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CONTENTS

LEGAL LIABILITY FOR VIOLATION OF THE NORMS THAT REGULATE PUBLIC ADMINISTRATION OF THE ENVIRONMENT UNDER ASPECIAL PERIOD

Chudnenko Volodymyr[1]

Annotation. In this article, attention is paid to the issue of legal responsibility for violation of norms that regulate the public administration of the natural environment in the conditions of a special period.

Legal responsibility is characterized by: 1) involvement in legal relations; 2) procedurality; 3) resolution of the issue of responsibility by authorized entities; 4) provision by legislation; 5) occurrence of adverse consequences; 6) adverse consequences are of a personal, property or organizational nature.

Administrative responsibility is characterized by the following general features: 1) has a public state-obligatory character; 2) is a means of protecting the established state legal order; 3) is normatively determined and consists in the application of sanctions of legal norms; 4) is a consequence of culpable antisocial behavior; is accompanied by state and public condemnation of the offender and the act committed by him; 5) is related to coercion, with negative consequences for the offender, which he must suffer; 6) implemented in appropriate procedural forms; has a subsidiary value in relation to many other branches of law.

It was noted that administrative compliance for violation of norms regulating the public administration of the environment in the conditions of a special period is the activity of public administration bodies regulated by administrative and legal norms to apply administrative penalties to those guilty of administrative offenses in the field of the environment in the conditions of a special period within the limits stipulated by administrative and legal norms.

When considering the issue of legal responsibility for violation of norms regulating the public administration of the natural environment in the conditions of a special period, it is impossible to bypass the issue of reparation of the aggressor state.

It should be noted that it is extremely difficult to fully assess the damage. First, we do not have access to the occupied territory, and therefore there is no possibility to conduct monitoring. Secondly, the occupation is a long process, and therefore the amounts can change. Thirdly, each of the damage figures named

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by the researchers is only an approximate indicator. The final amount can only be determined in the course of court proceedings, arbitrations and tribunals.

Key words: public administration, natural environment, environmental legislation, legal responsibility, administrative responsibility, tools of public administration, environmental condition, control, supervision, protection of natural resources.

Formulation of the problem. Legal liability is a legal remedy that provides law and order in all spheres of society. According to Art. 68 of the Basic Law of our country, legal responsibility comes for non -compliance with the Constitution of Ukraine and the laws of Ukraine, for encroachment on rights and freedoms, honor and dignity of other people. Today, when Ukraine is in martial law, an important issue is legal responsibility for violation of the norms that regulate the public administration of the environment in a special period.

The state of development of this problem. Scientific works of leading experts in the field of environmental and administrative law: V.B. Averyanova, V.I. Andreytseva, G.I. Balyuk, V.I. Boreyko, A.P. Hetman, V.A. Zueva, R.A. Kalyuzhny, T.S. Kichilyuk, V.K. Kolpakova, V.V. Kostytsky, N.R. Kobetskaya, M.V. Krasnova, V.I. Kurila, K.A. Ryabets, O.O. Pogrebny, Yu.S. Shemshuchenko. The problem of administrative and legal measures of environmental protection and nature management was investigated by A.F. Andriyko, Yu.P. Bytyak, V.M. Garashchuk, L.V. Koval, L.P. Kovalenko and others.

The purpose of the article is attention is paid to the issue of legal responsibility for violation of norms that regulate the public administration of the natural environment in the conditions of a special period.

Presenting main material. Legal liability is understood to be legally determined substantiated and inevitable adverse consequences of personal, property or other nature, which are procedurally used by the authorized entity to the person who committed the offense, for his punishment and the protection or restoration of violated rights, freedoms and interests persons and states.

Legal liability is characteristic: 1) involvement in legal relations; 2) procedural; 3) resolving the issue of liability by authorized entities; 4) provision of legislation; 5) the onset of adverse effects; 6) adverse effects have personal, property or organizational nature.

Types of legal liability are: administrative, civil, criminal, and disciplinary. Each of these types of responsibility has certain features and features. Administrative responsibility is preferred for our study. Today there are different approaches to understanding this concept.

Thus, IP Golonichenko proves that administrative liability is a kind of legal liability, which is a set of administrative legal relations that arise in connection with the application the rights of special sanctions - administrative penalties [1, p. 430–432].

According to IO Halagan, administrative liability should be understood as the use of administrative penalties, formulated in the sanctions of administrative and legal norms by the bodies and officials of administrative penalties in accordance which is manifested in the negative consequences for them, which they are

obliged to fulfill, and pursue the goals of their punishment, correction and re -education, as well as the protection of public relations in the sphere of Soviet state administration [2, p. 41].

EV Dodin expresses that administrative liability is the definition of authorized state bodies through the application of administrative and monitoring measures of restrictions of property, as well as personal goods and interests for the exercise of administrative offenses [3, p. 265–274].

Administrative responsibility is characterized by the following general features: 1) has a public state-obligatory nature; 2) is a means of protection of established state law and order; 3) normatively defined and consists in the application of sanctions of legal norms; 4) is the result of guilty antisocial behavior; is accompanied by state and public condemnation of the offender and the act committed; 5) related to coercion, with the consequences of the offender negative for the offender; 6) realized in the relevant procedural forms; It is auxiliary importance to many other branches of law.

Therefore, administrative compliance for violation of the norms that regulate the public administration of the environment in a special period-is regulated by administrative and legal norms the activities the limits provided for by administrative and legal norms.

Signs of administrative compliance for violations of the norms that regulate the public administration of the environment in the conditions of a special period are: warehouses of administrative violations of the field of environmental protection are contained in Chapter 7 «Administrative offenses in the field of nature protection, use of natural resources, protection of cultural heritage» On administrative offenses, the Forest Code of Ukraine, the Water Code of Ukraine, the Code on subsoil ,. Laws of Ukraine: «On the Fairy World», «On Fisheries, Industrial Fisheries and the Protection of Aquatic Bioresources», «On Hunting and Hunting», «On the Red Book of Ukraine», «On Environmental Protection», etc.; Cases of bringing to administrative responsibility for violation of the norms that regulate the public administration of the environment in the conditions of a special period are considered: 1) administrative commissions at the executive committees of village, settlement, city councils; 2) executive committees (in settlements where the executive committees are not created – executive bodies that exercise their powers) of village, settlement, city councils and their officials authorized by administrative legislation; 3) district, district in the city, city and city district courts (judges), and in the cases stipulated by the Code of Administrative Offenses, local administrative and economic courts, appellate courts, the Supreme Court of Ukraine; 4) bodies of the National Police, bodies of state inspections and other bodies (officials), authorized to the Code of Administrative Offenses (Article 213 of the Code of Administrative Offenses of Ukraine). Special bodies of ecological and administrative jurisdiction include bodies (officials): central executive bodies: Ministry of Ecology and Natural Resources of Ukraine; State Service of Ukraine for Emergency Situations; Ministry of Health of Ukraine; State Service of Ukraine for Geodesy, Cartography and Cadastre; State Forest Resources Agency of

Ukraine; State Agency of Water Resources of Ukraine; State Fisheries Agency of Ukraine; State Service of Geology and Subsoil; State Service of Ukraine on Food Safety and Consumer Protection; Government bodies of public administration with special powers: State Environmental Inspectorate of Ukraine; State Inspectorate of Technogenic Safety of Ukraine and. others [4, p. 55]; The most common type of administrative penalties for violations of the norms that regulate the public administration of the environment in a special period is a fine; The case is considered at the place of its commission or at the place of residence of the offender within fifteen days from the date of receipt by the relevant state body (official), to consider the case, the protocol on offenses and other case files; The subject of administrative liability is: the general entity (citizens of Ukraine) and special entities (officials, legal public and private law, foreigners, stateless persons, foreign legal entities).

