3, p. 72–77].

The aforesaid testifies to the fact that the legislator has since acknowledged that radical changes in the civil-law legislation such as the abandonment of norms regulating inheritance are erroneous since inheritance, as a procedure for the transfer of rights and obligations from the deceased to the heirs, has not disappeared, even with the refusal of the State to regulate it. In turn, the existing normative legal acts available at that time, which were intended to regulate related branches of law, and which, as expected, were supposed to streamline hereditary legal relations, could not regulate these relations due to the specificity of the object and subject of the regulation of hereditary relations.

At the same time, the legislator devoted a significant role to the contractual regulation of civil relations in the Civil Code of the Ukrainian SSR, as amended in 1922. It is well known that contracts have regulated and continue to regulate the dominant part of private legal relations. In turn, the branch of inheritance law, referring to private law, is the least subject to the contractual settlement of relations. To understand the development vector of the possibility of regulating hereditary relations with the help of contracts, it is necessary to analyze the emergence of these legal relations as well as the first normative legal acts that regulated them.

This article offers an analysis of the Civil Code of the Ukrainian SSR as amended in 1922 to identify and analyze the norms that regulated specifically contractual relations in the area of inheritance at that time, as well as to identify and analyze the norms that did not directly regulate, but implicitly permitted the use of contractual structures to regulate relations between participants in the area of inheritance without a direct reference to the norms of law.

Research status. Many well-known Ukrainian lawyers were involved in the study of the problems of hereditary relations. At the same time, fewer works have been devoted to the study of the possibility of using contracts to regulate relations in the field of inheritance. This topic has been studied to some extent by Yu.O. Zaika, Yu.Ye. Zinkevych, L.V. Kozlovska, O.Ye. Kukhariev, I.P. Orlov, O.P. Pecheny, O.O. Tieriekhova.

However, the scholars have studied the specified subject matter sporadically, exclusively from the standpoint of normative-legal regulation of certain types of contracts, which can be applied in the sphere of inheritance under the current Civil Code of Ukraine of 2003. Thus, Yu. O. Zaika addresses the specifics of the legal regulation of the contract for inheritance management. Yu. Ye. Zinkevych studies contracts between heirs on the inheritance distribution. In the author's opinion, general theoretical aspects concerning the regulation of contractual relations in the field of inheritance have been paid the greatest attention by O. Ye. Kukhariev [6], [7, p. 233–308] and O. P. Pecheny [5, p. 534].

Thus, I.P. Orlov and O. Ye. Kuhariev noted that in the period of the validity of the 1922 CC of the USSR, the possibility of subjects in hereditary legal relations to influence the dynamics of such relations through the implementation of legally relevant actions was reduced to a minimum [4, p. 11]. The specified above, in the author's opinion, should be understood in such a way that the use of dispositive

methods for regulating inheritance relations, including the use of contractual structures by subjects of inheritance relations was reduced to a minimum by the legislator.

At the same time, the aforementioned does not mean that the use of contractual structures to regulate inheritance relations was prohibited altogether.

Problem statement. This article offers an analysis of the 1922 Civil Code of the Ukrainian SSR in order to identify its norms, which permitted the use of contractual relations in inheritance and regulated these relations, or those which, although did not directly indicate the possibility of using contractual structures, but obviously permitted their use or did not prohibit them. The identification and analysis of these norms are essential for understanding the trends in the development of contractual regulation of inheritance relations and their regulatory and legal support.

Presentation of the main material. Article 1 of the Decree of the Council of People's Commissars of the Ukrainian SSR "On Abolition of Inheritance" issued on March 11, 1919, abolished the right to inherit both by law and by will for all property located in the territory of the Republic [2, p. 268]

At the same time, such radical approaches to modifying the normative-legal regulation of civil relations of that time and the abandonment of the already established foundations, the introduction of completely new rules of regulation could not ensure a qualitative streamlining of these relations. The legislation that existed at the time was not consistent with the system of measures proclaimed for the development of the new economic policy. Therefore, it was imperative to introduce new changes and adjustments.

The first step on this path was the Resolution of the Second Session of the All-Russian Central Executive Committee of May 22, 1922, "On the Basic Private Property Rights Recognized by the RSFSR, Protected by Its Laws, and Defended by the Courts of the RSFSR", and its analogue in the Ukrainian SSR – the Resolution of the All-Ukrainian Central Executive Committee of July 26, 1922, "On the Basic Private Property Rights Recognized by the USSR, Protected by Its Laws, and Defended by the Courts of the USSR". These normative legal acts defined the basic rules of inheritance for the first time. At the same time, there were no real changes in the inheritance procedure as a result of the Decree and Resolutions due to the declarative nature of these normative legal acts. Furthermore, with insignificant development of legal thought regarding the law of obligations at that time in general and contractual relations in the field of inheritance in particular as well as taking into account the specific political conjuncture of that time and the preference for imperative methods of regulating relations over dispositive ones, there were not even minor hints at the possibility of using contractual structures to regulate relations in the field of inheritance.

At the same time, it had already become clear to scholars by that time that regardless of how effective and universal the law might be from the legislator's point of view, it was impossible to regulate all legal relations falling within the sphere of its regulation solely by peremptory methods. In this regard, it is necessary to provide ample opportunity for the subjects of civil legal relations

to use methods of self-regulation and to offer the possibility of using contractual methods to regulate these relations.

Although inheritance law in general, given its specific nature, is the least inclined to self-regulation and the use of contractual means of regulation, the elements of using contractual regulation in inheritance relations were already reflected in the first codified compendium of civil normative legal acts of the Soviet Union, and soon – in the USSR – in the Civil Code of the USSR of 16.12.1922. These were codified acts of civil legislation, rather than collections of civil regulations, as it was earlier in the Russian Empire (the Code of Laws).

In the USSR, the first Civil Code was adopted by the Decree of the All-Ukrainian Central Executive Committee on December 16, 1922, and it became effective on February 1, 1923. A separate section in it entitled "The Right of Inheritance" regulated inheritance relations. This section consisted of 20 articles: from Article 416 to Article 435 [3].

In this first codified source of Soviet civil law there is already a direct indication of the possibility of applying the contract of sale in the circumstances outlined in paragraph two of Article 417, stated in the following wording:

"If by the nature of the constituent parts it is economically disadvantageous and inconvenient to divide the inherited property, a joint ownership shall be established between the state and the private parties, or a right of redemption of the respective part in favour of the state or private parties shall be established if the latter is permitted in the interests of the state" [3].

The analysis of the above Article indisputably indicates that the legislator, even at that stage in the development of the regulation of inheritance relations, laid down the option for the contractual settlement of inheritance relations in cases where both the state and individuals were heirs, and under the hypothesis of the Article, the division of inherited property claimed by them would be disadvantageous or inconvenient. In doing so, the legislator indicates that one of the options for the development of such legal relations may be the redemption of the relevant part in favour of the state or private individuals if the latter is permitted by the interests of the state.

Considering the condition stipulated in the norm "if the latter is permitted by the interests of the state", we must conclude that the legislator was quite cautious in attempting to use this norm, with very tight restrictions, while still prioritizing the interests of the state.

At the same time, the possibility of applying the terms of the sales agreement, especially in legal relations of inheritance, according to the author, is quite progressive in the conditions of the totalitarian Soviet regime at that time, in which the role of private property in civil circulation was brought to naught.

The analysis of the following norms of the Civil Code of the USSR (1922), which regulated inheritance relations did not imply a prohibition on applying the structures of contractual regulation. At the same time, the possibility of using contracts to regulate inheritance relations was not obvious. However, the possibility of such use was evident.

Thus, according to Article 427 of the Civil Code of USSR (1922), "The execution of the will is entrusted with the heirs appointed therein, except in cases where

the testator authorized in the will an individual – the executor of the will – to fulfil his will. In this case, the executor's consent is required on the will itself or in a separate statement attached to the will" [3].

Although the specified norm does not directly stipulate a prior agreement between the testator and the person he intends to appoint the executor of the will, at the same time, in the author's opinion, it does not always seem appropriate to appoint an executor of the will without prior agreement with him on the terms of the will execution, considering that the very execution of the will is envisaged only after the testator's death; and the executor's refusal to execute such a will, provided that he learned of the need for execution only after the testator's death, or he knew of the condition of the will but did not agree with it or with the algorithm for its execution and the testator still appointed him as executor of the will, would make it nonsensical for the testator to specify such an executor of the will without prior agreement with the latter, i.e., without entering into a contract.

In addition, according to Article 428 of the 1922 Civil Code of the USSR, "Disagreements and disputes between private individuals or between private individuals and state bodies on the issues of assessment, division and procedure for settlement of inheritance shall be resolved by the court" [3].

It is directly apparent from the above norm that the legislator was definitely aware of the existence of regular disputes between heirs, at least with respect to the assessment of inherited property, its division and the order of settlement when formalizing inheritance rights.

At the same time, the legislator determines that such inheritance disputes on these issues are resolved by the court.

At the same time, it is obvious that individuals-heirs may be completely different in age, education and life experience, and therefore may differently understand the content of certain norms, actions and events, which will lead to disputes between them.

In this connection, it is quite obvious that even without the possibility of settling the mentioned disputes by means of agreements between heirs specified in the article – such possibility of settlement of disputes between heirs occurred, since disputes were settled using agreements between them in an extrajudicial, i.e., a contractual procedure by explaining and/or clarifying the content of certain actions, events and facts and reaching mutual agreement on their understanding. However, only if the heirs do not reach an agreement with each other and/or with state authorities on these issues, shall such disputes be resolved in court.

In the author's opinion, the content of Article 434 of the 1922 Civil Code of the USSR seems analogous, envisaging that "the heir who inherited, as well as the state, which acquired the escheated property, shall be liable for the debts that aggravate the inheritance, only to the extent of the actual value of the inherited property. Note. Creditors of the testator must assert their claims, in fear of lapse of the claim, within 6 months from the date of the security measures".

In our opinion, it is also obvious that, at least in the case where a creditor of the testator asserts claims against the heirs-individuals, such relations could be resolved extrajudicially through the conclusion of agreements between the heirs and the testator's creditors concerning the option that the heirs, who have accepted the inheritance, partially satisfy the claims of the testator's creditor in the near future, and the testator's creditor does not claim the entire debt, but only that part, which is properly confirmed, and waives it.

In the author's opinion, in such a case it was obvious that the elements of the contract structures regarding the claim assignment (even though it had not been designated yet at that time) when the heir, after the conclusion of such a contract and the testator's creditor became one individual which was the consequence of terminating the claims of the testator's creditor.

Conclusions. The 1922 Civil Code of the USSR is the first codified compilation of civil regulations in the USSR, which the legislator used as an attempt to regulate inheritance relations in the Soviet post-revolutionary society. Although it is generally considered that inheritance relations are the least amenable to contractual regulation due to their specific nature, the first elements of constructions of contractual regulation in inheritance relations were already reflected in this code and were further developed in the 1963 Civil Code of the USSR and later in the 2003 Civil Code of Ukraine. This, in turn, indicates the Soviet authorities' understanding of the impossibility to regulate inheritance relations without resorting to contractual structures which is reflected in the 1922 Civil Code of the USSR.

However, acquiring a more detailed understanding of the trends in the development of the normative-legal provision of contractual regulation of inheritance relations, identifying new legal relations which, to varying degrees, permit applying contracts for their settlement within the inheritance relations, as well as defining and formulating the circumstances, which enable and necessitate using contracts in the field of inheritance, call for the study of the 1963 Civil Code of the USSR, and the 2003 Civil Code of Ukraine in the part regulating inheritance relations.

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ADMINISTRATIVE AND LEGAL PRINCIPLES OF COMBATING CORRUPTION IN UKRAINE

Pashkovskyi Vladyslav[1]

Annotation. The scientific article is devoted to the issue of the administrative and legal status of combating corruption in Ukraine. The article presents the problems of the corruption component in the functioning of state authorities and officials in Ukraine, as well as offers effective ways to solve the relevant problems. The article also provides legislative prerequisites for solving corruption problems in Ukraine, and also examines the effective experience of anti-corruption policy in foreign countries, which is proposed to be implemented.

Key words: Anti-corruption activity, anti-corruption policy, anti-corruption legislation, prevention of corruption, anti-corruption state authorities.

Formulation of the problem. Issues of anti-corruption policy in Ukraine are among the first on the agenda in recent years. But despite the developed legislative framework of Ukraine in the field of anti-corruption and the focus of state policy on its elimination, corruption in the country causes many complaints.

Presenting main material. Despite Ukraine's steps in the direction of overcoming corruption in Ukraine, due to reforms and international obligations, corruption still exists in a certain part of the country. Thus, today it is impossible to claim significant achievements in the field of overcoming it, corruption has acquired a systemic character. To a large extent, this is due to the inefficiency of state administration, the peculiarities of social mentality, the specifics of political culture, as well as the underdevelopment of civil society institutions [1, p. 57], appointed to control the activities of executive authorities. In addition, the socio-economic and political conditions of society's life are constantly changing, the «corruption field» of social interactions is updated due to the introduction of new actors into it.

It should be emphasized that almost all citizens face corruption, and only individual officials who have committed corrupt acts are exposed and punished. As a result, it undermines the principle of inevitability of punishment and negates the effectiveness of anti-corruption measures.

Thus, the relevance of the problem in general is due to the manifestation of negative trends and destructive processes associated with the growth of corruption in Ukraine, as well as the need to prevent and counter this

[1] Pashkovskyi Vladyslav, graduate student of Kyiv University of Market Relations.

phenomenon, primarily in the system of state power. After all, nowadays in Ukraine, corruption offenses cover almost all spheres of state power and management, which leads to the destruction of the state apparatus and the destruction of the moral foundations of society.

The purpose of the article is to substantiate the theoretical content of modern administrative and legal means of combating corruption in the state authorities of Ukraine, to identify problems related to the implementation of their provisions in practice.

Presenting main material. The ineffectiveness of legal policy in the field of prevention and countering corruption is due to weak state control over countering corruption, the imperfection of legislation (the presence of legislative gaps, legal conflicts, confusion of legal norms, numerous by-laws, etc.), as well as a decrease in the moral and spiritual potential of society with prevailing legal nihilism, citizens' disbelief in the inevitability of punishing the selfishness of officials.

The above-mentioned aspects determine the special relevance and necessity of a theoretical and practical rethinking of the accumulated experience and analysis of legislative regulation in this area, as well as generalization of the practice of implementation by executive authorities of measures aimed at combating corruption at the current stage of the development of the state and law.