Administrative offenses in the field of environment, include the following articles of the Code of Administrative Offenses:

– Art. 90 of the Code of Administrative Offenses, the destruction of the habitation (growth) of animals and plants, the types of which are listed in the Red Book of Ukraine, the destruction, illegal or in violation of the established procedure for removing them from the natural environment, as well as violation of the conditions of keeping (cultivation) , dendrological and zoological parks, other specially created artificial conditions, which led to their death, injury (damage);

– Part 2 of Art. 88-1 of the Code of Administrative Offenses of the Procedure of purchase, sale or distribution of fauna or flora objects committed in the objects of fauna or flora that were within the territories and objects of the nature reserve fund listed in the Red Book of Ukraine, or or which are protected in accordance with the international treaties of Ukraine;

– Part 2 of Art. 88 of the Code of Administrative Offenses illegal export from Ukraine or the import of wildlife objects, including zoological collections into its territory, - actions 186 on species of animals listed in the Red Book of Ukraine or the protection of which are regulated by relevant international treaties of Ukraine;

– Art. 87 of the Code of Administrative Offenses: part 1 violation of the requirements for the protection of the habitat and pathways of migration, resettlement, acclimatization and crossing of wild animals; part 2 of non -measures to prevent the death of wild animals, the deterioration of their stay and the conditions of migration or the extraction of wild animals;

– Art. 85 KUPAP: Part 1 of the Breach of Hunting Rules (hunting without proper permission, in forbidden places, forbidden time, prohibited tools or ways, forbidden for animals forbidden, allow dogs in hunting grounds unattended, hunting with violation of the installed for a particular area (region, hunting, bypass, etc.), which had no consequence of the production, destruction or injury of animals, as well as transportation or transfer of the animals obtained or transfer without marking this fact in the control card of accounting of the game and violations of hunting and violations in the permit for their extraction;

violation of the procedure for the release of pollutants into the atmosphere or influence of physical and biological factors on it (Article 78 of the Code of Administrative Offenses of Ukraine); violation of the order of activity aimed at artificial changes in the state of the atmosphere and atmospheric phenomena (Article 78-1 of the Code of Administrative Offenses of Ukraine); failure to comply with the requirements for the protection of atmospheric air when commissioning and operation of enterprises and structures (Article 79 of the Code of Administrative Offenses of Ukraine);

Part 2 repeated violation of the rules of hunting (hunting without 187 proper permission, in forbidden places, at the prohibited time, prohibited tools or methods for prohibited for the production of animals) or one that was the result of the production, destruction or injury of animals;

part 3 of violation of fishing rules;

part 4 of the rude violation of fishing rules (fishing with the use of firearms, electric current, explosive or poisonous substances, other prohibited fishing tools, industrial tools fishing persons who do not have permission for crafts, catch aquatic living resources in size exceeding installed limits or established limits rules of amateur and sports fishing daily of catch);

part 5 of violation of the rules of implementation of other types of special use of wildlife objects;

violation of state ownership of forests (Article 49 of the Code of Administrative Offenses of Ukraine); illegal use of lands of the State Forest Fund (Article 63 of the Code of Administrative Offenses of Ukraine); violation of the established order of use of the forest fund, harvesting and export of timber, harvesting of the hedgehog (Article 64 of the Code of Administrative Offenses of Ukraine); forest management is not in accordance with the purposes and requirements provided in the logging ticket (order) or forest ticket (Article 67 of the Code of Administrative Offenses of Ukraine); illegal precision, damage and destruction of forest crops and young animals (Article 65 of the Code of Administrative Offenses of Ukraine); destruction or damage to the undergrowth in forests (Article 66 of the Code of Administrative Offenses of Ukraine); destruction or damage of forest protection strips and protective forest plantations (Article 65-1 of the Code of Administrative Offenses of Ukraine); violation of the rules of forest restoration and improvement, use of rusted wood resources (Article 68 of the Code of Administrative Offenses of Ukraine);

violation of the rules of water protection (Article 59 of the Code of Administrative Offenses of Ukraine); damage to water management structures and devices (Article 61 of the Code of Administrative Offenses of Ukraine); violation of requirements for the protection of territorial and inland sea water from pollution and clogging (Article 59-1 of the Code of Administrative Offenses of Ukraine); violation of the rules of water use (Article 60 of the Code of Administrative Offenses of Ukraine); failure to fulfill the obligations to register in ship documents operations with harmful substances and mixtures (Article 62 of the Code of Administrative Offenses of Ukraine).

According to Art. 91 of the Code of Administrative Offenses, implementation within the territories and objects of the nature reserve fund, their security

zones, as well as the territories reserved for the next commandment, prohibited economic and other activities, violation of other requirements of the regime of these territories and objects, unauthorized change of their boundaries, failure to take measures to prevent and eliminate the negative effects of accidents or other harmful effects on the territory and objects of the nature reserve fund.

It is worth noting that a separate group of administrative offenses are offenses concerning the ownership of natural resources, in particular: violation of state ownership of subsoil (Article 47); violation of state ownership of water (Article 48); violation of state ownership of forests (Article 49); violation of state ownership of wildlife (Article 50); unauthorized occupation of the land plot (Article 53-1 of the Code of Administrative Offenses of Ukraine).

Part 6 of Art. 63 of the Law of Ukraine «On Faven World» and Art. The VIII CITES Convention Legal Liability for Illegal International Trade should provide for the confiscation of an animal (parts or products of life), which is defined as follows. According to Part 6 of Art. 63 of the Law of Ukraine «On Faven World», «Wild Animals and Other Objects of Baven World, which are imported into the territory of Ukraine or exported beyond it in violation of the legislation, are subject to confiscation or free seizure in accordance with the law. According to Art. VIII CITES, "the parties take appropriate measures to ensure the provisions of this Convention and the prohibition of trade samples in violation of the provisions of the Convention; These measures include: (a) punishment for trade or possession of such samples or both; and (b) the confiscation and return of such exporting states and others.

Among the administrative offenses in the field of environment, those that violate the environmental rights of citizens should be distinguished. Yes, in accordance with Art. 9 of the Law of Ukraine «On Environmental Protection» one of the basic environmental rights of citizens is the right to free access to information on the state of the environment (environmental information) and free receipt, use, dissemination and storage of such information, except for restrictions established by law . The refusal to provide or late provision of full and reliable environmental information provided by law entails the imposition of a fine on officials or officials (Articles 91-4 of the Code of Administrative Offenses of Ukraine).

Considering the issues of legal liability for violations of the norms that regulate the public administration of the environment in the conditions of a special period, it is impossible to bypass the issue of reparation of the aggressor state. It should be noted that reparation is full or partial compensation (under a peace treaty or other international acts) of the state, which began an aggressive war, the losses caused by the state that attacked [5]. To date, the legislation applies the term «losses caused to the environment» (Articles 202 and 41 of the Law of Ukraine «On Environmental Protection»), according to which one of the instruments of compensation for such losses can be a collective (group) claim of Ukrainian citizens on compensation losses caused by the aggressor country. The Stockholm Arbitration Court, the Supreme Court of London and the Hague Court in Strasbourg, the UN International

Court of Justice and the International Criminal Court may consider claims. Where «environmental losses» should be understood as any losses caused by the occupiers of the environment of Ukraine, that is, everything that surrounds us and is subject to evaluation (air, water resources, land (subsoil), green planting, nature reserve fund, etc.). According to estimates of the Ministry of Environmental and Natural Resources of Ukraine, the amount of losses from ecology caused by war is estimated at about € 25 billion, another 11.5 billion euros are necessary to eliminate the effects of soil contamination. In particular, almost a third of the specified amounts of estimated losses, namely over UAH 407.3 billion, are damages caused to the land resources of Ukraine. Among the total amount of losses, more than UAH 176.5 billion losses were caused by atmospheric air due to unorganized emissions of pollutants that rise into the air during fires caused by shelling, including in forest areas, objects of the nature reserve fund [6].

According to the Resolution of the Cabinet of Ministers of Ukraine of March 20, 2022 № 326 "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of armed aggression of the Russian Federation", the determination of damage and losses is carried out separately in the following areas, in particular, in the field of ecology: 1) damage caused to land resources; 2) losses of subsoil; 3) losses caused to water resources; 4) damage caused by atmospheric air; 5) loss of forest fund; 6) losses caused by the nature reserve fund.

The amount of environmental losses caused to Ukraine (and Ukrainian citizens) is constantly increasing, since military aggression against Ukraine is ongoing - it is unprecedented after the environmental losses of the Chornobyl accident in 1986. Created for the purposes of fixing, harvesting and analyzing environmental losses, the Operational Headquarters of the Ministry of Environmental Protection and Natural Resources of Ukraine use, among other things, online platform, in particular, to prepare evidence under the lawsuits of Ukraine to the International Court of Ukraine for damages for damages Those who want to provide information about the damage caused to the environment.

During the inspection of emergencies, the inspectors of the State Environmental Inspectorate of Ukraine record the clogging of land plots with fragments of ammunition, destroyed buildings, infrastructure, as well as soil contamination, groundwater and air with dangerous substances.

On this basis, numerous documentary sources are formed, for example: acts of land survey, acts of commissions to determine the losses of landowners and land users, reports on expert monetary valuation of land plots, primary documents, accounting registers, accounting and other reporting, which is based enterprises, institutions and organizations, design and estimate documentation, information of the State Land Cadastre, Documentation on Land Management, Data of Remote Sending of Land and other documented information. Given limited access to these documents available for collection when filing a collective claim - there is a moral harm in favor of many individuals, since in this case: somewhat simplified the process of proof,

recovery of moral harm directly caused by many persons (with a collective claim may occur. Claim of claim – to whom the environmental losses are caused and who is entitled (obliged) to file appropriate claims).

It should be noted that it is extremely difficult to estimate the losses completely. First, we do not have access to the occupied territory, so there is no opportunity to monitor. Secondly, occupation is a long process, and therefore the amounts can change. Third, each of the data named by the researchers is only an indicator. The final amount can only be determined in the course of litigation, arbitration and tribunals.

At the international level, the Verkhovna Rada appealed to the General Assembly of the United Nations, the United Nations Programs from the Environment, the European Parliament, the European Commission, Parliaments and Governments of the Member States of the General Assembly for fixing environmental damage caused as a result of armed aggression of the Russian Federation in the territory of Ukraine. This will provide proper fixation and evaluation of environmental losses at the international level, which can objectively help with the recognition and execution of decisions of the courts of Ukraine on the consequences of consideration of collective lawsuits in the field [7].

Conclusions. Therefore, Ukraine will gradually return its territories, movable and real estate, and other assets. And only after returning it will be possible to finally calculate the losses – which is lost irreversibly, which is not lost, but needs compensation, etc. At the same time, it should be noted that it is almost impossible to physically receive compensation from the Russian Federation by a court decision, since no international court has mechanisms of coercion. There is only international interaction between countries to assist in the seizure of property of the aggressor state. That is why Ukraine needs to defeat the occupier, release all Ukrainian lands, and only then, under the conditions of sufficient control, will it be possible to speak about reparations, as well as the international tribunal, and indemnity. The aggressor country will pay compensation in several categories: compensation to the state for the destroyed industry and civil infrastructure, including schools, hospitals, cultural institutions and other objects; compensation to individuals and legal entities. Financial assistance to the victims will go first and foremost to restore housing and business; compensation for environmental damage. Ukraine can become one of the first countries to receive compensation for environmental damage. Contribution from Russia will be used to eliminate the consequences of military aggression and to restore ecology [7].

References:

1. Administratyvne pravo Ukrainy. Akademichnyi kurs: pidruchnyk: u 2 t.: Zahalna chastyna / red. kol.: V. B. Aver'ianov (holova). Kyiv: Yuryd. dumka, 2004. T. 1. 2004. 584 c.
2. Halahan Y.A. Admynystratyvnaia otvetstvennost v SSSR. Voronezh: VHU, 1970. 267 c.
3. Derzhavne upravlinnia: teoriia i praktyka / za zah. red. V.B. Aver'ianova. Kyiv: Yurinkom Inter, 1998. 432 c.

4. Yurydychna vidpovidalnist za ekolohichni pravoporushennia : navch. posib. / T.K. Overkovska, N.M. Opolska; Vinn. nats. ahrar. un-t. Vinnytsia: VNAU, 2019. 254 s.
5. Reparatsii URL: https://uk.wikipedia.org/.
6. Kak zastavyt rossyiu zaplatyt za эkolohycheskyi ushcherb URL: https://www.epravda.com.ua/rus/columns/2022/10/17/692705/.
7. Shcho take kontrybutsiia? Vyplata kompensatsii vid rosii URL: https://advokatveurope.com/uk/shcho-take-kontrybutsiya-vyplata-kompensatsiy-vid-rosiyi/.

CONSTITUTIONAL AND LEGAL PRINCIPLES OF THE STATUS OF CERTAIN CITIZENS (ON THE EXAMPLE OF REFUGEES)

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Bielova Myroslava[2]

Annotation. The article is devoted to the analysis of scientific approaches to determining the constitutional and legal status of a person. The specifics of the norm of the constitutional law of Ukraine in the context of establishing in it the basic provisions of the constitutional and legal status of a person and a citizen, projecting them on the status of a refugee.

It is determined that the content of a person's legal position is determined by all those norms and the relations regulated by them that arise between the state and a person in connection with his actual place in the socio-economic, political and spiritual and moral life of our society. These relations are very diverse, they cover the most diverse aspects of life and therefore are regulated by the norms of not just one, but practically all branches of law.

At the same time, constitutional norms play a special role here. As a result of their general regulatory nature, they outline the position of citizens not in any one sphere of activity, but in its main branches. At the same time, they establish only the most essential, fundamental relations between the state and its citizens in connection with their place in the management of public and state affairs, leaving the detailed regulation of such relations to the norms of other branches.

It is indicated that the establishment of the foundations of the legal status of refugees by the Constitution of Ukraine also marked the beginning of the process of creating a new type of legal culture of our state and its citizens. At the same time, it is the principles of the legal status of a refugee, being formed outside of the very institution of the constitutional status of refugees, that bring to it the content that causes the need for truly historic changes in our society. Therefore, the growth of scientific interest of constitutionalists in questions of the sources, nature and legal value of the main principles of the constitutional status of refugees is quite natural.

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Key words: constitutional and legal status of a person and citizen, system of constitutional law, rule of constitutional law, constitutional and legal status of refugees, constitutional and legal status of asylum seekers.

Formulation of the problem. The right to safety and life is an integral part of a developed democratic society. The global problem of refugees and internally displaced persons is one of the key issues facing all democratic countries of the world.

Millions of Ukrainian refugees who left for Europe due to Russian aggression against Ukraine have become both a problem and an advantage. On the one hand, the largest wave of refugees in Europe since the Second World War has put additional pressure on the EU's financial system, which is already burdened by the consequences of the covid pandemic and the rising cost of living. If we add to this the fact that the majority of Ukrainian refugees are women and children, then it is understandable and quite expected that the load on the education and health care systems of European countries will also increase [20].

Therefore, it is important to determine the constitutional and legal status of such persons, to clarify the essence of the constitutional and legal status of "refugees" and "internally displaced persons", since the state policy regarding this category of persons is an integral part of strengthening the international authority of Ukraine, confirms its orientation towards deepening international cooperation and integration into the European community.

Analysis of scientific research. The greatest attention was paid to the problem of the legal status of refugees in Ukraine in the scientific works of S.P. Britchenko, O.L. Kopylenka, O.A. Malinovska, Y.M. Todyka, O.F. Frytskyi, S.B. Chekhovych and a number of others other leading domestic and foreign scientists.

The authors set themselves the **goal** of clarifying the specifics of the constitutional and legal status of certain categories of citizens, taking the constitutional and legal status of refugees as a basis.

Presenting main material. Today in Ukraine there are quite a lot of unresolved issues concerning refugees and internally displaced persons. The existence of an effective mechanism for ensuring the rights and freedoms of a person and a citizen determines the democratic and social orientation of the state. The state is not omnipotent over a person; in its activity, it must be limited, "bound" by human rights and freedoms. In connection with numerous cases of mass migration of the population to other countries, primarily due to the war in Ukraine, conflicts of a non-international nature, political persecution, special attention from the relevant state authorities should be paid to ensuring the rights and freedoms of such a category of people as refugees.

First of all, we note that the primary and one of the most important elements of the system of constitutional law of Ukraine is the constitutional-legal norm (from the Latin. norma – rule, model). The norms of constitutional law as components of the system of constitutional law of Ukraine reflect in their totality the essence and content of this branch of law [1, p. 289]. In view of this, they are sometimes compared with cells, as the primary basis of any living organism, biological system.