Modern state and legal reforms in Ukraine were supposed to form a platform for the further socio-economic development of the country, strengthen the prestige of the civil service, and also contribute to the improvement of the administrative and legal status of civil servants. In addition, the reforms were supposed to form modern administrative and legal means of preventing and countering corruption in the civil service system, but instead of the expected decrease in the level of corruption, the latter has a tendency to increase.

All these circumstances cause serious concern both in the institutions of state power and in the civil society of Ukraine [1, p. 60].

Today, the international community is developing various legal recommendations in order to increase the effectiveness of the fight against corruption, insisting on the need to improve anti-corruption legislation. However, the success of the implementation of the mentioned recommendations in Ukraine requires taking into account the established legal system.

Thus, V. Bashtannyk notes that in the history of Ukraine, various state-legal means of combating corruption were used, both legal and organizational, and there were also periods when a systematic approach was used in the fight against it [2, p. 25].

The identification of conditions that contribute to corruption offenses, as well as the analysis of the historical experience of combating these negative phenomena at various stages of the evolution of political and socio-economic relations in Ukraine allows one to assess the positive developments and shortcomings of this struggle.

Modern corruption is characterized by transnationality and systematicity, as well as significant branching of structures, not only carry out illegal activities, but also are included in the international mechanisms of the shadow economy [3,

p. 219]. The commission of corrupt acts involves the use of various mechanisms: political, social, economic (bribery, bribery, material gain). Mechanisms of blackmail and threats, as well as espionage and other illegal activities, together make up a complex system. In particular, O. Andriyko, E. Nevmerzhytskyi, and A. Subbot note in their research that in Ukraine, the legal and organizational foundations for countering corruption are mainly formed, the effectiveness of the measures taken remains insufficient [4, p. 115]. However, the problem of combating corruption in the system of state authorities by administrative and legal means is considered in these scientific works in general theoretical terms.

Analyzing the development and formation of statehood in Ukraine, taking into account the work of scientists in this field, we came to the conclusion that corruption in the system of state bodies creates and has created a number of problems during the formation of statehood both in the past and at the present stage. Existing problems with the growing level of corruption in the system of state bodies have a very negative impact on the socio-economic development of the country. Corruption hinders the inflow of foreign investments into the economy of our country, stimulates the outflow of national capital abroad, creates a threat to law and order and state security [5, p. 50].

Usually, corruption is divided into economic corruption and political corruption [6, p. 50]. The development of political corruption can lead to an uncontrolled political situation in the country, as it poses a real threat to democratic institutions and the balance of various branches of government. Economic corruption reduces the effectiveness of market institutions and regulatory activity of the state.

To create an effective mechanism for the implementation of administrative and legal means of preventing and stopping corruption in the state bodies of Ukraine, historical and international experience should be taken into account; implement scientific developments and positive international experience in the fight against corruption; to use the recommendations of international organizations and experts in the process of rulemaking and ensuring the effective activity of law enforcement agencies.

It is also important to unite and coordinate the state and civil society, to establish dialogue and cooperation through the adoption of an effective legal framework for fighting corruption in the country.

The legal basis for combating corruption in Ukraine is the Law of Ukraine «On Prevention of Corruption», which defines the legal and organizational principles of the functioning of the system of prevention of corruption in Ukraine. , content and procedure of application of preventive anti-corruption mechanisms, rules for eliminating the consequences of corruption offenses. The analysis of legal acts shows that the fight against corruption in Ukraine is based on the basic principles set forth in Art. 3 of the previously valid Law of Ukraine «On Principles of Prevention and Counteraction of Corruption».

The main direction of fighting corruption should be its prevention, i.e. influencing its causes and conditions, so anti-corruption policy is a part of state policy and should include measures aimed at solving the following tasks: organizing the fight against corruption at all its levels; narrowing the field of conditions and circumstances that contribute to corruption; increasing the

probability of detection of corrupt actions and punishment for them; influence on the motives of the official's behavior; creating an atmosphere of social rejection of corruption in all its manifestations [7, p. 68].

That is, it is about the manifestation of uncompromising political will of the state in the practical implementation of the anti-corruption program and about the active cooperation of state anti-corruption structures with civil society [1, p. 62].

It is necessary to make an interim conclusion that in Ukraine it is necessary to highlight the main stages of state policy in the field of combating corruption in state authorities, namely to ensure the manifestation of strong political will; establishment of voters' trust; the beginning of an attack on corruption in all branches of government; adaptation of international experience to local conditions; application of new technologies to limit direct contacts of citizens with state bodies.

Before considering the set of measures aimed at preventing and combating corruption in Ukraine, we consider it necessary to analyze the data on combating corruption in state authorities in order to systematize the entire set of measures to combat corruption.

As for the prevention of corruption offenses, the latter is carried out by organizing and monitoring the effectiveness of the fight against corruption, the ultimate goal of which is to obtain objective information, which is the main and necessary element of effective management.

Accordingly, the main directions of anti-corruption monitoring are, in particular, the study of public opinion regarding the state of corruption; study and analysis of discovered corruption offenses; analysis of complaints and appeals of individuals.

It should be noted that anti-corruption programs, both local and national, need strengthening of legislative regulation; organization and conduct of anti-corruption examinations.

Conclusions. Today, anti-corruption activities in Ukraine need improvement.

The improvement of anti-corruption activity should be connected with the comprehensive implementation of legal, political, organizational, technical and financial measures that ensure the development of the necessary mechanisms, the implementation of which will create significant prerequisites for a radical change in the situation in the field of combating large-scale manifestations of corruption.

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THEORETICAL AND LEGAL GROUNDS OF LIABILITY IN INTERNATIONAL LAW

Pavlovska Nataliia[1]

Annotation. The article describes the peculiarities of the state's international legal responsibility for violating international obligations in accordance with the requirements and norms of international law. Along with this, the legal nature of offenses was analyzed and it was noted that the main shortcomings are that special attention is paid to the application of countermeasures to states from the position of international organizations and institutions regarding the subsidiary responsibility of member states. The concept of legal responsibility of states for internationally illegal acts was developed in antiquity, more precisely – in the 4th century BC. In modern international law, the application of the institution of international legal responsibility dates back to 1920, when the Charter of the League of Nations indicated the possibility of imposing sanctions against countries that violated their international legal obligations. But the issue of international legal responsibility was fully developed after the Second World War, when humanity realized the extent of the damage caused by the fascist states and theirs. In 1945, the issue of combating internationally illegal acts was reflected in the UN Charter (Chapter VII «Actions in relation to threats to peace, breaches of peace and acts of aggression»). Attempts to codify norms of international legal responsibility of states were made by legal scholars, non-governmental and intergovernmental organizations. However, none of them led to the emergence of a universal international convention at this time. The modern concept of international legal responsibility evolved from the responsibility of states for damages caused to foreign persons. Therefore, initially the codifiers paid the main attention to material liability for damage caused to the person and property of foreign citizens and foreign capital. Since the second half of the 20th century, the responsibility of states for aggression, war crimes, apartheid policy, and genocide began to be recognized. The nature of the applied measures of responsibility and the forms of its implementation are changing. Then there are changes in the circle of subjects – the responsibility of international organizations and individuals appears. With the expansion of technical and scientific capabilities, the absolute responsibility of states for damage caused as a result of legitimate activities appears. In 1956, the UN General Assembly referred to the International Law Commission the issue of codification of norms of international legal responsibility of states.

[1] Pavlovska Nataliia, candidate of legal sciences, Associate Professor of the Department of Theory and History of Law Law Institute of Far Eastern National University "Kyiv National Economic University named after Vadym Hetman".

Key words: international legal responsibility, international legal order, internationally illegal act, realization of international responsibility, mechanism of application of international legal responsibility, international legal coercive measures, international crime.

Formulation of the problem. Responsibility in international law plays an important role in ensuring the stable functioning of the international system. The International Law Commission of the United Nations (hereinafter – the UN) defined the content of international responsibility in the context of: «those consequences that this or that internationally wrongful act may have in accordance with the norms of international law in various cases, for example, the consequences of an act in terms of compensation damage and corresponding sanctions». In the modern science of international law, the definition of «international legal responsibility» is defined as specific negative legal consequences arising from a subject of international law as a result of his violation of an international legal obligation.

The purpose of the article is to analyze the institution of state responsibility in international law, and the object of research is the institution of international legal responsibility of states for committing illegal acts.

The state of scientific development of the problem. The author researched and analyzed well-known scientific works of international scientists, namely: I.P. Blyshchenko, B.C. Vereshetin, Yu.M. Zhdanov, R.A. Kalamkryan, A.Ya. Kapustin, I.I. Karpets, Yu.M. Kolosov, V.M. Kudryavtsev, etc.

Presenting main material. International legal responsibility of states is one of the fundamental and oldest institutions of international law. One of the guiding principles in modern international law is the principle of sovereign equality. Adhering to this principle, states take part in mutual relations and multilateral international communication, possessing sovereignty as a political and legal property and international immunity, which express the supremacy of each of them within the country and independence in external relations. At the same time, the mentioned principle is not a sign of the lack of interaction and interdependence of states, since no state can exist and develop in isolation from the entire world community. This principle enables the state to carry out any actions that do not contradict the established principles and norms of international law. If the state does not fulfill or violates its obligations arising from the norms of international law, the question of its responsibility before individual states or the world community as a whole naturally arises. The principle of sovereign equality makes it possible to distinguish states into the main group of subjects of international law, and therefore of international responsibility. When studying the theory of international law, the subjects of international legal responsibility are the subjects of international law. The current articles adopted by the UN General Assembly are mainly devoted to the responsibility of states to other states. However, it should be noted that the general part of the articles also applies to the responsibility of states before other subjects of international law.

In addition to states, states that advocate self-determination and international (intergovernmental) organizations are also considered subjects of the law of international legal responsibility [1, p. 98]. In 2002, the UN International Law Commission, in accordance with the resolution of the UN General Assembly, started working on the topic «Responsibility of international organizations». The issue of legal personality of natural

persons is debatable in the theory of international law. The majority of authors (for example, D.B. Levin, V.A. Vasylenko, V. Davyd and others) justify the position according to which natural persons, like legal entities, are not subjects of international legal responsibility. The question of the legal personality of transnational corporations is similar to the problem of the international legal personality of an individual. The definition of «international legal responsibility» covers legal relations arising under international law in connection with an internationally wrongful act. Therefore, the content of international legal responsibility consists of negative consequences that occur for the state as a result of its violation of the norms of international law. These legal relations can be both bilateral and multilateral (in case of an increase in the number of subjects due to the participation of other subjects, except the injured state) [2, p. 47]. They arise both in connection with the initial obligations of the subject's responsibility, and in connection with the use of coercive measures by the injured party (with the aim of forcing the offending state to fulfill the initial obligations).

The legal relations of international legal responsibility can be outlined in detail and structured as follows: the basis of international legal responsibility of a state is its violation of an international obligation, that is, the commission of an international offense. In order to draw a conclusion about the presence of an international offense, it is necessary to establish whether there was an action or inaction by state officials or bodies that, according to the current norms of international law, can be blamed on the state, and such behavior violated the international obligation of this state. Since the state can perform certain actions or not act with the help of its organs and officials, it can be blamed for the internationally illegal behavior of only such individuals who have the status of a state organ or its official. The action or inaction of these persons, which violates the norm of international law, is considered in international practice as the behavior of the state itself. A state will bear international responsibility for the actions of its legislative body if it has adopted a law or other normative act that contradicts the international obligations of that state. For example, the European Court of Human Rights in the Decision in the case «Kononenko v. Ukraine» dated December 7, 2006 recognized a violation of paragraph 1 of Art. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and Art. 1 of the First Protocol to this Convention on the grounds that in accordance with the Law of Ukraine «On the Introduction of a Moratorium on the Compulsory Sale of Property» dated December 26, 2001, a moratorium was introduced on the compulsory sale of property of state-owned enterprises, in the statutory funds of which the state's share is more than 25% , as a result of which the decision of the national court rendered in favor of the applicant was not implemented for more than 7 years and 11 months [3]. The basis for the emergence of liability will be the official publication of such an act of parliament (which in most cases is also the moment from which the normative act enters into force). Failure by the parliament of a state to adopt a legislative act necessary for the fulfillment of its international obligation can trigger the responsibility of that state only if it caused moral or material damage. However, there are situations when the state can bear responsibility for inaction as such (without the occurrence of negative consequences), in particular, if the subject of an international agreement was precisely the adoption of relevant legislative acts.

On the basis of the above, it can be noted that the concept of international legal responsibility is characterized by the following features: it occurs after the commission of

an international offense, is implemented on the basis of the norms of international law, is associated with certain negative consequences for the offender, is aimed at strengthening the international legal order. Norms defining the responsibility of states in international law form a special international legal institution. The content of this institute changed in accordance with changes in the development of international law. Norms constituting the institution of international legal responsibility are mostly of a conventional nature, which gives increased significance to their codification. The UN International Law Commission has done extensive preliminary work on this issue. Eight reports of its special rapporteur – the Italian professor R. Ago – made by him in 1969–1980, were laid by the UN International Law Commission as the basis of Part 1 «The Origin of International Responsibility» of the Draft Articles on the Responsibility of States for Internationally Illegal Acts. Since 1981, the UN International Law Commission has been working on parts 2 and 3 of the draft articles on the responsibility of states for internationally wrongful acts, which have the names «Content, forms and scope of international responsibility» and «Exercise of international responsibility and settlement of disputes». Another important direction in the activities of the UN International Law Commission is the preparation of the draft Code of Crimes against the Peace and Security of Mankind, which was carried out in 1947–1954 and was renewed in 1982. If the offending state does not fulfill its obligations under such legal relations, it, accordingly, commits a new offense, therefore new legal relations arise in which the injured state already has the right to apply coercive measures to the offending state in order to fulfill its subjective obligations. The grounds for responsibility are divided into legal (normative) and factual. Legal grounds are a set of legally binding international legal acts, on the basis of which a certain behavior (action or inaction) qualifies as an international offense. The legal basis of responsibility can be contained in any sources of international law and other acts that fix the rules of conduct binding on the state. They are legitimate, legally valid contracts, customs, judicial decisions of international courts and arbitrations (however, advisory opinions are not included in the list); binding acts of international bodies and organizations (for example, the UN Security Council), conferences and meetings; individual unilateral acts of states of an international legal nature, through which they assume international obligations and which are recognized by other states (for example, establishing a certain width of territorial waters). The factual basis of international legal responsibility is that for which responsibility arises. That is, it is a certain legal fact, namely an international offense [4].

The resolution of the question of whether the action of the state is a violation of international obligations and a factual basis for responsibility depends on the presence of signs of an offense. The main characteristics of an international offense are illegal conduct, harm (damage) caused by illegal conduct, and a causal connection between the action and harmful consequences. More controversial in the science of international law is the inclusion of the subject's guilt in the list of objective signs of an international offense. Given the complexity of the interpretation of the very concept of «guilt», the establishment of guilt in international law, the controversial practice of proving it, the UN International Law Commission did not include it in the Draft Articles on the Responsibility of States for Internationally Illegal Acts as a necessary sign of an offense. Illegal behavior is manifested in the violation of international obligations of the state in the form of action or inaction. Illegality in international law means a discrepancy between the legal norm and the behavior of the state. Manifestations of illegal behavior are as follows: – non-compliance

by state bodies with its international obligations, which manifests itself in violation of the rights of other states and international organizations; – non-compliance by state bodies with its international obligations, which is manifested in the violation of the rights of individuals and legal entities; – non-compliance by state bodies with its international obligations in connection with spontaneous actions of legal entities and individuals; – non-compliance by state bodies with its international obligations arising in connection with illegal activities on its territory by bodies of other states and international organizations. Any illegal behavior damages the legitimate interests of subjects of international law, which are protected by international law, negatively affects the international legal order. Damage can be both material (property) and immaterial (moral). Most often, damage is caused in a mixed form. The nature and amount of damages affect the determination of the scope, type and form of international legal responsibility. A causal connection (real, objective, necessary, not accidental) between the unlawful conduct and the harm caused is a necessary element of the offense. The presence of the necessary features makes it possible not only to qualify a certain behavior as a crime, but also to separate the latter from similar acts that do not have all the necessary features, such as unfriendly acts and crimes of an international nature. An unfriendly act is the behavior of a state that causes harm to other states, but does not violate the norms of international law, as a result of which there is no offense [5, p. 36]. An unfriendly act affects the interests of the state, which are not protected by international law. Such actions (acts) include, for example, the restriction of the rights of individuals and legal entities on the territory of the state, the increase of customs duties (taxes) on goods imported from a certain state, the nationalization of foreign property, etc. In the event of an unfriendly act, the state independently decides how to respond to such actions, however, if this does not contradict the obligations under the treaties. Since international law does not prohibit unfriendly acts, the main role in regulating the problems that arise is played by moral and political means. Crimes of an international nature (criminal acts of natural persons) affect the interests of two, several or many states, that is, they are of international danger, therefore they are grounds for criminal, not international legal punishment. The legal basis for responsibility for such acts is international agreements on combating specific types of crimes and domestic norms of criminal law adopted in accordance with them. The fight against such offenses is provided for by the norms of international law, but the responsibility of individuals in such cases is not international law. The main feature of these offenses is that they are committed outside the boundaries of state policy by individuals who are not state officials acting on its behalf, but on the contrary, act, as a rule, to violate the legislation and law and order of their own state. In our opinion, it is appropriate to distinguish the following types of international responsibility: a) political responsibility arising in the event of a violation of any international obligation by a subject of international law. This type of liability arises from the very fact of violation of a norm that protects the interests of another state, as well as in the event that there is no property damage or other visible negative consequences; b) material liability arising in two cases: when the offense caused material damage and when the damage occurred without violation of the law, but its compensation is provided for by a special international agreement. In the first case, material liability arises as a result of a direct causal connection between a violation of the law and material damage. Thus, political and material responsibility can arise simultaneously as a result of the same offense. Any

international wrongful act that is not an international crime is an international offense. During the commission of torts, the regime of bilateral responsibility applies, which consists in the fact that only the directly injured state has the right to apply to the court.

Conclusions. Summarizing the above, the scientific opinion is defended that the modern system of international legal coercive measures (sanctions and countermeasures) is a complex of various elements implemented by states both individually and within the framework of relevant international organizations and institutions. The existing system plays a unique role in the mechanism of international legal regulation, and in social terms it performs the function of comprehensive protection of the security of the international community and aims at the possibility of flexible selection of adequate and effective means of response to any internationally illegal act. The modern powerful system of international legal coercive measures is, without a doubt, the main means of realizing international legal responsibility.

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THE FIRST UNIVERSITY AND THE FORMATION OF JOHN DEWEY'S VIEWS

Rozputna Mariia[1]

Annotation. The figure of John Dewey is considered one of the most influential in American philosophical and pedagogical thought of the 20th century. In the course of our research, we used materials about the scientist, referring to the works of American researchers John Dewey – Hook S. [1], Coughlan N. [3], McDermott D.J. [2], Shilpp P.A. [8], Ryan A. [4], Rockefeller S. [5], Westbrook R. [6], Dunhuizen J. [7], which have not been translated into the Ukrainian language, which allows us to understand more profoundly and perceive the life of a prominent scientist.

These works analyze and describe the multifaceted life, creative work, ideas, primary works, and principles of John Dewey's philosophical, social, political, and pedagogical activity.

John Dewey had a great thirst for knowledge. Thanks to his perseverance and intelligence, he analyzed what society and science needed. We believe that his natural intelligence and the right intellectual environment shaped him into a great intellectual. This article will explore how studying at the University of Vermont contributed to this.

Key word: the first university, the influence of teachers, systematic learning, transcendentalism, the formation of views on psychology, religion.

Introduction. After analyzing the works of biographers, we note that John Dewey entered the University of Vermont (Burlington, Vermont, USA), after graduating from a local school when he turned fifteen, that is, in 1875 [8, c.10]. Of interest to us is the fact that at this time, John Dewey's family lived in a house that is still located on Prospect Street, near the University of Vermont. His brother Davis had entered college a year earlier, and John Dewey was ready to join his cousin. The elder brother Davis missed a year of school due to a severe health condition, and the three boys graduated from college together in 1879. He notes the American philosopher and educator Paul Arthur Schilpp's «The Philosophy of John Dewey» [8]. At that time, the University of Vermont was a small college in the New England region of the northeastern United States, founded in 1791. It was one of the first oldest universities after Harvard, Yale, Dartmouth, and Brown. The department of philosophy was one of the strongest, even at the level of the above institutions. Therefore, we need to

[1] Rozputna Mariia, Postgraduate Student, National Pedagogical.

investigate why and thanks to whom it was so powerful and what influence it had on the scientist.

The research aims to investigate the cause-and-effect relationships in the influence of the first teachers on John Dewey. But to understand the origins of the formation of the views of his teachers.

The methodological basis of the study is historical, scientific, particular, theoretical, and experimental processes. We use it to compare different points of view on the development of a scientist and the impact of studying at a university on further scientific activity. We also use the generalization method, which consists of the conception of independent characteristics, their analysis, and synthesis when we concentrate on historical factage. We also use the information method, which allows us to quickly and effectively obtain information from various sources regarding the chosen issue, for example, from scientific literature and periodicals, so we take as essential historical and thorough biographical works about the scientist.

Presentation of research results. John Dewey entered the University of Vermont, where he met highly influential scientists. That is why we take this particular period of his training as a basis. After all, this is the time of the development of intellectual thought in America.

We consider it essential to emphasize that the teaching staff of the university consisted of eight professors who had the title of professor, who in turn taught classics, rhetoric, moral philosophy, political economy, natural sciences, mathematics, and languages. John Dewey took courses in Greek and Latin, ancient history, analytical geometry, and algebra, as well as separate courses in the natural sciences.

As stated in the work of P. A. Schilpp, one of the essential disciplines of that time – geology – was taught at the university by Professor H. H. Perkins, who presented material on the theory of evolution in his lectures. Included in his studies on the development of animal life were scholarly reports on the ideas of several early church fathers that indicated that they did not observe a literal seven-day period of creation of the world at the same time as the Creator. Despite his orthodox background (the professor was a member of the Congregationalist Church), the emphasis on evolution caused little visible outrage. In the course of physiology taught in the same year, the text written by T. H. Huxley was used [8, p. 12], a well-known supporter of Charles Darwin's theory of evolution.

It is reasonable to assume that from these lectures, John Dewey received an impressive picture of the unity of the world. We are sure that getting acquainted with the views of T. H. Huxley caused him a great curiosity about a broad view of things that interested the youth of that time in philosophical and scientific research. We justify that, firstly, the students worked with T. Huxley's work «Elements of Physiology», which was based on the foundations of the evolutionary theory of the origin of man, the scientist himself noted: «I believe that this work was the beginning of my interest in philosophy – the organic nature of living beings left a deep impression» [7, p. 70]; secondly, based on functional psychology, which in turn is based on Charles Darwin's theory of evolution, John Dewey in his future views develops a theory of cognition that opposed dualism; thirdly, returning to the University of Vermont, we should note that the university library at that time

had subscriptions to English periodicals, namely «Weekly Review», «Nineteenth Century», «Modern Review» [7, p. 11] which discussed new ideas related to the theory of evolution, economics, sociology, since the debate about change was the main direction of the growing interest in the relationship between the natural sciences and traditional ideas, the English periodicals that reflected the new wave were the main intellectual stimulated by John Dewey.

He took from the library books by Richard Hooker, George Beckley, Edmund Burke, John Mill's works on William Hamilton, David Hume, and Plato, as well as a textbook on Schwegler's History of Philosophy and additional volumes of the Journal of Speculative Philosophy [15, p. 21].

In this way, it becomes clear that logically working with this kind of literature, and the scientist is interested in philosophy in the first place.

Later, when John Dewey was already in his senior years, the philosophy department developed a unique course to acquaint students with the fundamental problems of human existence. Biographer J. Dunhuizen notes in his work «The Life and Thoughts of John Dewey» that «the courses were offered in two directions – political philosophy and social philosophy, mental and moral philosophy. The first was not only courses in political and social philosophy but rather studies in the history of civilization, political economy, constitutional history, international law, and the Constitution of the United States of America; courses of mental and moral philosophy included traditional areas: religion, theory of fine arts, Plato's theory, metaphysics, logic, psychology» [7, p. 12].

A professor of political and social philosophy, the then president of the University of Vermont, Buckman M., was an excellent example for the students of that time, and it was he who conducted classes in the format of Socratic dialogue, which, in our opinion, is invaluable and innovative for teaching at that time. Thanks to Buckman M.'s lectures and practical classes, the young scientist turned his attention to the works of the English writer Harriet Martineau about the French positivist philosopher Auguste Comte.

The University of Vermont was known for its strong philosophy department because one of Buckman's predecessors, M. President James Marsh (1794–1842), worked there [8, p. 12]. James Marsh was the fifth president of the University of Vermont from 1826 to 1833; he reorganized the curriculum, transforming the educational institution from a local college into the first American university with the foundations of idealism and a transparent system of presentation of knowledge [9, p. 556].

James Marsh first organized the admission of correspondence students to the university. He called on teachers to freely present the material, which, in his opinion, will contribute to the development of critical thinking. He also proposed a system of subject choices that allow students to study topics that are of immediate interest to them. James Marsh served at the university as a professor of moral and intellectual philosophy until he died in 1842 at the University of Vermont; James Marsh also founded the Burlington School of Philosophy, which operated during the presidency of Joseph Torrey until 1867. And then his nephew, Professor Henry Augustus Pearson Torrey, before 1902, is now part of the University of Vermont.

The scientist built his philosophy on German idealism, as well as on the works of Samuel Taylor Coleridge, based on the ideas of transcendentalism; the latter always sought to know the basic principles of being and to search for «absolute truth». In the 19th century, it was widely held that modern science and philosophy were compatible with Christian belief, declaring matters of faith impossible. The argument was that although the truth of religious beliefs cannot be established empirically (through scientific observation) or rationally (by philosophical discussion), this does not mean that the idea is unacceptable. It simply means that science and philosophy have to do only with the world that we can see and touch, the world of phenomena; about things of the spirit, they may not say anything. James Marsh refuses to follow this, and it became the quest of his short life to find a philosophy on all fours with evangelical Christianity. He found it (or he thought he saw it) in the work of Samuel Taylor Coleridge. S.T. Coleridge, when James Marsh began to consider him, was known in the United States as a distinguished poet with an unfortunate taste for German metaphysics. He was despised as a thinker. But in 1829, James Marsh published an edition of «An Aid to Reflection» by S.T. Coleridge, in which he made a clarification stating that Coleridge had proved that Christianity corresponds to philosophy – that (in the words of J. Marsh) «so far as it is not irrational, the Christian faith is the perfection of human existence.»

So, we can conclude that the philosophical views and the reformation of the education system at the university significantly influenced the next generation of American philosophers.

James Marsh studied the views of Cambridge Platonism, Immanuel Kant, Friedrich Schelling, Friedrich Schiller, Georg Hegel. He learned Spanish, Italian and German, and Latin and Greek. He was likely the first American to begin studying the works of Immanuel Kant, and there is evidence that he was well acquainted with the Critique of Practical Reason as well as Immanuel Kant's anthropology.

Researcher of John Dewey's work Dunhuizen J. notes that the American philosophy professor Torrey H.A.P. gave lectures on moral and mental philosophy, as well as a psychology course based on the intellectual philosophy of Noah Porter, and a shorter course by Joseph Butler, an English bishop, known, criticism of deism, Thomas Hobbes' egoism and John Locke's personality theory, students also read Plato's «State», the professor paid a lot of attention to Immanuel Kant, his work «Critique of Pure Reason», constantly developing discussions around this work [7]. We can assume that he also first introduced the young student to the creation of James Marsh, a critic of Samuel Coleridge's Means of Reflection. John Dewey will later dedicate an article to James Marsh entitled: «James Marsh and American Philosophy» [10]. Later, a student at Columbia University, where John Dewey taught, Herbert Schneider, in his work: «Recollections of John Dewey at Columbia, 1913–1950», noted that John Dewey gave him the book by James Marsh, saying: «This book was essential to me in the early years, it is worth reading even today» [11].

Following the above, we note that when Professor Torrey first began teaching, he used as a textbook the book «The Legacy of James Marsh,» edited by his uncle Joseph Torrey. Scottish common sense is a solid foundation of religious

faith. Once in 1882, two books were published that made I. Kant's philosophy accessible to American students – «Kant's Philosophy» in Excerpts by John Watson and «Critique of Pure Reason» by George S. Morris: A Critical Exposition. Professor Torrey quickly adopted these two books as texts for his metaphysics course [14, p. 7].