According to V. Fedorenko, the mentioned comparison is valid for many other organic systems as well. Thus, the multifaceted system of constitutional law of Ukraine and all its structural elements consist precisely of the norms of constitutional law. The latter are the basis of the institutions of constitutional law, as well as other parts of the system of constitutional law - natural and positive, general part and special part, material and procedural, international and national, etc. That is, the system of constitutional law of Ukraine cannot exist outside of its normative dimension. In addition, law, and later its system, was formed precisely on the basis of legal norms, which historically stood out from among other social norms - religious, moral, ethical, cultural, etc. At the same time, legal norms have retained the properties inherent in all social norms in general [2, p. 128].

Presenting main material. The content of a person's legal position is determined by all those norms and the relations regulated by them that arise between the state and a person in connection with his actual place in the socio-economic, political and spiritual and moral life of our society. These relations are very diverse, they cover the most diverse aspects of life and therefore are regulated by the norms of not just one, but practically all branches of law.

At the same time, constitutional norms play a special role here. As a result of their general regulatory nature, they outline the position of citizens not in any one sphere of activity, but in its main branches. At the same time, they establish only the most essential, fundamental relations between the state and its citizens in connection with their place in the management of public and state affairs, leaving the detailed regulation of such relations to the norms of other branches.

Any social norm, the well-known Ukrainian Soviet legal theorist P. Nedbailo wrote in his time, is a general rule that reflects the needs of social life and is of guiding importance for people's practical activities. Social norms arose simultaneously with human society in connection with the need to encompass and regulate people's behavior by general rules [3, p. 73]. According to the scientist, "...a norm is not a simple statement of facts, not a judgment about one or another of their signs, but a mandatory rule, a command that always requires certain results, the occurrence or non-occurrence of certain consequences. A norm is always a rule of appropriate and possible behavior within its limits, which obligates, prohibits, allows this or that action or deed under certain conditions. A norm is an imperative that postulates a proper relationship between people; it is caused by the threat of unfavorable consequences for anyone who deviates from its requirements" [3, p. 73-74]. Such properties of the regulator of social relations are generally characteristic of the norms of constitutional law.

In view of the above-grounded primacy of the norm of constitutional law in relation to other structural elements of the multifaceted system of constitutional law of Ukraine, the study of their essence, content, legal properties and peculiarities of construction is a kind of "key" to the knowledge of institutions and other components of the system of constitutional law in general. In addition, unlike other structural elements of the constitutional law system of Ukraine, the norms of constitutional law are among the most studied in modern Ukrainian

legal science. Thus, only at the dissertation level, the legal nature of the norms of the constitutional law of Ukraine has been studied several times in the last eighteen years (among such works, for example, the research of O. Stepaniuk [4]; O. Sinkevich [5]; Ya. Chistokolyany [6] and others.)

At the same time, constitutional norms contain not only the initial data of the status of an individual, but also fix all its main aspects. Therefore, the constitutional status is rightly considered as the basis of the legal status of citizens [7, p. 22].

It should be noted that the position of the general theory of constitutional law, the study of the constitutional-legal status of a person and a citizen is closely related to the problem of defining the subject of constitutional law in relation to the legal status of a person and a citizen. In this sense, in the science of constitutional law, there are at least two ways of answering the question raised. One of them interprets exclusively the basic principles of the constitutional and legal status of a person as a subject of constitutional law, and the other adds to the subject of the science of constitutional law the problems of protecting and ensuring the constitutional and legal status of a person and a citizen. On the other hand, highlighting the problems of the constitutional and legal status of a person and a citizen has a purely methodological relevance. It is implied, according to the statement of T. Frantzuz-Yakovets, that thanks to the category of constitutional and legal status of a person and a citizen, it is possible to analyze its structure and constituent elements. At the same time, the analysis acquires signs of complexity, because not limited institutions of citizenship, legal personality, human rights and freedoms, duties of citizens, guarantees of human rights and freedoms, etc. are investigated, but one of the elements of the constitutional and legal status of a person, which is closely related connected with others and constitutes a complete system through which human relations with the state and other subjects of legal relations are established and regulated [8, p. 3].

At the same time, according to the scientist, the problem of ensuring the constitutional-legal status of a person and a citizen is one of the key issues both in the science of constitutional law and in direct constitutional practice. This is explained by the fact that in the very concept of “constitutional and legal status of a person and a citizen” the foundations of the relationship between a person, the state and society are fixed, their rights and mutual obligations are outlined, a system of ensuring, guaranteeing and protecting the rights of all participants in these relationships is established [8, p. 3].

Setting the task of researching the principle of equality of rights between women and men, as well as its scientific, theoretical and practical content, one cannot limit oneself to the analysis of the actual rights of the above categories of persons and other elements of their constitutional and legal status, which are fixed at the legislative level of one or another state. Indeed, an adequate understanding of what in reality is the constitutional and legal status of a person requires a detailed coverage of the foundations that form the system of human and citizen rights and through which the actual realization of these rights is ensured. These fundamental principles are

defined by the concept of "principles of the constitutional and legal status of a person." Their role and significance in the process of formation and development of relations between the state and the individual is explained by the fact that it is at the level of the principles of the constitutional and legal status of a person that it is determined whether the state ensures the equality of rights and freedoms of a person and a citizen, or whether the state undertakes to observe human rights defined in the Constitution and to protect them, whether these rights are recognized by the state in full, whether there are restrictions on the realization of human and citizen rights, and if so, what, etc.

Thus, ipso jure, based on the understanding of the principles of the constitutional and legal status of a person as recognized and protected by the law and the state as the basic principles on the basis of which the constitutional and legal status of a person is realized, it is necessary to recognize that the study of the system of these principles, as well as the specifics of their interaction in the implementation of the constitutional and legal status of a person, is an integral component of theoretical research in the field of constitutional law, the theory of human and citizen rights [9, p. 10].

According to the true statement of S. Lavreniev, the importance of the institution of the constitutional status of a person in any modern democratic state is difficult to overestimate [10, p. 1]. In Ukraine, this is all the more difficult to do, since not only people's hopes for a dignified legal way of life are connected with this institute, but also all the processes of transformation of the state and legal system of society. To a decisive extent, this is explained by the fact that it was the constitutional status of the person that became the concrete and legally significant form in which human rights and freedoms were expressed, which caused and in many ways continue to be the most important reason for truly democratic changes in the life of our society [11, with. 89-90].

The establishment of the foundations of the legal status of refugees by the Constitution of Ukraine marked the beginning of the process of building a new type of legal culture of our state and its citizens. At the same time, it is the principles of the legal status of a refugee, being formed outside of the very institution of the constitutional status of refugees, that bring to it the content that causes the need for truly historic changes in our society. Therefore, the growth of scientific interest of constitutionalists in questions of the sources, nature and legal value of the main principles of the constitutional status of refugees is quite natural.

P. Rabinovych, M. Havronyuk [11, p. 81], V. Kravchenko [12, p. 119], O. Fritskyi [13, p. 118] worked on the problem of the principles of the constitutional and legal status of a person and a citizen, who in turn, the following principles are distinguished:

1) the principle of equality in rights and freedoms and equality before the law, which follows from Articles 21 and 24 of the Constitution of Ukraine;

2) the principle of inalienability and inviolability of human rights and freedoms, enshrined in Art. 21 of the Constitution of Ukraine;

3) the principle of guaranteed human and citizen rights and freedoms and the impossibility of their cancellation;

4) the principle of inexhaustibility of the rights and freedoms of a person and a citizen, enshrined in Art. 22 of the Constitution of Ukraine;

5) the principle of compliance with international standards of human and citizen rights and freedoms enshrined in the Constitution of Ukraine (Articles 3, 5, 6, 8, 9);

6) the principle of unity of rights and duties of a person and a citizen in accordance with Articles 23 and 68 of the Constitution of Ukraine.