We noted above that it subscribed to the University of Vermont to English periodicals within the scope of the study. We consider it essential to note that also in these publications, there were many articles on materialism, agnosticism, naturalism, and humanism. Which regularly appeared under the title «Metaphysics of Materialism», «Materialism and its Opponents», «Modern Materialism: Its Relation to Theology», «The Religion of Positivism», «The Place of Conscience in Evolution», «Evolution as a Religion of the Future», «New psychology» [7, p. 18].

Of course, John Dewey read these articles, and we are sure that his first two published articles already outside the university, «Metaphysical Assumptions of Materialism» and «Spinoza's Pantheism», he wrote concerning the material he knew, which he had worked on at the University of Vermont [12] . He called these articles «very schematic and formal» and said that «they are written in the language of intuitionism» [12, p. 150]. They were rather Kantian but influenced by Scottish realism, which he undoubtedly learned from Professor Torry.

Let us emphasize that the influence of Professor Torrey was one of the strongest, in our opinion, because it was with him that John Dewey studied philosophical German, which of course, as we noted above, included the works of Immanuel Kant; after all, he was one of the first philosophers to write in German instead of Latin. This fact continues to create problems with the translation and interpretation of I. Kant's works.

Also based on the article by Lewis Samuel Feuer H.A. P. Torrey and John Dewey: Teacher and Student [14], where he examines the philosophical path of H.A. P. Torrey and his work with the future scientist, we will try to prove our research goal – to show the relationship between John Dewey and the influence of German philosophers on him.

The author aptly notes that years after the appointment of H.A. P.Torry was such a professor that Americans discussed the significance of Darwin's theory of natural selection for their moral and religious life. «Torry's Kantian upbringing helped him to bear wisely during this transition period,» wrote his friend Griffin. Darwin's theory encouraged the scientific study of origins and discouraged interest in philosophical ideas. H.A. P. Torre met this situation by applying the Kantian distinction between the phenomenal and the noumenal realms. He was unequivocal (according to Griffin) that «there are two different lines of inquiry that it can follow». First, «we can ask about causal and genetic relationships.» This is a purely scientific study, but secondly, we can ask questions «about the ideal meanings of things, the desire to determine their essential nature and meanings that are included in human experience and related to human destiny.» This research is not objective, experimental, but rather «subject to an introspective decision based on reason and self-awareness, aesthetic and ethical feeling, speculative understanding» [14,

p.7]. Such was the Kantian compromise of H.A. P. Torrey in the controversies surrounding the theory of evolution.

John Dewey learned a lot from H.A. P. Torrey – Kantian philosophy, emphasizing development. He also heard H.A. P. Torrey presented the basic idea that the Aristotelian formal system contradicts the concept of evolution; «Of transmutations of species,» said Torry, «Aquinas knows nothing»; the science of the nineteenth century cannot be adapted to the metaphysics of the thirteenth. «The work of philosophy is a constant adaptation to a changing environment.» John Dewey was to make this concept central to his study of Darwin's influence on philosophy. He would also use Torrey's lectures that every philosophy is an expression of the circumstances of a given culture. At the same time, however, he was in sharp rebellion against his teacher and the environment in which he studied [14, p. 10].

Conclusions. We should conclude that studying at the university filled the young scientist with thoughts about the theory of evolution, German classical philosophy, and religious issues. Thanks to close communication with professors and such a rich teaching program, philosophy and psychology. John Dewey graduated from university in 1979 at the age of 20.

John Dunhuizen notes that John Dewey brought his ideas together in an article entitled «Metaphysical Assumptions of Materialism,» which he sent to Professor T. Harris, editor of the Journal of Speculative Philosophy, on May 17, 1881, just a few weeks before the school year closed in June [7, c. 22]. At the end of the school year, John Dewey finishes his work in Oil City, returning to Burlington. Next year, the young scientist begins to teach during the winter period in a small academy in the village of Charlotte, Vermont. He also continues to meet for friendly talks with Professor Torrey for private lessons in philosophical classics and German. Later, his second article, «Spinoza's Pantheism» was published. We will discuss it in more detail in the second chapter of the study. John Dewey continued to meet with Professor H. Torrey, who gave him the idea to apply for admission to a higher educational institution, namely to Johns Hopkins University, Baltimore, Maryland, so the scientist continued his philosophical path in Baltimore, where he entered graduate school at Johns Hopkins University in September 1882.

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COGNITION AS A MEANS OF FORMING THE PROOF SYSTEM IN THE CONSTITUTIONAL COURT PROCESS

Rusnak L.V.[1]

Annotation. Issues related to the specifics of the constitutional court process have been studied much less compared to other types of legal processes. The peculiarities of the domestic constitutional judicial process include the fact that it is not adversarial, the participants do not defend their interests, but provide explanations on issues that are important for a full, comprehensive and objective consideration of the case and the adoption of a reasoned decision. The Constitutional Court of Ukraine is not a body authorized to conduct investigative or investigative actions, however, it has the right, exclusively within the limits established by law, to demand any information for its possible use as evidence in the case. Evidence in a constitutional trial as a type of legal knowledge is based on the principle of the cognizability of law and legal prescriptions, which is carried out in accordance with the canons of formal logic (philosophical component) and special methods, techniques and forms regulated by legislation (legal component) in order to establish the truth during the specified process

Key words: proof, constitutional justice, constitutional design, proof procedure

Formulation of the problem. Cognition as a means of forming the system of evidence in the constitutional judicial process occurs not only through passive contemplation, but is also the result of the active mental activity of judges and participants in this process with the aim of understanding what happened and what is happening, searching for information with an awareness of what information and for what purpose. For the methodological analysis of scientific knowledge, it is important to distinguish between two types or levels of knowledge and, accordingly, two types of research – empirical and theoretical.

Analysis of the latest research. In Ukraine, the issue of the legal nature of proof in constitutional matters was carried out by N.K. Shaptala in her dissertation research «Philosophical and legal dimensions of proof in the constitutional court

[1] Rusnak L.V., graduate student of the Department of Procedural Law Chernivtsi National University named after Yury Fedkovich, ORCID: 0000-0002-5165-1079, e-mail: lesyavolodumurivnarusnak@gmail.com.

process». At one time, scientists such as S. Alpert, Y. Alenin, V. Bakhin, A. Belkin, T. Varfolomeeva, H. Horskyi, Y. Groshevyi, M. Hoshovskyi, A. Dubinskyi turned to the consideration and scientific analysis of proof problems. A. Ishchenko, Ts. Kaz, O. Kaplina, N. Karpov, L. Kokorev, F. Kudin, O. Larin, E. Lukyanchikov, V. Malyarenko, M. Mykhienko, V. Nor, N. Obryzan, I. Petrukhin, M. Pohoretskyi, V. Popelyushko, V. Savytskyi, S. Stakhivskyi, Yu. Stetsovskyi, L. Udalova, S. Sheifer, V. Shepitko, M. Shumylo, and others

The purpose of the article is to analyze the role of cognition as a means of forming a system of evidence in the constitutional judicial process.

Main text. The majority of scientists note that proof should be considered as a process of sensory and rational cognition, that is, proof is a specific procedural form of cognition by legally authorized subjects of the relevant research object. In addition, evidence is also considered as a practical activity to establish the circumstances of the proceedings, depending on the type of legal proceedings.

Cognition is the ability we have to assimilate and process data that comes to us in different ways (perception, experience, beliefs...) to transform it into knowledge. Different disciplines study cognition – psychology, philosophy and jurisprudence.

In scientific circles, there is an opinion that the concepts of «means of cognition», «method of cognition», «method of cognition», «reception of cognition» are not identical and depend on the content of the method, the structure of cognitive activity as a whole. In the most general form, knowledge can be presented as a process that develops historically in the direction of achieving more reliable knowledge about the world with the help of certain means and actions of the subject. In the system of components of cognitive activity (object of cognition, actions of the subject, means of solving the problem), the method should belong to the means of cognition, but in no way be equated with all cognitive activity (Podkorytov G.A., 2003).

Forensic knowledge as a component of the evidentiary process also plays a leading role in the administration of justice in matters of public and private law and, as a rule, is carried out in accordance with a legally regulated procedure.

In order to provide a definition of the object of science, as Professor L. Poudrier notes in this regard, it is necessary to first of all investigate the phenomena that are associated with the process of obtaining knowledge (cognition) by this science, and everything that concerns philosophical, legal and political and social aspects of social relations that belong to the subject of such research. They include both institutional and non-institutional facts that take place in society, and all government actions in the fields of law, politics, economics, etc., which can be divided into two classes: on the one hand – rules and institutions, on the other – facts, relating to human behavior according to these rules and institutions (Poudrier L., 1963).

Knowledge is an integral philosophical basis of the concept of proof. Related to this circumstance are theoretical disputes regarding the relationship between these concepts, the content and structure of proof, the circle of subjects and the duty of proof, the specifics of its implementation at different stages of the process, etc.

I. Bentham pointed out that there is something misleading in the proof; the alleged object so called appears to have sufficient power to be trusted; but this word should be understood only as a means that is used to establish the truth of a fact, a means that can be both bad and good, and complete, and insufficient (Bentham I., 1876).

According to V. Arsenyev, Y. Motovylovker, M. Mikheenko, and others, proof has two types: a) «procedural proof», or proof as a study of actual circumstances, i.e. the activity of relevant bodies and persons in collecting, checking and evaluating evidence; b) «logical proof», i.e. logical and procedural substantiation of a certain thesis, statement, conclusions in the case.

Yes, V.Savitskyi defines the essence of proof exclusively as the substantiation of a certain statement, theses, at the same time considering that it is also necessary to take into account the traditional identification in jurisprudence of proof and the practical activity of forming and verifying evidence, as well as the fact that in criminal proceedings the term «proof» is used in both values

Since the process of proof is not limited only to logical operations for substantiating conclusions, but includes cognitive activity related to obtaining facts for substantiation, that is, evidence, it is important to find out exactly how these facts appear in criminal proceedings. that is, evidence.

According to S. Shafer, the formation of evidence primarily consists in the transformation of primary evidentiary information, that is, information extracted by the subject of evidence from the traces left by the event (Shafer S.A., 2009). Therefore, it can be argued that the collection, or more precisely, the formation of evidence, is a complex of operations carried out by the subject of evidence, which consist in the identification of information carriers, its perception and transformation into an appropriate procedural form (the form of testimony, expert conclusions, etc.). The following main questions are debatable in the modern concept: about the relationship between knowledge and proof, about the purpose of proof, which is considered by most lawyers to be the establishment of absolute, judicial, material, formal truth, about the subjects of proof (Pohoretskyi M., 2014). The methodological basis of the proposed concept is determined by the theory of cognition, activity, argumentation and interpretation, etc. At the same time, the opinion is expressed that in the theory of proof, depending on the needs, it is advisable to use inferential knowledge of any sciences, provided that the subject of the theory of the judicial process is not replaced.

R.S. Belkin and A.I. Vinberg, who emphasize that, considering proof as a process of establishing the truth, that is, a process of cognition, we must proceed from the generality of the process of cognition, that is, from the fact that there is not and cannot be a specific judicial cognition of the truth (Belkin R.S, Vinberg A.I ., 1969).

The goal of the process of knowledge is to know the truth. The problem of determining the purpose and final result of the evidence, striving to establish the truth in the proceedings remains debatable at the present time.

Today, the questions regarding the methodological basis of proof, the relationship between proof and knowledge, the feasibility of using the theory of reflection in the theory of proof, the purpose and results of proof, the means and

subjects of proof, etc., remain debatable.Ambiguity of scientific approaches of scientists regarding many fundamental categories of the theory of proof causes many difficulties for the rule makers and law enforcers in their activities, which has a negative effect on the effectiveness of the judicial process and its social value in resolving legal disputes.

The implementation of judicial proceedings in the case at all stages is connected with proof and directly depends on it: the circumstances, the establishment of which is required to solve the case, took place in the past, and their knowledge occurs through a retrospective analysis of the peculiar traces left by these circumstances in the real world in the form of evidence The process of proof as a systemic multifaceted phenomenon directs the activity of the court and the participants in the case to obtain the array of evidence that is necessary to achieve compliance of the court's conclusions with the actual circumstances of the case, which becomes the basis for law-enforcement actions of the court when passing a court decision. In turn, one of the factors that ensure the effectiveness of judicial protection is the proper legislative regulation of the procedure of proof.

M.A. Fokina substantiates that evidence is a type of judicial knowledge that combines cognitive and procedural elements and during which, in accordance with the norms of law, factual circumstances are consistently established that are important for the correct and timely consideration and resolution of a civil case (M.A. Fokina, 2011). Evidence in court proceedings, as V. Yu. Husyakov is convinced, is a process of cognition, which includes both indirect and direct acquisition of knowledge about the facts of reality (Husyakov V. Yu., 2005). Combining judicial knowledge with the activities of the subjects of evidence, M.A. Vikut considered judicial evidence as an indirect form of judicial knowledge, which is clearly and in detail regulated by law the procedural activity of the court and the participants in the case to study the actual circumstances for the purpose of legal and justified resolution of the legal conflict (M. A. Vykut, 2005). First of all, it should be noted that the evidence has a clear legislative regulation, which is manifested in the combination of procedural and substantive legal sources. The procedural law establishes general provisions on evidence and the evidentiary procedure: it defines the rights and obligations of the subjects of evidence, establishes requirements for evidence, determines the sequence and content of procedural actions.

It is true to say that the term «truth» should be used so that the court clearly understands its main task – separating true evidence from false, accepting the true arguments of the subjects of evidence and making a decision in the case based on them and on the basis of the law. The difference between truth in philosophy and procedural truth in the fact that it is not enough to learn, understand, discover about the latter – in the process, the truth is established, if it is proven.

Indeed, in order to achieve the truth in constitutional proceedings, it is necessary to match the conclusions of the court with the actual circumstances of the case in their legal meaning. The court does not simply learn the circumstances of the case, but establishes legal facts with which the law

connects the emergence, change and termination of material legal relations, facts of violation of rights.

Conclusions. Knowing the truth has always been one of the central categories of epistemology and the main aspect of the life of society, in particular in philosophy and theology – as a subject of analysis of the cognitive issues of the surrounding world; in jurisprudence and law enforcement – as a way of objectively regulating certain legal relations; in everyday life – as a factor of meeting needs and real possibilities. The existence of a significant number of definitions of the philosophical-legal nature and essence of truth within the limits of certain theories is noted, namely: correspondent or relative, coherent or rational-intuitive, pragmatic or materially-coherent, absolute or objective. It should be noted that the truth established in the legal process is objective information about the subject of knowledge obtained as a result of the study of phenomena, material or empirical data with the help of sensory or intellectual understanding or information about it, characterized from the point of view of its reliability and is used for proof. Instead, the truth or truthfulness of information obtained during a judicial process, including a constitutional one, is often a subjective, spiritual reality in its cognitive-evidential aspect.

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ELECTIONS AND DEMOCRACY: FROM THEORY TO PRACTICE

Skochylyas Lyubomyr[1]

Annotation. Summarizing, the holding of elections is an important stage of the movement towards democracy in post-conflict countries and countries that are beginning to democratize. However, this process should not be considered mechanistically and at one moment. A number of conditions are necessary for elections to successfully implement their democratization function, including the formation of a general favorable security and political context, the formation of effective and impartial electoral institutions, the establishment of an optimal election system, as well as ensuring the transparency and fairness of the electoral process, as well as guaranteeing the establishment of positive election results that will be trusted among the subjects of the election process and among the electorate.

Key words: election, democracy, post-conflict countries, countries that are beginning to democratize, democratization function.

Introduction. The debate over the relationship between elections and democratization has long attracted scholarly attention. Elections are seen as a very popular prerequisite for democracy in scientific and political activity. Given the claim that democracy is «rule by the people for the people», many scholars and politicians associate democracy with holding free and fair elections. However, there are many critics of this argument who claim that this is a minimalist definition of democracy and should be discussed more thoroughly. In our opinion, the review of the relationship between elections and democracy, as well as elections and democratization at the theoretical and practical levels, carried out by the Albanian researcher Adil Omar Fara in the work «Elections and Democratization: A New Assessment» is quite thorough and at the same time convincing [1]. He believes that it is important to give answers to the following questions: What are the definitions of democracy in scientific literature? What position did scientists take on elections in a democracy? What are the indicators of fair and free elections? Do fair and free elections anchor the democratic process? Under what conditions do elections lead to democratization?

The concept of democracy has evolved over the years to meet the new challenges and opportunities that democracies face. It is clear from the literature that there is no consensus on the meaning of the term «democracy».

[1] Skochylyas Lyubomyr, Ivan Franko Lviv National University (Ukraine).

David Collier and Steven Levitsky reviewed 550 subtypes of democracy [2, p. 430–451]. Collier and Levitsky examined how scholars named democratic regimes in more than 150 studies. The concept of democracy encompassed some social and economic elements, especially in the 1960s and 1970s. In this literature, social inequality was seen as a barrier to full democracy. However, this trend is changing in recent decades, as scholars and politicians define democracy as a purely political phenomenon. This contributed to the study of democracy and its connection with some socio-economic phenomena. In the study mentioned above, the authors noted how different concepts of democracy are and how they have been used to describe different types of regimes in scholarly works.

Main part. So, it is clear that the concept of democracy still does not have a clear meaning. Democracy is an elastic concept that adapts to the context in which it is applied. However, the elasticity of democracy should not distance us from accepting a more maximalist definition of the concept that scientists can use. Larry Diamond [3, p. 65] seems to have offered an interesting definition of the concept, looking at most of the aspects that make up democracy. In Diamond's theory, elections are given an important position as one of the prerequisites of democracy. Diamond's definition does not stop at the election stage, but continues to cover aspects of fair and free elections.

The concepts of «honest» and «free» must be clearly defined and distinguished from other determinants of democracy. These two concepts should also be translated into some specific criteria that can help to assess how free and fair the elections are. According to Jorgan Elkitt and Sevenson Palle, the concept of «freedom» contrasts with coercion. Freedom entails the right and the possibility of choosing one and not another. Coercion implies a lack of choice – formally and in reality: either all options but one are prohibited, or a particular choice may have negative consequences for one's own safety or the safety of one's family, well-being or dignity [4, p. 32–46]. Honesty means impartiality. According to Jorgan Elkitt and Palle Sevenson, "the opposite of justice is unequal treatment of equals, due to which some people (or groups) are given unjustified advantages. Thus, fairness implies regularity (unbiased application of rules) and reasonableness (not too uneven distribution of relevant resources among competitors). In the context of elections, the dimension of freedom should include elements of citizen participation in the process (voting and running for office), without any coercion. On the other hand, justice mainly concerns the «rules of the game».

For Elkitt and Sevenson, freedom should be given priority "because it is a prerequisite for democracy and elections as a means of achieving this goal. Without rules that ensure formal political freedoms, the question of fair application of norms is meaningless, and the question of equality of resources is irrelevant.»

The dimension of freedom covers the following criteria:

- freedom of movement;
- freedom of speech (for candidates, mass media, voters and other participants);

- freedom of assembly;
- freedom from fear in connection with elections and election campaigns;
- absence of obstacles to participation in elections (for political parties and for independent candidates);
- equal and universal suffrage;
- opportunity to participate in elections;
- legal options for complaints.
- The measure of honesty consists of the following criteria:
- transparent election process;
- the electoral act and the electoral system, which do not grant special privileges to any political party or social group;
- creation of an independent and impartial election commission;
- absence of obstacles to inclusion in the electoral register;
- impartial treatment of candidates by the police, army and courts;
- equal opportunities for political parties and independent candidates to participate in elections;
- impartial voter information programs;
- organized election campaign (compliance with the code of conduct);
- equal access to publicly controlled mass media;
- impartial allocation of public funds to political parties (if necessary);
- not abusing state institutions for election campaign purposes;
- access to all polling stations for representatives of political parties, accredited local and international election observers and mass media;
- secrecy of voting;
- not intimidating voters;
- effective newsletter design;
- proper urns;
- uncommitted assistance to voters (if necessary);
- correct vote counting procedure;
- correct processing of invalid ballot papers;
- appropriate precautions for transportation and election materials;
- neutral protection of polling stations;
- official and prompt announcement of election results;
- acceptance of election results by all involved.

After examining the academic literature and how various scholars have addressed the theoretical issue between elections and democracy, it is time to take a closer look at how practitioners have explored this issue. The reviewed literature suggests that there is a consensus among practitioners regarding the importance of elections for any democratic consolidation. Experiences that provide insight into the specific components of elections that play a role in democratization, namely election management and its contribution to democratic consolidation, are very important.

The first and decisive step in the conduct of elections is the preparation of the legislative framework, according to which the elections will be held. The legal framework can play a crucial role in shaping the process and outcome of elections. It is necessary that the legal architecture of elections aims to

enshrine the democratic process, but this is not always the case in many countries.

In a study published by the National Democratic Institute on International Affairs (NIA) [5, p.], Patrick Merleau suggested that promoting legislative frameworks for elections should be in the interest of all democratic stakeholders in society, namely political parties, community groups, and candidates. These parties should be prepared to take initiatives to protect and maintain elements of the legal framework they believe are important to justice, and to advocate for changing the legal framework to remove obstacles to justice and improve their chances of victory.

Knowing the rules is not enough to ensure democratic elections. Fair and transparent elections also require monitoring of the process of their implementation.

Merleau identified a set of elements that should be basic for the organization of democratic elections. These may be divided or labeled in slightly different ways, although the categories below provide an overview of the various electoral processes.

Recognition of rights and description of government structure and electoral system. The constitution and electoral law must recognize as fundamental the right to genuine democratic elections and election-related rights.

Electoral districts. Equal suffrage requires that the weight of each person's vote be essentially the same. This is of particular importance in the development of the legislative framework for the delimitation of electoral districts.

Election administration bodies (EBOs). CSOs must be impartial and competent. This should be perceived by the election participants and the public. The legislative framework is key to ensuring that all elements of the electoral process are open to monitoring by political parties, candidates, advocacy groups, domestic non-party election monitoring organizations, the media and international organizations.

Voter registration and voter lists. Voter registration ensures that all eligible voters can exercise their right to vote and prevent illegal voting.

Informing voters. Elections cannot be truly democratic unless voters understand the differences between the contestants so that they can cast an informed vote. Voters also need to know when, where and how to register to vote, and when, where and how to vote.

Legal recognition and status of political parties. The legislative framework should provide, on a non-discriminatory basis and without undue restrictions, for the legal recognition and continuation of the legal status of political parties and other political organizations, such as candidate support groups and initiative groups.

Canvass. The legal framework for holding democratic elections should ensure fair conditions for the participants in the elections, sometimes called a level playing field.

Election campaign resources. If the legislative framework provides resources for election campaigns to political participants, it should be done on a non-discriminatory basis, which implies equal treatment of all contest participants.

Mass media. The legislative framework for democratic elections should address several issues related to mass media: protection of mass media for the exercise of freedom of speech in the electoral context; giving election participants a real opportunity to convey their pre-election messages to the public; and providing voters with accurate information on which to make decisions about their choices.

Voting. The legislative framework must take into account many issues to ensure a real opportunity to exercise the right to vote on the basis of equal and universal suffrage.

Counting of votes, counting of results and announcement of results. Counting of votes, transmission of results, summarization and announcement of results require clear and specific provisions in the legislative framework of democratic elections. A fair and accurate determination of the will of the people as to who shall hold elected office depends on these provisions.

Grievance mechanisms. The legislative framework for democratic elections should provide for a complaint procedure for each element of the electoral process, which ensures due process, equality before the law, equal protection of the law, effective legal remedies against violations of electoral rights and accountability of those who committed violations.

The development of a new legislative framework for elections can also be a source of legitimacy for some regimes or the maintenance of the status quo for others. The leaders of some countries have developed new «rules of the game» to gain greater legitimacy or to satisfy their own interests. Therefore, the development of the legislative framework for elections can be very sensitive and lead the country in different directions.

In this case, we recall Larry Diamond's definition of democracy and democratic consolidation, which he associates not only with holding elections, but also with the existence of civil liberties. If the process of developing the legislative framework for elections is not comprehensive and does not take into account the interests and positions of the majority of interested parties in society, it cannot consolidate democratic practice in a particular country.

In any election, the question of how the election is conducted is very important to qualify the election as democratic or not. Despite the fact that the main focus has been on the normative concept of elections and its relationship with democracy, the causal effect of the institutionalization of electoral politics (election administration) and the emergence of democracy has often been neglected in the academic literature.

Today, the world is witnessing an increase in the number of election administration bodies (EABs) as election management institutions. EAB are important institutions for building democracy. They deal directly with the organization of multiparty elections and indirectly with governance and the rule of law. The EAB is an organization or body responsible for managing one or more elements that are essential to the conduct of elections and the tools of direct democracy – referenda, popular initiatives and recall votes – if they are part of the legislative framework.

In a study published by the United Nations Development Program (UNDP), Professor Rafael López-Pintor assessed EABs as permanent public electoral management institutions in a democratizing world [6, p.76]. He considered the technical aspects of their sustainability, as well as their contribution to the legitimacy of democratic institutions and to strengthening the rule of law in a democratic state. López-Pintor emphasized that countries are now moving towards independent electoral bodies as a better form of EBA. A second model, followed by other countries, is one in which elections are conducted by the government, but to some extent regulated and monitored by an independent commission, which also has the power to make decisions on electoral conduct. However, all forms of EAB have a certain composition of commissions, either partisan or one that includes at least several representatives of political parties. He noted that elections held under the control of the executive power do not guarantee democracy. Therefore, most democratic countries have moved from this form of election management to the form of EAB as part of the process of developing democracy. López-Pintor argued that of the 27 most stable democracies identified by analysts in the second half of the 20th century, only seven countries retain this type of electoral power. All of them are in northwestern Europe (including Switzerland) and make up 25 percent of all old democracies.

The professor also believes that permanent EABs with professional staff work more efficiently than temporary bodies. This is confirmed by the evidence of changes in election budgets (average cost per voter) in relation to the duration of the experience of organizing elections in the country. He also tried to study the influence of institutional factors of election management on increasing legitimacy and reached the following conclusions:

1) individual experience in areas related to the conduct of elections directly depends on how a sense of political effectiveness develops in individual citizens;

2) this is an important factor that conditions the possible development of legitimacy and principled commitment to democracy, i.e. progress towards democratic consolidation (even at the transitional stage).

In general, as can be understood from the above, scholars and practitioners agree that elections are an important prerequisite for democratic consolidation. The organization of elections is the first step in a long process of democratization, which should include, in addition to elections, other elements of civil liberties and freedom of speech. These elements can make democratic consolidation more complete and convincing. Democracy develops as a complex system that encompasses different dimensions and inter-societal relations. There may be other factors that contribute to the emergence of democracy besides elections. However, the idea of our description is that free and fair elections are, although not decisive, a very important component of the democratic process, which contributes to the birth of a democratic government. It stands to reason that democratically elected officials are more committed to supporting democracy than anyone else. On the other hand, it can be argued that elections are a legitimization of the mechanism of authoritarianism in many countries. Elections are held to legitimize the regime by creating pro-regime elites who are less likely to

challenge the status quo. This shows that elections do not mean democratization a priori, but fair and free elections can lead to democracy.

Conclusions. The selection of an appropriate electoral system, as well as the establishment of an effective electoral commission and complaints mechanism, are necessary to ensure sufficiently free and fair elections. However, more is needed for the elections to continue and end peacefully. In war-torn countries and countries holding elections for the first time, there is a huge and persistent potential for conflict, especially over the acceptance of final results. Therefore, political and other confidence-building measures need to be put in place to contain the destructive dynamics at the local and international levels. In particular, several mechanisms for supporting the peace process should be created at the local level. They should be aimed at regulating relations between the Election Commission, political parties and the electorate, in particular by:

– establishing a formalized dialogue between political parties and the electoral body, which enabled both parties to raise and resolve controversial issues in the general political sphere;

– giving political parties access to direct participation in all important stages of the election process, starting from voter registration and ending with the polling station and counting of votes.

So, summarizing, we can note that the holding of elections is an important stage of the movement towards democracy in post-conflict countries and countries that are beginning to democratize. However, this process should not be considered mechanistically and at one moment. A number of conditions are necessary for elections to successfully implement their democratization function, including the formation of a general favorable security and political context, the formation of effective and impartial electoral institutions, the establishment of an optimal election system, as well as ensuring the transparency and fairness of the electoral process, as well as guaranteeing the establishment of positive election results that will be trusted among the subjects of the election process and among the electorate.