In addition, some scientists highlight other principles of the constitutional and legal status of a person and a citizen. Thus, in particular, V. Kravchenko [12, p. 120] singles out the principle of human freedom. In his opinion, in Articles 21 and 23 of the Constitution of Ukraine, this principle stipulates her right to free development of her personality, and the limit of individual freedom is the rights and freedoms of other people. The scientist also highlights the principle of equality of people in their dignity (Article 21 of the Constitution of Ukraine). According to the Preamble of the International Covenant on Civil and Political Rights, human dignity is a property inherent in "all members of the human family", recognition of the dignity of people, their equal and inalienable rights is "the basis of freedom, justice and universal peace" [14, p. 28].

P. Rabinovych and M. Havronyuk in their work note as a separate principle the principle of preventing the narrowing of the content and scope of existing rights and freedoms [11, p. 85], enshrined in Art. 22 of the Constitution, which does not allow narrowing when adopting new laws or making changes to existing laws. They also point out the principle of prohibition of arbitrary restriction of the constitutional rights and freedoms of a person and a citizen [11, p. 86]. Article 64 of the Constitution of Ukraine provides for the existence of certain formal limits of these rights and freedoms, as well as the fact that these limits should be determined only by law, only in cases provided for by the Basic Law of Ukraine, and justified by relevant factors.

And, finally, the principle enshrined in the Basic Law of our country (Articles 24, 23, 21) is the principle of equal rights of women and men (gender equality), which, in particular, declares that the equality of rights of women and men is ensured by: providing women with equal men of opportunities in socio-political and cultural activities, in obtaining education and professional training, in work and remuneration for it.

Without denying either the epistemological or practical value of the above approach to understanding and identifying the main principles of the constitutional status of refugees, one cannot fail to notice its one-sidedness. This turns out, according to S. Lavrentiev [10, p. 2] already in the fact that principles of this kind have the character of universally recognized, and therefore, firstly, they are not given by the state, but are recognized by it, and secondly, they are formulated not by the state and its bodies, but by the international community, thus bringing to the constitutional refugee status universal human values of natural rights and freedoms. From this, according to A. Oliynyk, it follows that the methodology of their scientific analysis cannot be reduced to the above

rules. It should be extended to the natural-legal nature of the constitutional status of a person. This, in turn, makes it necessary to rethink both the category "constitutional status of a person" itself and its structural entities, among which these principles are located [15, p. 21].

Conclusions. The establishment of the foundations of the legal status of refugees by the Constitution of Ukraine marked the beginning of the process of building a new type of legal culture of our state and its citizens. At the same time, it is the principles of the legal status of a refugee, being formed outside of the very institution of the constitutional status of refugees, that bring to it the content that causes the need for truly historic changes in our society. Therefore, the growth of scientific interest of constitutionalists in questions of the sources, nature and legal value of the main principles of the constitutional status of refugees is quite natural.

Without denying either the epistemological or practical value of the approach to understanding and identifying the basic principles of the constitutional status of refugees, one cannot fail to notice its one-sidedness, which is a perspective of research in the works of constitutionalist scholars.

References:

1. Pohorilko V.F. Konstytutsiine pravo Ukrainy: akad. kurs: pidruch.: u 2 t. T. 1 / za red. V.F. Pohorilka. K.: TOV «Vyd-vo «Iurydychna dumka», 2006. 544 s.
2. Fedorenko V.L. Teoretychni osnovy systemy konstytutsiinoho prava Ukrainy. Dys. na zdobuttia nauk. stupenia dokt. yurydych. nauk: spetsialnist 12.00.02 – «konstytutsiine pravo; munitsypalne pravo». Kh., 2010. 550 s.
3. Nedbailo P.O. Sovetskye sotsyalystycheskye pravovыe normы. Antolohiia ukrainskoi yurydychnoi dumky: v 10 t. / [redkol.: Yu.S. Shemshuchenko (holova) ta in.]. T. 9: Yurydychna nauka radianskoi doby / [uporiad.: V.B. Averianov, O.M. Kostenko, V.P. Nahrebelnyi, V.F. Pohorilko, K.O. Savchuk, I.B. Usenko, H.P. Tymchenko; vidp. red. V.P. Nahrebelnyi]. K.: «Vydavnychyi dim «Iurydychna konyha», 2004. S. 73–95.
4. Stepaniuk O.I. Normy konstytutsiinoho prava Ukrainy: problemy teorii: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.02 «Konstytutsiine pravo Ukrainy». K., 1993. 18 s.
5. Sinkevych O.V. Normy konstytutsiinoho prava Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.02 «Konstytutsiine pravo Ukrainy». K., 2003. 20 s.
6. Chystokolianyi Ya.V. Konstytutsiino-pravovi normy v Ukraini: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.02 «Konstytutsiine pravo Ukrainy». K., 2005. – 20 s.
7. Voevodyn L.D. Poniatye y osnovnыe эlementы konstytutsyonnoho statusa lychnosty. Konstytutsyonnыi status lychnosty v SSSR. M. Yuryd. lyt., 1980. 331 s.
8. Frantsuz-Yakovets T.A. Zabezpechennia konstytutsiino-pravovoho statusu liudyny i hromadianyna v Ukraini: Dys. nauk. stupenia kand. yuryd. nauk za

spets. 12.00.02. – konstytutsiine pravo. Odeska natsionalna yurydychna akademiia, Odesa, 2007. 210 s.
9. Frantsuz-Yakovets T.A. Zabezpechennia konstytutsiino-pravovoho statusu liudyny i hromadianyna v Ukraini: Avtoref. dys. nauk. stupenia kand. yuryd. nauk za spets. 12.00.02. – konstytutsiine pravo. Odeska natsionalna yurydychna akademiia, Odesa, 2007. 19 s.
10. Lavrentev S.V. Osnovnыe pryntsypы konstytutsyonnoho statusa lychnosty: Teoretyko-konstytutsyonnыi analyz: avtoref. dysss. kand. yuryd. nauk po spets.: 12.00.02 – konstytutsyonnoe pravo; munytsыpalnoe pravo. Volhohrad. 2005. 19 s.
11. Rabinovych P.M., Khavroniuk M.I. Prava liudyny i hromadianyna: Navchalnyi posibnyk. K.: Atika, 2004. 464 s.
12. Kravchenko V.V. Konstytutsiine pravo Ukrainy: Navchalnyi posibnyk. K.: Atika, 2004. 512 s.
13. Frytskyi O.F. Konstytutsiine pravo Ukrainy: Pidruchnyk. K.: Yurinkom Inter, 2002. 536 s.
14. Mizhnarodnyi pakt pro hromadski i politychni prava. Prava liudyny (Osnovni mizhnarodno-pravovi dokumenty). K., 1989. 530 s.
15. Oliinyk A.S. Konstytutsiine zakonodavstvo Ukrainy: Genderna ekspertyza. K.: Lohos, 2001. 77 s.
16. Bielov D. Human rights for information in social networks: constitutional aspect. Journal of legal studies. Volume 22. Issue 36/2018. ISSN 2457-9017.
17. Bielov D.M., Hromovchuk M.V. Systema zakhystu prav i svobod liudyny i hromadianyna: doktyrynalni zasady. Naukovyi visnyk UzhNU. Seriia "Pravo". Vypusk 42. 2017 r. C. 27–31.
18. Byelov Dmytry. Ochrana ľudských a občianskych práv a slobôd advokácie na Ukrajine. ĽUDSKÉ PRÁVA VČERA A DNES. PÔVOD A VÝZNAM ĽUDSKÝCH PRÁV A ICH OCHRANA V PRÁVNEJ TEÓRII I PRAXI: Medzinárodná vedecká konferencia „Banskobystrická škola právnych dejín" 3. ročník (Univerzita Mateja Bela, Právnická fakulta BANSKÁ BYSTRICA, 15. – 16. marca 2017). S. 15–19.
19. Byelov Dmytry, Hromovhcuk Miroslava. The constitution of the state in the context of its functions. *Visegrad Journal on Human Rights*. 2017. № 4. S. 41–49.
20. Zanuda A. Yak ukrainski bizhentsi dopomohly ekonomitsi YeS i shcho mozhe vtratyty Ukraina. URL: https://www.bbc.com/ukrainian/articles/ceqvw58zj8po.
21. Bielov D.M. Konstytutsiino-pravovyi status liudyny i hromadianyna: okremi pytannia teorii konstutsionalzmu. Chasopys Kyivskoho universytetu prava. 2020. № 4. S. 31–37.
22. Bielov D.M., Hromovchuk M.V. Konstytutsiino-pravovyi status osoby: bazovi pidkhody. Konstytutsiino-pravovi akademichni studii. 2020. № 1. S. 21–27.
23. Bielov D.M., Hromovchuk M.V. Konstytutsiino-pravovi zasady statusu osoby: okremi aspekty. Analitychno-porivnialne pravo. № 1. 2021. S. 21–26.