The theoretical debates and practical cases described in our review are directly related to Ukraine as a «young democracy». In particular, throughout recent electoral history, we observe the search for the optimal electoral model for local and national elections. It is worth recalling that in 1990, the first democratic elections held in independent Ukraine were the result of political consensus, which ensured their recognition by all participants in the political process. The choice of the election model at that time (majoritarian system of the absolute majority) was most likely due to its simplicity and compliance with the classical understanding of democracy as the rule of the majority. However, in practice, this system proved to be ineffective, because it was necessary to conduct a second round, which meant a high expenditure of resources and time. And even after the second round, the winners were not determined in all districts, which led to the understaffing of the highest legislative body.

Obviously, for these reasons, the next parliamentary elections in 1994 already took place under the majoritarian system of the relative majority. On the one hand, such a system guaranteed almost 100% and prompt results of

the elections (determining the winner in each one the first time), but on the other hand, it ensured that a candidate who was supported by even less than a third of the voters could become elected, but de jure he in the future acted as a representative of the entire electorate of this district.

At the same time, political practice revealed the shortcomings of this majoritarian system, in particular, in terms of its counterproductiveness for the development of multipartyism. But multipartyism is also one of the foundations of democracy. In addition, the majoritarian model has discredited itself in Ukraine due to political corruption and indirect (or even direct) bribery of voters (which was named in the media as «buying constituencies») and the use of administrative resources. Therefore, in subsequent election cycles (1998 and 2002) there was a transition to a parallel (sometimes called mixed) electoral system, which involved the simultaneous symmetrical use of a proportional system with closed lists and a majoritarian relative majority (later, in 2012, there was a return to this system, and elections in 2014 and 2019 were also held according to this model).

However, the vast majority of experts believed that a pure proportional system would be a much better option than a mixed one, since the majoritarian component still contained all of the shortcomings mentioned in the previous paragraph. Therefore, again as a result of political consensus, the elections in 2006, as well as early elections in 2007, were already held according to the proportional system. This was supposed to be favorable for party building and for the representation in parliaments of the political spectrum characteristic of Ukrainian society. However, this system also caused comments and criticism. In particular, this concerned the parties' monopolization of the process of recruiting candidates for election (closed lists), the disappearance of the territorial component in the process of selection and representation (a single nationwide district). Therefore, experts and politicians began to talk about the need to replace it with a more democratic one, and as a panacea they chose a proportional system with open regional lists.

This is what is provided by the new Electoral Code[7], which was adopted in 2020, according to which the next parliamentary elections will be held. Despite the undeniable progressiveness of this electoral model, it also contains a number of threats, among which, in particular, the danger of regional-party segmentation of the parliament, given the pronounced differences in political-ideological, cultural-value and foreign policy dimensions of Ukrainian regions. Therefore, it is safe to say that the search for the optimal election model for Ukraine is not over yet.

Another direction from the one described in the main part of our material, which concerns Ukraine, is holding elections in post-conflict and post-war conditions. After all, due to Russia's armed aggression, Ukraine now has uncontrolled territories. After the return of these territories to the control of Ukraine, sooner or later the question of holding elections there will arise. It is obvious that holding elections without ensuring full control over these territories makes no sense and is not possible. Therefore, in relation to these territories, first of all, jurisdictional and security packages should be implemented. But even if de facto these territories fully return to the jurisdiction of the Ukrainian state,

holding elections there on a general basis will contain the threat of the victory of anti-Ukrainian political forces and their actual legalization and legal incorporation into the state political system, which will act as a powerful destructive factor for the development of the state itself , and will not ensure the spread of democratic procedures in the currently uncontrolled territory. Therefore, in this Ukrainian case, we reveal another aspect of elections and democracy: how and when should elections be held as an element of democracy, if they can pose a threat to political stability, territorial integrity and, in general, statehood?

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AXIOLOGICAL FACTORS OF THE DIGITAL ECONOMY: INTERNET ECONOMY, NEO-ECONOMY, CREATIVE ECONOMY

Teslenko Tetyana[1]

Teslenko Volodymyr[2]

Annotation. The relevance of the study is due to the need to analyze the axiological factors of the digital economy as a set of values related to the algorithmic culture and consciousness of the individual, his digital competences, representing the totality of the experience of each country, personal aspirations, family heritage and cultural roots of the nation. The purpose of the study is to identify the axiological factors of the digital economy, taking into account its three basic components, to determine the new values of the new digital era through understanding and harmonizing the upcoming and down-coming definitions of the digital economy. The digital economy, also called the internet economy, neo-economy, creative economy, new economy, refers to an economy in which digital computing technologies are used in economic activity. The methodology of research provided for the use of the method of system analysis and synthesis of process modeling, Agile-methodology as a methodology of complex social systems. The result of the study. The values of a new type of economy in its historical context are revealed, the modern values of the digital economy, which are formed under the influence of artificial intelligence and BIG DATA, are shown; the existence of digital platforms and popular social networks has been proven, which satisfy the needs of development and communication, unite people by interests, and allow the rapid dissemination of any information; the introduction of innovative digital technologies is predicted, during the recovery period after the COVID-19 pandemic, the need to develop an understanding of the values of artificial intelligence as an advanced technology and to promote the use of creative digital technologies is shown. It is recognized that the growth of the digital economy has a wide impact on the entire economy, as shown by the example of

[1] Teslenko Tetyana, Candidate of economic sciences, associate prof., Head of the Department of Tourism and Hotel and Restaurant Business, Higher Private Educational Institution «Dnipro Humanitarian University», Dnipro, Ukraine, ORCID ID: 0000-0002-5810-3569.

[2] Teslenko Volodymyr, Higher Private Educational Institution «Dnipro Humanitarian University», Dnipro, Ukraine, graduate student.

the work of the world's leading companies. Conclusions. The axiological factors of the digital economy (Internet economy, neo-economy, creative economy) give us the understanding that new productive forces, such as digital and other high technologies of the 21st century, must correspond to completely new production relations between people that do not contradict their accumulated social values. The digital economy is not a separate industry, it is a way of life, a new basis for the development of public administration, economy, business, social sphere and the whole society. Only such relations become the basis for the formation of institutional, financial mechanisms, and infrastructure projects for the development of the digital economy. All organizations, sectors and individuals are now required to act in the style of «systems leadership», which involves new approaches to technology, management and values.

Key words: axiological values, components, management consulting, artificial intelligence, innovative technologies, digital economy

The axiological factors of the digital economy are related to values that represent the totality of each country's experience, personal aspirations, family heritage and cultural roots of a nation that has its own code, subconsciously formed over thousands of years. Axiological factors of the digital economy are a set of values related to the algorithmic culture and consciousness of the individual, his digital competences – from product development to personnel management, determining the level of salary, corporate culture and digital sustainability. Axiological values build the goals of business models, organizations successfully attract consumers based on their values of digital culture, key values determine countries, communities and companies, and trends in the digital economy [1].

The best manifestation of axiological values in practice is the analysis of the experience of countries that define each country, which grows out of the history of the people, the region, the religious topography, and the demographic situation. The key axiological factors of the digital economy have been formed for decades, are passed down from generation to generation, are constantly developing and radically changing because new digital, scientific and technological values are emerging that form the economy, politics, and business communications. New values appear in the core of axiological factors – artificial intelligence and BIG DATA, which are becoming more and more successful for conducting business. Moore's Law reduced the cost of digital storage, and the exponential growth of the number of smartphones created conditions for the emergence of services for forwarding messages between different devices and clients, which previously put new values at the forefront [2].

The digital economy, also called the internet economy, neo-economy, creative economy, new economy, refers to an economy in which digital computing technologies are used in economic activity. The term «digital economy» was first mentioned in Japan by a Japanese professor and economist researcher at the height of the Japanese recession of the 1990s, in the West the term began to be used in the early 1990s; New York University's Center for Research in the Digital Economy has published many scientific articles.

The term was more widely popularized in Don Tapscott's 1995 book «The Digital Economy: Prospects and Perils in the Age of Networked Intelligence». According to Thomas Mesenburg (2001), three main components of the digital economy concept can be distinguished:

1) e-business infrastructure (hardware, software, telecommunications, networks, human capital, etc.);

2) electronic business (how business is conducted, any process that the organization conducts through computer networks);

3) electronic commerce (transfer of goods, for example, when a book is sold online). Therefore, we turn to the definition of digitalization to define the new values of the new digital age. According to the OECD, there are three different approaches to its definition, namely:

1) a «bottom-up» approach: characterization of output or production processes of industries and companies in order to decide whether they should be included in the digital economy;

2) a descending approach based on trends: first identifying the key trends driving digital transformation, and then analyzing to what extent they are reflected in the real economy;

3) a flexible or multi-level approach: defining the components and finding a compromise between adaptability and the need to come to a common point of view on the term meaning [3].

The «bottom-up» definition determines the digital economy as a set of indicators for a set of industries defined as participants in the digital economy. The digital industry depends on the nature of the products (narrow focus) or the share of digital resources used in production processes (broad). As the analysis shows, from the point of view of a narrow focus (Internet economy, neo-economy, creative economy), they directly participate in production or are extremely dependent on digital resources. For example, McKinsey summarizes the economic performance of the Information and communication technologies (ICT) sector in terms of online sales of goods and consumer spending on digital equipment. Although this definition is well suited for measuring the impact of digitalization on economic growth, it focuses only on the nature of output and offers an incomplete picture of the development of the digital economy [4].

In the context of a broad «bottom-up» definition, the digital economy is all industries that use digital resources as part of their production process. Examples of digital inputs include digital infrastructure, which can include data and digital skills. The top-down definitions identify the broad trends of digital transformation and define the digital economy as the result of their combined impact on value creation. These include spin-offs such as changes in labor market demand and regulation, platform economics, sustainability and equity.

Unlike the bottom-up definition, the «top-down» definition involves units of analysis that go beyond firms, industries and sectors to include individuals, communities and societies. While the last one definition is more comprehensive, the International Monetary Fund (IMF) notes that it is subjective, qualitative

and open-ended, limiting meaningful benchmarking. To reconcile the bottom-up and top-down definitions of the digital economy, Bucht and Hicks stated that the digital economy consists of all sectors that make extensive use of digital technologies (that is, their existence depends on digital technologies), as opposed to sectors that use digital technologies intensively [5] .

According to this approach, the digital economy is divided into three levels and covers their values:

1) valuable cores: covers the digital sector and core technologies, which include manufacturing and IT consulting, information services and telecommunications;

2) the values of a narrow approach: an economy based on a platform;

3) the values of a broad approach: the digitized economy, which includes the values of digitized sectors such as advanced manufacturing, agriculture, the algorithmic economy, the sharing economy and the gig economy. These digital sectors generate phenomenologically the values of the Fourth Industrial Revolution [6].

At the end of the past century, Ray Oldenburg proposed the concept of so-called "third places", where people would be able to compensate for the lack of social communication and fill it with new values. These third places can be clubs, university campuses, open discussion events, coffee shops and parks, and other places beyond work and home. The expression of the values of the new digital worldview is popular social networks that meet the needs of development and communication, unite people by interests, allow to spread quickly information with one click of the "Share" button, symbolizing the values of a new type of economy. [7]

The development of the digital economy values are based on firms specializing in management consulting, which today compete with business schools that offer services. It is important to predict what to avoid: which customers will leave the company when their contract ends; which account the fraudsters gained access to; which customers will potentially not pay their bills or which pages contain objectionable content. In the nascent economy of transformations, the values of the customer, who acts as a product, are formed, and transformations help the customer to change his certain qualities.

The digital society must develop new values of the digital worldview, develop a concept, plan measures that will help people survive and preserve dignity as a fundamental anthropological value in a world of great inequality. According to experts, 55% of the companies surveyed as part of the investment review in 2021 have witnessed a demand for digitalization; 46% of companies report that they have become more digital; 34% of companies that do not use advanced digital technologies yet. The world saw that the COVID-19 crisis forced organizations to focus on the values digitalization values. Companies that have implemented innovative digital technologies have a more positive view of their industry and the overall economic state. 53% of businesses in the European Union that have previously adopted advanced digital technologies have invested more in digital to become more efficient; 34% of non-digital EU organizations see the crisis as an opportunity to start investing in digital transformation; 38% of companies reported that they are focused on the

values of basic digital technologies: 22% on advanced technologies (such as robotics, artificial intelligence) [8].

In the context of a digital society, the digital market can be called «multifaceted», forming a set of digital values, as the digital transformation of organizations forces firms to develop new digital capabilities in order to remain competitive. The meaning of the value significantly contribute to the profitability of the firm, which is based on resources that would moderate the influence of organizational and environmental factors on the interaction effect. Marketing values are a set of firm-level skills and knowledge embedded in organizational processes that perform marketing tasks and human adaptation to market changes. They are widely recognized as essential factors for the firm's performance to keep up with the profound transformations in practice caused by the digitization of activities, forced to develop new digital capabilities and, in particular, digital marketing capabilities [9].

The axiological factors of the digital economy (internet economy, neo-economy, creative economy) are based on the ideas that platforms are «bilateral», developed by the French Nobel laureate Jean Tirole. He tried to explain why some platforms can offer network value, the value of advanced software, because when users spend time on a page or click on a link, it creates a positive externality for the advertiser. Transformations capable of providing such profound changes that cannot be cheap and widely available, because the transformation of a person or a company means the highest level of differentiation [10]. This anthropological approach required employers to provide a person with the realization of basic needs, needs for self-realization and self-improvement of a person.

The results of intertwined and combined effects tend to lead to the formation of dominant positions in the market, also called digital monopoly or oligopoly. In this sense, digital platforms such as Google, Apple, Facebook and Amazon can be considered first-class – large companies that bring a service or product to market, allowing the company to build brand recognition and service loyalty. Given the expected wide-ranging impact, traditional firms are actively evaluating how they respond to the changes brought about by the digital economy. For corporations, response times are of the essence, banks are trying to innovate and use digital tools to improve their traditional business. [11]

For millions of people, artificial intellect is the primary value of innovative technologies, has become the heart of the company and the first axiological value for a person. It found that organizations that invested in both advanced and core digital technologies were the most likely to outperform during the pandemic. Following the outbreak of COVID-19, the proportion of non-digital businesses that reduced was greater than the proportion of non-digital businesses that had a positive reproduction. Non-digital companies had a negative net employment balance: in Europe, 31% of people work for companies that are non-digital, equal to 22% of people in the US. Companies that have introduced innovative digital technologies are more likely to evaluate positively their own business and the global economy during the post-COVID-19 recovery period. Under the pandemic, 53% of businesses

in the European Union, which had previously adopted advanced digital technologies, invested more to become more digital. 34% of non-digital EU organizations respected the crisis with a chance to start investing in their digital transformation. 38% of the companies said they were interested in the stench of basic digital technologies, while 22% were interested in advanced technologies. [12].

Access to digital infrastructure is growing in the European Union, and more homes now have more access to broadband communications. Some traditional companies are struggling to respond to the regulatory challenges of the digital economy, including tax evasion. Due to the intangible nature of digital activities, digital multinational companies (MNCs) are extremely mobile, allowing them to optimize tax evasion. They can make large volumes of sales from the tax jurisdiction.

In particular, governments are faced with the fiscal optimization of MNCs through companies that locate their operations in countries with the lowest taxes. On the other hand, companies may be subject to double taxation of the same activity or face legal and tax uncertainty. The Conseil National du Numrique concluded that in 2012 the corporate tax shortfall for Apple, Google, Amazon and Facebook amounted to approximately 500 million Euros. Society must plan measures to help people survive and preserve dignity as a fundamental anthropological value in a world of great inequality, as this will forever undermine citizens' confidence in society's ability to solve these problems. [14]

According to experts, the authorities underestimate how urgently it is necessary to develop an effective social policy and its proper financing. Embedded AI systems will always try to guess what their users want or need, updating their models after each customer interaction. For advertisers working with Google, the ability to predict will certainly be extremely valuable. Therefore, a deep understanding of the value of artificial intelligence as an advanced technology should be developed and the application of creative digital technologies should be promoted. For millions of people, artificial intelligence is no longer a series of promising innovative technologies, it has become the heart of companies and the main axiological value for society and man. [15]

The digital economy uses a tenth part of the world's electricity. Moving to the cloud has caused an increase in electricity use and carbon emissions. A server room in a data center can use, on average, the electricity to power 180,000 homes. The digital economy can be used to mine Bitcoin, which uses an average of 70.69 TWh of electricity per year, according to Digiconomist. There are about 6.5 million households in the US that can get power to run Bitcoin mining. [16]

The digital economy is based on the values of collecting personal data. In 1995, the Data Protection Directive (Directive 95/46/CE) defined data as any value relating to a natural person that can be identified by reference to an identification number or information relating to that person. At that time, this regulation arose in response to the need to integrate the European market. By adopting common European data protection standards, the EU was able to

harmonize conflicting national laws that acted as a trade barrier, restraining commerce in Europe. For this reason, the GDPR and its predecessor were seen as internal market instruments, contributing to the creation of the Digital Single Market by allowing the unhindered flow of data within the entire Common Market. Thanks to the ability to overcome the information asymmetry between supply and demand, data now has great economic value. [17]

Due to free access to the platforms in exchange for collecting personal data, they make the content non-competitive. Thus, the intangibility of content seeks to give this information a collective aspect, accessible to everyone, to benefit the public good by creating a digital public space. A McKinsey Global Institute (2014) report identifies five general ways in which the use of big data can create business value:

1) creating transparency by facilitating access to data for interested parties who are able to use the data;

2) efficiency management by conducting experiments to analyze the variability of efficiency and understand its main causes;

3) segmentation of the population for personalization of products and services;

4) decision-making by replacing or supporting human decision-making with automated algorithms;

5) improving the development of new business models, products and services. [18]

Digital companies like GAFA thrive on the variety of free services they provide to consumers that appear beneficial to consumers but less beneficial to potentially competing firms. Regulators will find it difficult to apply sanctions on such firms as GAFA because of the jobs and services they provide worldwide.

Yes, there may be some problems for regulators. One example is the identification and definition of platforms. Member countries do not have enough coordination and may be independent of a regulator that may not have a global vision of the market. In addition, tax evasion is a growing problem for most European governments, including the European Commission. Attracting foreign investment is less and less seen as a valid reason for tax cuts. In addition to fiscal deficits, the issue has become political in recent years, as some politicians believe that during the financial crisis, these high-profit firms are not contributing to national efforts. [19]

The digital market is characterized by its heterogeneity. The European market is in a difficult position to compete with other developed countries in the digital world, such as the US or China. There are currently no European Digital Champions. The European digital market is divided into rules, standards, customs and languages. Member States cannot meet demand or support research and development (R&D) of innovation because the digital environment is global in nature. As the European Parliament noted, taxation of the digital market can bring about 415 billion to the EU economy and be seen as an incentive for further deepening of EU integration. [11]

In 2017, the European Commission fined Google 2.42 billion Euros for abusing its search engine dominant position by giving Google Shopping an illegal

advantage. The European Commission aimed to pave the way for the release of firms suffering from abuse of a dominant position. In addition, the commission strived to prove that the EC's strategy works and that companies can be fined high interest rates. The digital economy has therefore been a concern of the Juncker Commission since the first Barroso Commission. 3 pillars of the policy were emphasized:

1) improving access to digital goods and services;

2) developing an environment where digital networks and services can flourish;

3) digital technologies as a driving force of growth. [20]

In 2020, the digital economy continues to be a top priority for the EC and belongs to the Commission President's agenda. Frans Timmermans, responsible for one of the six priorities of the EC entitled "Europe suitable for the digital age". It is prioritized so that the EC works towards a digital transformation that benefits everyone. The values are aimed at opening up new opportunities for business, promoting the development of advanced technologies, promoting an open and democratic society, a viable and sustainable economy, facilitating fighting against climate change and achieving environmental sustainability. The digital economy strategy is included in the broader strategy for the future of Europe. However, the goal of the EC is to become a global model of the digital economy, which cannot limit the realization of opportunities for its citizens, as digital leaders put the values of a digital society and a digital person to the foreground. [21]

The values of the digital economy qualify as "immaterial capitalism" that promotes inequality and social division. In 2017, Haskell and Westlake published «Capitalism without capital», which raises concerns about the failure of politicians to facilitate the transition from a traditional economy to a new economy based on intangible assets. Since the mid-2000s, companies have invested more in «intangible assets» such as branding, design and technology than in machinery, equipment or property. Many companies' key assets are software and data (Uber, for example), but not physical. The digital economy has accelerated the spread of global value chains into which they integrate their international operations [22].

The development of online platforms raises concerns from the point of view of legal issues of social security and labor law.

Digital platforms rely on «deep learning» to increase the power of their algorithms. The human-assisted content tagging industry is constantly growing. For example, digital companies such as Facebook or YouTube use «content monitors» – contractors who act as third-party monitors hired by a subcontractor to a professional services company to monitor social media to remove any inappropriate content. Thus, the work consists of viewing and listening to potentially disturbing messages that may be violent or sexual. In January 2020, through a group of subcontractors, Facebook and YouTube asked "content moderators" to sign a PTSD (post-traumatic stress disorder) disclosure statement following alleged cases of mental disorders seen among employees.

Bill Imla argues that new applications are blurring boundaries and adding complexity, such as social media and Internet search. In traditional manufacturing, marginal costs decrease with volume due to economies of scale and the learning curve effect. For digital products and services such as data, insurance, e-books and movies, this effect is amplified as the share of the global economy that does not conform to the old model continues growing, with implications for a wide range of digital policies. [23]

The U.S. information technology (IT) sector now accounts for about 8.2% of the country's GDP, doubling its share of GDP over the past decade. 45% of business hardware spending is investment in IT products and services, so companies like Intel, Microsoft, and Dell have grown from $12 million in 1987 to over half a billion in 1997. The Global E-Commerce Framework promotes five principles used to guide the U.S. government's e-commerce actions so that the growth potential of the digital economy remains high. These five principles include:

1) leadership of the private sector;

2) avoidance by the government of unreasonable restrictions on electronic commerce;

3) limited government involvement;

4) recognition by the government of the unique qualities of the Internet;

5) global promotion of electronic commerce.

The widespread adoption of ICTs, combined with the rapid fall in prices and the increase in productivity of these technologies, has contributed to the development of new types of activities in the private and public sectors. These new technologies provide market reach, lower costs and new opportunities for products and services, changing the way multinational enterprises (MNEs) and start-ups develop their business models. [24]

The African Center for Economic Transformation (ACET) began in 2008 with the understanding that Africa needed more than economic growth. Although our continent is developing steadily, too many countries are unable to sustain their progress. They continue to over-rely on low-productivity agriculture for rural employment and have failed to develop strong production sectors.

ACET is an economic policy institution that supports Africa's long-term growth through transformation. In our opinion, simple growth is not enough. Africa must also transform by diversifying production, exporting competitively, increasing productivity, modernizing technology and improving human well-being. The concept of a digital society in Africa is an economically transformed Africa in one generation; mission is to help governments and businesses deliver economic transformations that improve lives. [25]

The long-term goal of the development of the digital economy, also called the Internet economy, neo-economy, creative economy, new economy, is economic transformation and improvement of human well-being through diversified production, competitive exports, increased productivity and updated technologies. [26]

Countries and cities around the world are starting smart city projects to make their countries and cities smarter. However, how do these smart city projects contribute to the achievement of the UN Sustainable Development Goals? The

UN's Sustainable Development Goals (SDGs) are ambitious global efforts to be achieved by 2030 and include global action on inclusiveness, socio-economic sustainability and environmental protection. [27]

Given that cities are the home to half of the world's population and generate two-thirds of global GDP, our cities are important contributors to achieving the Sustainable Development Goals (SDGs). All 17 cross-cutting SDGs are urban goals for urban participants to drive action and investment in smart urban development. It is obvious, that not all cities will operate at the same speed or have the same priorities or even the same starting point. Thus, localization of the SDGs at local and regional city levels becomes key, which will encourage and direct city leaders to achieve global goals. Given the scale, complexity, and interconnectedness of smart city services, cities need integrated strategies, project implementation, and robust monitoring and reporting methods to align with specific goals.

Why the SDGs are important for smart city planning: 1) half of humanity (3.5 billion people) lives in cities today, and by 2030 it is predicted that 5 billion people will live in cities; 2) 95% of urban growth occurs in developing countries; 3) cities consume 80% of energy and generate more than 70% of carbon emissions; 4) rapid urbanization puts pressure on urban infrastructure, including housing, transport, water supply, electricity and healthcare systems: 5) shortage of digitally skilled workforce to drive smart economy and smart community transformations; 6) access to food can increase significantly in cities, as 70% of the world's population will live in urban settlements by 2050. [28]

Therefore, the axiological factors of the digital economy are related to the values of the digital economy, which will lead to the stability and cohesion of a dispersed and unstable society, which will become essential for further progress, humanism, and the development of science.

Conclusions.

Therefore, the axiological factors of the digital economy (Internet economy, neo-economy, creative economy) give us the understanding that new productive forces, such as digital and other high technologies of the 21st century, must correspond to completely new production relations between people. The digital economy is not a separate industry, it is a way of life, a new basis for the development of public administration, economy, business, social sphere, and the whole society. A prerequisite is a transition to a new model of life management at the local level with a simultaneous mechanism for coordinating the interests of the state, society, and business with the interests of each individual in real-time and the entire digital communication infrastructure between them. This mechanism is a mechanism for establishing a digital economy that is safe for people. A tool that can fully implement the mechanism of reconciliation of interests is blockchain technology. Platforms for transactions between equal partners that operate without intermediaries are based on this technology, in which decentralized information storage is used to display all transaction data to align interests separately at each local level.

The digital economy must be considered as an economy of coordinated inter- New paradigms of thinking form the standard of living, life expectancy, literacy and quality of education, a high index of human potential associated with the

development of digital competencies. Human activity, first of all in a business area, can quickly reformat and rebuild the country. It is not easy to rebuild society, for this, it is necessary to change values, let creativity and creativity manifest, identify weak points and point out the areas of economic development, which are becoming more complicated and require new metrics and methods of assessment.

Science and technology is the basis that enables companies to develop and implement their ideas and values in order to build a world of equal opportunities, to contribute to the overall future development, within the interests and values of all employees. The digital revolution – its dynamics, technologies, and values allow leaders to look at the problem more broadly, think more deeply about the connections between technology and society, and realize the ways in which our collective activities create the future. All organizations, sectors and individuals need to act in a "systems leadership" style that involves new approaches to technology, management and values.

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CONCEPTS AND FEATURES OF THE ACTIVITIES OF PUBLIC ADMINISTRATION SUBJECTS IN THE FIELD OF PROFESSIONAL EDUCATION

Chizh Bohdan[1]

Annotation. This scientific article defines the concept of subjects of public administration in the field of professional education. The specifics of their activity are determined. Particular attention is paid to the content of the decentralized model of professional education management: the advantages are determined. Attention is focused on determining the powers and competence of subjects of public administration in the field of professional education.

It was determined that the public administration as a subject of the public administration of vocational education in Ukraine is a system of subjects that have their own or delegated powers in the field of vocational education, with the aim of reforming it and increasing its prestige, taking into account the needs of the labor market in training, retraining and improving the qualifications of specialists.

The peculiarities of the activity of the public administration in the field of professional education in Ukraine are: 1) a hierarchically structured system of management bodies; 2) decisions of competent subjects, both those having their own and delegated powers, are of an imperative nature; 3) public nature of the activity; 4) exercise their powers and competence with the help of the system of administrative and legal means of public administration; 5) competent to apply measures of administrative coercion; 6) have a branched system.

It is noted that the modern model of management in the field of professional education, in our opinion, should take into account the following features: 1) integration with the labor market and the requirements of employers in the qualifications and professional qualities of specialists; 2) promote the introduction of a dual form of professional education; 3) peculiarities of the economic development of each administrative-territorial region and their needs in certain categories of specialists; 4) the principle of «parity» management, i.e. redistribution of functions and powers between central and local education management bodies; 5) expansion of access opportunities and programs to encourage students to social development by acquiring professional knowledge,

[1] Chizh Bohdan, graduate student of the University of Modern Knowledge.

abilities and skills, increasing the prestige of professional education; 6) assistance in expanding the autonomy of vocational education institutions; 7) introduce a decentralized model of management of professional education, which involves a significant limitation of the functions of central executive bodies, as well as a clear definition of the basic goals of general and professional education and directions of its development.

Key words: professional education, dual professional education, specialist, public administration, decentralized model of management of professional education.

Methodological justification. Taking into account the specifics of the topic, the goal and tasks of the research, various scientific methods were used, in particular: dialectical – for the study of theoretical and normative provisions regarding the concept and features of the activity of public administration in the field of professional education; classifications and groupings – the powers and competence of public administration subjects in the field of professional education are distinguished; structural-functional – applied to research the specifics of public administration in the field of professional education; structural and logical – applied to the analysis of the hierarchical structure of the public administration system in the field of professional education: the Cabinet of Ministers of Ukraine; the central body of executive power, which forms state policy in the field of professional education; the central body of executive power implementing state policy in the field of professional education; central bodies of executive power that have vocational education institutions under their authority; local state administrations and local self-government bodies.