GRUNDSATZ DER VERHÄLTNISMÄSSIGKEIT – EIN MITTEL ZUR UMSETZUNG DES HÖCHSTEN GESETZES ZUR LÖSUNG VON KONFLIKTEN ZWISCHEN ÖFFENTLICHEN UND PRIVATEN INTERESSEN

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Zusammenfassung. Der Grundsatz des Vorrangs des Allgemeininteresses findet in der Rechtsordnung keine absolute Anwendung, er bleibt ein implizites Prinzip und bedarf einer ausgewogenen Anwendung, wenn er mit Einzelinteressen kollidiert, je nach Verhältnismäßigkeitsgrundsatz. Damit wird der begriffliche Gehalt des öffentlichen Interesses abgegrenzt und der Unterschied zwischen primärem und sekundärem öffentlichem Interesse erläutert. Nach der begrifflichen Abgrenzung des Gemeinwohls wird die Bedeutung des Grundsatzes des Vorrangs des Allgemeininteresses sowie die moderne Lehrkritik an seiner Verbreitung in der gegenwärtigen Verfassungs- und Rechtsordnung analysiert. Die Anwendung der in der Rechtstheorie von Robert Alexi vorgeschlagenen Verhältnismäßigkeitsregel auf das Vorrangprinzip im Falle eines Konflikts zwischen öffentlichen und privaten Interessen wird als eine Möglichkeit verteidigt, dieses Prinzip zu befriedigen, das willkürliches Verhalten verneint seitens der öffentlichen Hand.

Diese Studie basiert auf der Hinterfragung des Prinzips des Vorrangs des öffentlichen Interesses gegenüber dem privaten Interesse. Sie fragen hauptsächlich nach dem Inhalt dieses Grundsatzes, seiner Tragweite und Rechtsgrundlage. Das fragliche Prinzip wird als grundlegendes Rechtsprinzip angesehen, und daher ist es von größter Bedeutung, seine wahre Bedeutung in unserer gegenwärtigen Ordnung zu verstehen. Prinzipien sind Normen, die anordnen, dass etwas so weit wie möglich nach technischen und rechtlichen Möglichkeiten geschieht.Im Ergebnis sind die Grundsätze Gebote der Optimierung, die sich dadurch auszeichnen, dass

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die angeordnete Maßnahme nicht nur in Abhängigkeit von politischen, sondern auch von rechtlichen Möglichkeiten umgesetzt werden muss.

Das Prinzip des Vorrangs des Gemeinwohls ist die Funktionsgrundlage des Staates, da es neben der Einfügung in den Begriff des öffentlichen Dienstes auch die Grundlage bzw staatliche Eingriffe im Wirtschaftsbereich, d.h. in allen Verwaltungsfunktionen präsent.

Stichworte: Verhältnismäßigkeitsgrundsatz, Rechtsstaatlichkeit, öffentliche Interessen, private Interessen, Rechtsstreitigkeiten

Formulierung des Problems. Unter den Bedingungen einer angemessenen Lehrkritik gefährdet der Grundsatz des Vorrangs des öffentlichen Interesses im Gegensatz zu dem, was verteidigt wird, keine grundlegenden Menschenrechte. Der Grundsatz des Vorrangs des Allgemeininteresses beruht auf einer Fehlinterpretation seiner Bedeutung, die mit einer ungerechtfertigten allgemeinen und absoluten Häufigkeit verstanden wird.Mit anderen Worten, wenn in einer Konfliktsituation mit bestimmten Interessen das öffentliche Interesse überwiegt, bleiben die Rechte des Einzelnen nicht mehr bestehen. Daher ist es notwendig, dass das Rechtssystem individuelle Rechte einschränkt, um sicherzustellen, dass ihre Ausübung anderen Personen und der Gesellschaft keinen Schaden zufügt.

Das Ziel der Studie. Das Hauptaugenmerk dieser Studie liegt auf einer kritischen Analyse des Hauptprinzips der öffentlichen Verwaltung, dem Vorrang des öffentlichen Interesses, und dem Versuch, seine Bedeutung vom Standpunkt der modernen Lehre zusammen mit dem Grundsatz der Verhältnismäßigkeit aufzuzeigen.

Bearbeitungsstatus. S. Pogrebnyak befasste sich mit einer juristischen Untersuchung des Grundsatzes der Verhältnismäßigkeit in der nationalen Doktrin. Auch die internationalen Werke von R. Alexi, U. Avila, I. Nohar usw. wurden studiert.

Präsentation des Hauptmaterials. Der Vorrang des öffentlichen Interesses über das private als eine der Hauptsäulen des Verwaltungsrechts, zusammen mit der Unzugänglichkeit öffentlicher Interessen, die sie als Säulen der Vorrechte und Subjekte der staatlichen Verwaltung betrachten. Er versteht, dass es keinen Konflikt zwischen öffentlichem Interesse und individuellen Interessen gibt, da das Interesse öffentlich ist, wenn es die wahre Summe der Interessen von Einzelpersonen darstellt, die darin die Projektion ihrer eigenen Bestrebungen finden.Er befürwortet auch die Anwendung des Grundsatzes des Vorrangs des öffentlichen Interesses über das Private als die Notwendigkeit, die für das Leben in der Gesellschaft erforderliche Mindeststabilität und Ordnung aufrechtzuerhalten, und stellt fest, dass, um die Rechte des Einzelnen vor den Interessen des Einzelnen zu opfern kollektiv, es ist notwendig, eine rechtliche und begründete Begründung, die Auflösung eines solchen Opfers faire Entschädigung zu liefern [1].

Bei der Interpretation des öffentlichen Interesses wurden zwei Vektoren berücksichtigt: Einer bezieht sich auf das Interesse des Staates selbst und der andere auf die Kollektivität, auf die Repräsentation des Staates. Es sollte beachtet werden, dass der Staat direkt oder indirekt immer das öffentliche Interesse

polarisiert und die Rolle des Schiedsrichters für seine Identifizierung im Kontext der sozialen, politischen und wirtschaftlichen Beziehungen gespielt hat.

Der Vorrang des öffentlichen Interesses ist eine Annahme, die alle Disziplinen des öffentlichen Rechts unterstreicht, die mit vertikalen Beziehungen zwischen Staat und Bürgern beginnen, im Gegensatz zum Privatrecht, in denen Rechtsbeziehungen in der Regel von der Position der Horizontalität aus analysiert werden, d ist, von der Gleichheit zwischen Fächern und spezifischen Interessen [3].Der Anwalt sagt weiter, dass die öffentliche Verwaltung Vorrechte haben sollte, um ihr die Befugnisse zu garantieren, die zur Durchsetzung öffentlicher Interessen erforderlich sind. Gleichzeitig müssen die Bürgerinnen und Bürger Garantien für die Einhaltung ihrer Grundrechte gegen den Missbrauch öffentlicher Macht haben. Das heißt, der Staat, dessen Hauptzweck der Schutz des öffentlichen Interesses ist, muss alle seine Handlungen darauf ausrichten, die Interessen des Kollektivs auf der Suche nach sozialem Wohlergehen zu befriedigen, und muss daher über Befugnisse verfügen, die ihn gewährleisten der Gehorsam seiner Taten.