Results and discussion. Bodies of public administration play a decisive role in reforming professional education. Their role in the formation and implementation of state policy in the researched area contributes to the successful implementation of the tasks and directions of professional education. The activity of public administration subjects in the field of professional education has a systematic and competent nature, which is determined by their place in the hierarchical structure and the power-administrative nature of the activity.

In the theory of administrative law, under the concept of «public administration», scientists classically propose to understand the totality of executive power bodies and executive self-government bodies subordinate to political power, which ensure the implementation of the law and perform other public-management functions [1, p. 117].

T.M. interprets this definition somewhat more broadly. Kravtsova and A.V. Solonar, which, in addition to the classic list of subjects, also includes enterprises, institutions, organizations and other subjects that are endowed with administrative and managerial functions and act to ensure both the interests of the state and the interests of society in general [2].

A.A. Pukhtetska notes that public administration is a set of bodies, institutions and organizations that perform administrative functions; administrative activity carried out by this administration in the public interest; the sphere of public sector management by the same public administration [3, p. 41].

Researching the role and importance of public administration subjects in the development of professional education, scientists emphasize its role and performed tasks in different ways.

L.M. Gren notes that the prestige of working professions depends on the attention of the state in solving the issue of improving the content and practice of using mechanisms of state management of the vocational education system at the state and regional levels [4, p.82]. In our opinion, this statement is correct, because the development and adoption of state standards of professional education belongs to the competence of the Cabinet of Ministers of Ukraine and relevant central bodies of executive power.

In the study of V.A. Grigorieva revealed the relevance of the conceptual foundations of management of the development of vocational education as one of the possible directions of its renewal. The author proved that the development of professional education takes place thanks to the constant introduction of modern innovations into it, developed and theoretically substantiated a set of provisions that reveal prognostically significant conceptual bases for managing the development of professional education. It has been proven that it is possible to harmoniously solve the problem of reconstruction of the educational and administrative space only in the conditions of culturally appropriate education with the help of humanitarian technologies. At the same time, in our opinion, a new managerial paradigm in professional education, the content of which is formed under the conditions of a market economy, as a means of acquiring and using the intellectual capital of the future national education system, needs additional justification. The issue of the state and society's participation in ensuring the development of the personality of the future specialist requires additional attention [5; 6, p. 287].

The need for systemic reforms of vocational education as one of the levers of economic development of the country was proven in the study of O.I. Danilova [7]. The publication shows that the development of professional and technical education is closely related to the social and political features of the country's development, as well as the need for qualified workers [5, p.288]. Undoubtedly, the economic development of various industries and spheres of the national economy requires a sufficient number of qualified specialists. At the same time, the training and retraining of such personnel should take place on the basis of their competitive professional qualities and meet the demands of the labor market.

Research by Z.V. Doli testifies to the relevance of the monitoring study of the compliance of the supply of qualified labor with the needs of the labor market of Ukraine and the determination of the quality level of vocational education. The author justified the need for legislative regulation of the issue of establishing relations between vocational and technical education institutions and local executive authorities, developing a clear mechanism for multi-channel and multi-level financing of vocational and technical educational institutions, creating a new methodology for calculating the cost of training qualified workers, taking into account the complexity, knowledge and material intensity of professions . It is proposed to create legal and economic foundations for encouraging employers

and investors to participate in the development of vocational education institutions and the restoration of state labor resources, which should be based on mutual interest and responsibility [8].

V.V. Suprun notes that the goal of effective optimization of management is the optimal combination of state and public foundations in the interests of the individual, society and government. Its main tasks are the realization of the defined rights and obligations of pedagogical workers, students of education and their parents to participate in the management of educational institutions; democratization of state management of professional (vocational and technical) education; meeting the needs and interests of the participants in educational and educational and educational and production processes; development of coordination mechanisms in solving general tasks [9, p. 66].

The author notes that the need for qualitative changes in the interaction of central and local bodies of executive power and local self-government regarding the functioning and development of professional (vocational-technical) education institutions is ripe. The management system needs to be reformed. First of all, in conditions of decentralization, ensuring their autonomy, first of all, financial and economic independence, effective attraction of investments in the development of the education system, and the introduction of incentives for both business entities and pedagogical workers becomes relevant. Among them, first of all, the imbalance in the management of professional (vocational and technical) education institutions, their inadequate financing, the difficulty of preparing the necessary documentation during a possible transfer to communal ownership, etc. No legislative act has defined the powers or regulated the mechanisms of relations between the bodies of executive power and self-government at the state-wide and local level in order to ensure the functioning of both the system of professional (vocational and technical) education as a whole and a specific institution in matters of subordination and responsibility in the conditions decentralization and social changes, approval of founding documents, establishment of methodical support, organization of work with pedagogical personnel, their tariffs, professional development, etc. A balanced and rational distribution of powers, rights, responsibilities of education and science bodies at the national and regional levels, interaction of education management subjects, institutions and institutions of professional (vocational-technical) and vocational higher education, local self-government bodies, stakeholders also becomes important. of education, public organizations and citizens in the context of reforming the education sector [9, p. 66-67].

Undoubtedly, the most important functions for the development of the field of professional education should be entrusted to local bodies of public administration, which to a greater extent understand the current problems and needs of specialists in labor professions, are in constant interaction with the private sector and can contribute to ensuring the demand for the appropriate administrative territorial unit.

Optimizing education management, according to V.V. Suprun, includes: decentralization of management in this area; redistribution of functions and powers between central and local education management bodies; professional

approach during the selection and appointment of heads of educational institutions, educational management bodies; development of a system of measures (scientific-methodical, financial-economic, etc.) related to the implementation of the idea of autonomy of educational institutions, expansion of their rights and opportunities regarding financial independence; overcoming bureaucracy in the education management system, improving the procedure for inspections and reporting of educational institutions; professional training of competent managers of the education system, formation of managers of a new generation, capable of thinking and acting systematically, in particular in crisis situations, making managerial decisions in any sphere of activity, effectively using available resources; introduction of new effective forms of professional development of education managers; development of automated educational management systems [9, p.88].

The implementation of the specified tasks and areas of activity of the authorized subjects of public administration should be clearly defined by law and fixed in the strategy (concept) of the development of professional education and the development of the professional environment.

In the Concept of implementation of state policy in the field of professional (professional and technical) education «Modern professional (professional and technical) education» for the period until 2027» it is determined that the reform of the management system of professional (professional and technical) education and its structure provides:

distribution of management and financing powers in the field of professional (vocational and technical) education, in particular, the transfer to the regional level of powers to forecast the needs of the labor market in professional qualifications, the formation of a regional order for the training of personnel based on the analysis of the state of the labor market;

formation of regional councils of professional (professional and technical) education – consultative and advisory bodies formed under the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations, to participate in the formation and implementation of state regional policy in the field of professional (professional and technical) of education [13].

It should be noted that, first of all, in paragraph 23 of the National Doctrine of Education Development, the need for decentralization of education management, including professional education as a component of the education system as a whole, was determined for the first time, which provides for: optimization of state management structures, decentralization of management; redistribution of functions and powers between central and local bodies of executive power, local self-government bodies and educational institutions; transition to programmatic management; combination of state and public control; introduction of a new management ethics based on the principles of mutual respect and positive motivation; transparency of development, examination, approval and approval of normative and legal documents; creation of systems for monitoring the effectiveness of management decisions, their impact on the quality of educational services at all levels; organization of experimental testing

and examination of educational innovations; implementation of the latest information management and computer technologies; democratization of the procedure for appointing heads of educational institutions, their attestation; improvement of the mechanism of licensing, attestation and accreditation of educational institutions; increasing the competence of managers at all levels; wider involvement of talented young people, women in management activities, as well as education of leaders in the field of education [10].

That is, initially, managerial activity in the field of professional education should, to a greater extent, be based on the principle of decentralization; on the basis of automation of educational and training processes; minimization of the role of the state in the field of professional education and the granting of wider powers to local bodies of public administration and professional education institutions themselves; ensuring maximum compliance of the state standard of professional education with European standards; control over the quality of professional education.

A little later, in the National Strategy for the Development of Education in Ukraine for the period until 2021, it was determined that the modernization of the education management system should be carried out on the basis of innovative strategies in accordance with the principles of sustainable development, the creation of modern systems of educational projects and their monitoring; development of the model of state-public administration in the field of education, in which the individual, society and the state become equal subjects and partners. It is necessary to create a flexible, purposeful, effective system of state-public management of education, which will ensure intensive development and quality of education, its focus on meeting the needs of the state and individual requests. This provides for optimization of education management bodies, decentralization of management in this area; redistribution of functions and powers between central and local education management bodies [11].

The need for decentralization of management of vocational education in view of the problem of inefficient multi-level management of vocational (vocational and technical) education is declared in the Concept of the State target social program for the development of vocational (vocational and technical) education for 2022–2027.

The construction of a decentralized model of vocational education management includes: 1) completion of the transfer of integral property complexes of vocational (vocational-technical) education institutions from state to communal ownership, as well as powers to manage vocational (vocational-technical) education institutions at the regional level and their financing and/or cities – regional centers on their initiative; 2) expanding the autonomy of professional (vocational and technical) education institutions; 3) ensuring inclusiveness of professional (vocational and technical) education; 4) improvement of informational, architectural and transport accessibility to the educational process in institutions of professional (vocational and technical) education for various categories of education seekers, in particular persons with special educational needs, disabilities; 5) creation of education management information system (EMIS); 6) development and implementation of a framework

methodology for the analysis of regional labor markets with the possibility of monitoring and updating relevant data every year – for planning educational activities and forecasting the needs of personnel by profession; 7) increasing the level of capacity of regional councils of professional (vocational and technical) education in the formation of regional policy in the field of professional (vocational and technical) education; 8) development of new/modernization of existing programs for improving the qualifications of pedagogical workers based on national and international practices, including through participation in the EU Program «Erasmus+» and other international programs and projects, etc. [12]. In addition, an important component, in our opinion, is the development and practical cooperation within the framework of public-private partnership, which will provide additional levers to motivate the students of professional education in better study results and further employment.

Thus, the fundamental vector direction in the management of vocational education is directly its decentralization, i.e. the possibility of delegating powers to local bodies of public administration to resolve issues of reform and development of vocational education and the possibility of orienting the training of vocational education specialists depending on the needs of a certain administrative-territorial unit.

Implementation of the Concept of State Policy Implementation in the Field of Professional (Vocational and Technical) Education «Modern Vocational (Vocational and Technical) Education» for the period up to 2027 is planned in three stages during 2019–2027. In particular, at the first stage (2019–2021) it is planned to continue the decentralization of management, in particular to carry out a partial transition to the financing of professional (vocational and technical) education institutions located on the territory of cities of regional importance – regional centers, from regional budgets through the implementation of a pilot project in certain areas; develop and approve a standard regulation on the regional council of professional (vocational and technical) education. This stage involves: – the gradual transfer of powers for the management of professional (vocational and technical) education institutions and their financing to the regional level; – expanding the autonomy of professional (vocational and technical) education institutions; – optimization of the network of professional (vocational and technical) education institutions; – creation of conditions for a person to acquire professional qualifications throughout his life, taking into account inclusive education [13]. On this occasion, we note that after analyzing the powers of state authorities and local self-government bodies in the field of professional education, we can come to the conclusion that at the legislative level, norms have been adopted that provide for decentralized management of professional education institutions. However, according to the current legislation, powers in the field of professional education are also vested in the central bodies of the executive power. That is why we will reveal the system of powers of public administration bodies in the field of professional education and analyze their powers.

According to Article 6 of the Law of Ukraine «On Vocational (Vocational-Technical) Education» it is determined that the management bodies of professional

(vocational-technical) education include: the central body of executive power, which ensures the formation of state policy in the field of education and science; the central body of executive power, which implements state policy in the field of education and science; central bodies of executive power, to which institutions of professional (vocational and technical) education are subordinate; The Council of Ministers of the Autonomous Republic of Crimea, the regional, Kyiv and Sevastopol city state administrations, as well as the structural subdivisions created by them on matters of professional (professional and technical) education (local bodies of management of professional (professional and technical) education) [14].

Conclusions. Therefore, the public administration as a subject of public administration of vocational education in Ukraine is a system of subjects that are endowed with their own or delegated powers in the field of vocational education, with the aim of reforming it and increasing its prestige, taking into account the needs of the labor market in training, retraining and promotion qualifications of specialists.

The peculiarities of the activity of public administration in the field of professional education in Ukraine, in our opinion, are: 1) hierarchically constructed system of management bodies; 2) decisions of competent subjects, both those having their own and delegated powers, are of an imperative nature; 3) public nature of the activity; 4) exercise their powers and competence with the help of the system of administrative and legal means of public administration; 5) competent to apply measures of administrative coercion; 6) have a branched system.

It was determined that the modern model of management in the field of professional education, in our opinion, should take into account the following features: 1) integration with the labor market and the requirements of employers in the qualifications and professional qualities of specialists; 2) promote the introduction of a dual form of professional education; 3) peculiarities of the economic development of each administrative-territorial region and their needs in certain categories of specialists; 4) the principle of «parity» management, i.e. redistribution of functions and powers between central and local education management bodies; 5) expansion of access opportunities and programs to encourage students to social development by acquiring professional knowledge, abilities and skills, increasing the prestige of professional education; 6) assistance in expanding the autonomy of vocational education institutions; 7) introduce a decentralized model of management of professional education.

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EUROPEAN SOCIO-LEGAL AND HUMANITARIAN STUDIES

№1, 2022

Proffreading copyright
Layout – Ivanna Polianska
Design – Kate Shanta
Compiler – Sofia Byelova

Size of book 70x100/16. Font Source Serif Pro.
It was published in book form in 2021 by RIK-U
in an edition of 100 copies.
Original version made in printing shop "RIK-U"
Sertificate DK 5040, in 2016.01.21.

European Socio-Legal and Humanitarian Studies is the official journal of the The Faculty of Letters in Baia Mare. It publishes articles in the field of humanitarian science, written in English, French, Spanish, German, or Italian, and book reviews, or evaluations of scholarly conferences. The journal publishes the results of scientific research and primary sources in philology, pedagogy, sociology, philosophy, history, political science, law, the dissemination of humanitarian knowledge, humanization and humanization of education.

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Since its first publication in 2019, European Socio-Legal Humanitarian Studies has had a quarterly publication.

ISSN 2734-8873
ISSN-L 2734-8873