Der Vorrang des Allgemeininteresses kann die Analyse des Verhaltens eines Einzelnen durch die staatliche Verwaltung nicht rechtfertigen, da er nicht einmal als einheitliches Prinzip in der nationalen Gesetzgebung existiert [1]. Das heißt, die staatliche Verwaltung kann Einzelpersonen keine Beschränkungen oder Verpflichtungen auferlegen, die auf etwas beruhen, das nicht existiert. Die einzige Idee, die das Verhältnis zwischen öffentlichen und privaten Interessen oder zwischen Staat und Bürger zu erklären vermag, ist die Abwägung aufeinander bezogener Interessen auf der Grundlage der Systematisierung von Verfassungsnormen.Daher wird die Notwendigkeit betont, die betreffenden Rechtsgüter in Bezug auf einige private Interessen abzuwägen, die nicht durch das öffentliche Interesse außer Kraft gesetzt werden können, wie etwa die Vertraulichkeit.

Da die moderne Doktrin den Gemeinwohlgedanken dem Staatszweck gleichstellt, soll eine kurze Analyse seines Inhalts und seiner rechtlichen Rahmenbedingungen vorgenommen werden. In diesem Sinne ist die Bedeutung des öffentlichen Interesses weit gefasst, was in der Lehre von großer Komplexität ist. Da die begrifflichen Grenzen des öffentlichen Interesses noch nicht erreicht sind, wird darauf hingewiesen, dass es sich um einen unbestimmten Rechtsbegriff handelt. Daher ist die Abgrenzung der begrifflichen Grenze des öffentlichen Interesses von großer Bedeutung, um Missbräuche seitens der öffentlichen Verwaltung zu vermeiden.

Die Herausbildung des Verhältnismäßigkeitsprinzips im modernen Recht erklärt sich aus dem Einfluss des Pragmatismus als einer neuen Art des Rechtsverständnisses, das sich durch eine Abkehr vom formal-dogmatischen Rechtsverständnis und den Versuch einer größeren gesellschaftlichen Aufnahmefähigkeit und Realitätsnähe auszeichnet Recht unter Wahrung seiner Vormachtstellung, Autonomie und Unabhängigkeit von politischen Präferenzen.Der Grundsatz der Verhältnismäßigkeit wird gerade als Verbindung von Realismus und Rechtsautonomie betrachtet: Einerseits betont er nicht die Anwendung von Rechtsnormen und -grundsätzen, sondern die unmittelbare

Koordinierung und Ordnung verschiedener Interessen; andererseits schränkt es den Ermessensspielraum des Strafverfolgungs- und Rechtsetzungssubjekts bei der Entscheidung über die Zulässigkeit von Rechtsbeschränkungen ein, begründet „Einschränkungsbeschränkungen" [4]. Das Wesen der Verhältnismäßigkeit besteht darin, dass es sich um ein Rechtsinstrument handelt, das verwendet wird, um Konflikte zwischen einem bestimmten Recht und konkurrierenden Rechten und Interessen zu lösen.

Der Verhältnismäßigkeitsgrundsatz ist eine Auslegungs- und Anwendungsregel des Rechts, die insbesondere dann zur Anwendung kommt, wenn der staatliche Akt, der die Verwirklichung eines Grundrechts oder kollektiven Interesses fördern soll, die Einschränkung eines anderen oder anderer Grundrechte beinhaltet. Er soll sicherstellen, dass keine Einschränkung der Grundrechte unverhältnismäßig wird.

Das Erfordernis der Verhältnismäßigkeit ist bei der Anwendung jedes undefinierten Rechtsbegriffs vorhanden und dient dazu, die miteinander in Konflikt stehenden Grundsätze zu befriedigen, soweit dies bei der Analyse des Einzelfalls eine Abwägung zwischen den beteiligten Interessen zulässt. Es sollte auch festgestellt werden, dass die Doktrin fest an der Abwesenheit einer Hierarchie zwischen Prinzipien festhält, zumindest auf der Ebene der Abstraktion. Man kann sagen, dass einige Prinzipien wichtiger sind als andere, aber diese Prämisse kann nur angesichts eines konkreten Falls bestätigt werden, in dem es einen Konflikt zwischen ihnen gibt und dass nur eines angewendet werden kann. Die Wahl kann nicht dem Ermessen des Richters überlassen werden, der sich von einer komplexen und präzisen Analyse leiten lassen muss, die alle Umstände berücksichtigt, die die Situation präzisieren.

Das öffentliche Interesse hat Vorrang in der Rechtsordnung, weshalb die öffentliche Verwaltung in vertikalen Beziehungen gegenüber Einzelpersonen in eine überlegene Position gebracht wird, um die Interessen des Kollektivs effektiv zu verwirklichen.

Daher sollte die moderne Rechtslehre, die den Grundsatz des Vorrangs des Allgemeininteresses kritisierte, nicht mit der Begründung bestehen bleiben, dass sie individuelle Rechte und Garantien gefährdet.

Der Grundsatz des Vorrangs des Allgemeininteresses genießt in der Rechtsordnung keine absolute und uneingeschränkte Geltung, sondern bleibt ein impliziter Grundsatz, der im Widerspruch zu anderen Grundsätzen durch das Verhältnismäßigkeitsprinzip eine umsichtige Anwendung erfordert.

Wir leben also in einem demokratischen Rechtsstaat, in dem das öffentliche Interesse gegenüber dem privaten Interesse ein höheres abstraktes Gewicht hat, aber das eine dem anderen nicht absolut vorausgeht. Das heißt, das öffentliche Interesse hat eine höhere Argumentationslast, so dass private Interessen es letztendlich verdrängen können. So können Sonderinteressen nach Abwägung gegenüber dem öffentlichen Interesse überwiegen, aber keine relevanteren Gründe haben als diejenigen, die das öffentliche Interesse überwiegen lassen würden.

Sie soll die Anwendung des Grundsatzes der Verhältnismäßigkeit und die Anwendung der Abwägung im Falle eines Konflikts zwischen öffentlichem Interesse

und privatem Interesse nicht verhindern. Es soll lediglich verdeutlichen, dass die abstraktere Gewichtung des öffentlichen Interesses darauf zurückzuführen ist, dass es Ausdruck von Grundrechten, Verfassungsgeboten und Interessen der Allgemeinheit ist.

Der Grundsatz des Vorrangs des Allgemeininteresses erfordert eine Anwendung nach dem Grundsatz der Verhältnismäßigkeit, und der Richter muss die widerstreitenden Interessen unter Berücksichtigung der möglicherweise betroffenen Grundrechte berücksichtigen.

Daher wird geschlussfolgert, dass das öffentliche Interesse ein größeres abstraktes Gewicht im Denkprozess für seinen eigenen konzeptionellen Inhalt erfordert. Eine solche Beschwerde begründet keine Hierarchie zwischen öffentlichen und privaten Interessen. Es stellt sich nur heraus, dass private Interessen nach Abwägung stärkere Argumente erfordern als solche, die das öffentliche Interesse durchsetzen lassen würden.

Die Abwägung zwischen den Konfliktinteressen erfolgt nach der Theorie von Robert Alexi unter Anwendung der Verhältnismäßigkeitsregel, und der Richter muss im konkreten Fall prüfen, welche Interessen die Stufen Angemessenheit, Erforderlichkeit und Verhältnismäßigkeit im engeren Sinne durchlaufen Vorrang haben sollte, eine Entscheidung in Übereinstimmung mit den in der Rechtsordnung festgelegten Vorschriften zu treffen.

Allerdings wird nach dem Weg der modernen Lehre nicht die begriffliche Existenz des Gemeinwohls geleugnet, sondern das Prinzip des Vorrangs des Gemeinwohls.

Verweise:

1. Ávila, Humberto. Repensando o princípio da supremacia do interesse público sobre o interesse particular. Revista Eletrônica sobre a Reforma do Estado (RERE). Salvador, Instituto Brasileiro de Direito Público nº. 11.
2. Borges, Alice Gonzalez. Supremacia do interesse público: desconstrução ou reconstrução? Revista Diálogo Jurídico. Salvador, nº. 15, fev/mar/abr, 2007.
3. Nohara, Irene Patrícia. Reflexões críticas acerca da tentativa de desconstrução do sentido da supremacia do interesse público no direito administrativo. In: Di Pietro, Maria Sylvia Zanella. Ribeiro, Carlos Vinícius Alves (coordenadores). Supremacia do interesse público e outros temas relevantes do direito administrativo. São Paulo: Atlas, 2010.
4. Pogrebnyak S. Der Grundsatz der Verhältnismäßigkeit als allgemeiner Rechtsgrundsatz. Gesetz der Ukraine. Nr. 7/2017. S. 39–46.

HUMAN TRAFFICKING: OFFENDER'S CRIMINOLOGICAL CHARACTERISTIC ELEMENTS

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Annotation. The purpose of the article is to highlight one of the pressing issues of modern world and Ukraine, particularly at the time of Russian Federation's military aggression - human trafficking, and to identify criminological characteristic elements of individuals committing that criminal offense. Human trafficking in national legal acts is considered to be an illegal transaction involving a person, as well as recruitment, transportation, harboring, transferring or obtaining a person, committed with the intent to exploit, including sexual exploitation, by means of deception, fraud, blackmailing, or taking advantage of a person's vulnerable condition or by threatening or using violence, by taking advantage of official position or financial or other kind of dependence upon another person, which, according to the Criminal Code of Ukraine, are recognized as criminal offenses. We emphasize the importance of studying the state of this issue at the national and international levels.

Human trafficking in Ukraine remains a pressing issue, as 46,000 Ukrainians suffered from human trafficking in 2019–2021. In light of the migration processes triggered by Russian Federation's armed aggression, the number of victims of human trafficking is increasing significantly, as reported not only in a number of foreign media, but also in the reports of OSCE representatives [1]. Within the first five months of the full-scale invasion of Ukraine alone, 3 million Ukrainians were forced to emigrate abroad, and 1.9 million people were displaced within the country. Such conditions made it possible to examine the factors behind the victimization of a "human commodity."

In studying problematic aspects of human trafficking phenomena, in our opinion, one of the main objects of study should be the person who committed the criminal offense (the offender). Using statistical data and court practice analysis of prosecuting persons for human trafficking, we pay significant attention to classifying offender's personality. Following the study, author attempts to identify the main features inherent in trafficker's personality and provides

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an interpretation of each acting accomplice's personality, involved in human trafficking. We conclude that the respective criminal offense is committed by offenders who are classified as "situational".

Key words: human trafficking, crime, exploitation, criminal and legal characteristics, personality of an offender, victim.

Articulation of an issue. Recently, the world has become increasingly concerned about the spread of transnational organized crime, which threatens not only the security of individual states but also the world community as a whole. Criminal groups of different nature, structure and scale of influence are being created and operate in Europe and Asia, engaged in illegal activities aimed at illegal profit. Human trafficking is one of the most dangerous types of international criminal business which violates human rights. Human trafficking is a crime that violates the rights of freedom, honour and dignity of a person, enshrined and guaranteed by the Constitution of Ukraine. According to United Nations experts, this type of crime ranks third in terms of profitability after drug and arms trafficking. The annual profit of criminals from human trafficking worldwide is estimated to be around 150 billion dollars [2, p. 20].

Furthermore, the problem of human trafficking in our country is becoming increasingly relevant in view of Russian Federation military aggression. According to the UN, as of March 18, 2022, more than 3 million people were forced to leave Ukraine for neighboring countries, including 162,000 third-country nationals. At least 1.9 million people have been displaced within the country [3]. While it is difficult to identify cases of human trafficking during large-scale displacement, preliminary reports from within and outside Ukraine suggest that traffickers will be able to take advantage of the vulnerabilities of those forced to leave Ukraine. The International Organization for Migration (hereinafter - IOM) draws attention to the rapid increase in the number of cases of family separation, including the displacement of unaccompanied children, as well as the increased risk of conflict-related sexual violence [4]. The concern of the international community confirms the existing threats in the field of protection and combating human trafficking, so the issues of defining the phenomena of tort and personal characteristics of the offender committing the relevant criminal offense requires a comprehensive study.

Analysis of recent research and publications. Analysis of recent research and publications. In their scientific publications, Y.M. Antonian, Y.V. Baulin, E.I. Golovin, O.V. Naden, V.I. Olefir, V.V. Pyaskovskyi, E.L. Streltsov, M.I. Khavroniuk, and others paid attention to the study of criminal, legal and forensic aspects of human trafficking. However, the challenging aspects in studying the phenomena of human trafficking, as part of the general criminological characteristics of the offender's personality, remain unaddressed, and therefore require comprehensive scientific substantiation.

The purpose of the article is to define the criminal law regulation of human trafficking and to study the criminologically significant characteristics of offender's personality committing the aforementioned criminal offense.

Statement of basic materials. National legal acts define human trafficking as the implementation of an illegal transaction, where the object is a person, recruitment, transportation, harboring, transferring or obtaining a person, committed with the intent to exploit, including sexual exploitation, by means of deception, fraud, blackmailing, or taking advantage of a person's vulnerable condition or by threatening or using violence, by taking advantage of official position or financial or other kind of dependence upon another person [5]. From this perspective, V.V. Pyaskovskyi's opinion is justified that the method of committing human trafficking is a certain determined system of traffickers' actions to prepare, execute and conceal the crime, and to use the results of criminal activity [6, p. 71].

Poverty and gender inequality are among the main reasons behind such crimes against women and children – those factors impede education, decent employment, etc. Loss of work and income as a result of the war, limited opportunities in meeting the priority needs of internally displaced persons, refugees, and all victims of military aggression, lead to a significant risk of becoming a victim of human trafficking.

According to open sources, Ukraine has become a supplier and transit country for young women and children, the most vulnerable population groups, targeting them for sex industry in developed countries of Central and Western Europe, and Asia Pacific states. The main destination countries for "human trafficking" are usually Western European countries (Germany, Italy, Spain, Belgium), but also Turkey, Greece, Israel, the United States, the United Arab Emirates, Portugal, Egypt, France, Slovakia, Libya, Romania, Austria, Japan, Switzerland, etc. (victims of trafficking have been identified in 57 countries, according to Ukrainian investigative authorities) [8, p. 82].

In 2021, IOM office has identified and assisted more than a thousand victims of human trafficking – men, women and children. However, due to the inability to identify victims of trafficking, this number may be higher. According to a survey conducted by IOM, 46,000 Ukrainians were trafficked in 2019–2021. Last year, 18% of respondents to the IOM survey claimed that they were ready to accept an informal and risky job offer abroad, and one third were ready to do the same in Ukraine [9].

It is known that the study of official statistics has a positive impact on planning anti-criminal activities, but, in our opinion, it does not fully reflect the real situation of human trafficking spread in Ukraine. Criminologists have concluded that human trafficking has a predominantly natural latency (official statistics do not reflect the spread of crimes, but only the effectiveness of operational and investigative counteraction). Using criminal statistics, it is impossible to determine clear quantitative and qualitative indicators of both crime in general and human trafficking. Today, there is a trend towards an increase in the level of crime latency related to human trafficking in Ukraine. According to experts, it is about 90%, which is due to such factors as fear of social condemnation, threats from human traffickers and lack of trust in law enforcement agencies [10, p. 22].

When studying problematic aspects of human trafficking phenomena, in our opinion, one of the main objects of study should be both the person who has

committed a criminal offense (offender) and the person who has suffered any physical, financial, or moral damages (victim) as a result of a criminal offense. All personal characteristics are inseparably connected to each other and their unity creates the concept of "personality". Considering all mentioned above, criminology allows applying a comprehensive approach to the study of human personality: determining its physical and mental properties, natural and social factors underlying personal development.

Circumstances constantly arising during criminal activity and during criminal investigations indicate that identifying information about any personal characteristics of the offender and the victim are of criminological importance – ranging from anatomical and biological (blood type, smell, etc.) to psychological and social (features of previous mental disorders, professional skills, practical experience, view of the world). These characteristics are always considered when characterizing criminal offender's personality.

The statistics cited by E. Golovin demonstrate that a significant proportion of traffickers are male (65.5%). The typical age of these persons varies, but is usually within two ranges: from 18 to 30 years old (44.8%) and from 30 to 50 years old (44.8%). In addition, human traffickers usually have matured character, beliefs, distorted moral principles and values [11, p. 240]. It is worth to mention that despite the diversity of people involved in human trafficking (depending on age, education, life experience, social roles), they are united by the mercenary motivation of criminal activity. As A.A. Nebytov fairly states, criminals engaged in human trafficking seek to obtain a considerable reward for each victim sold. At the same time, the author admits that the offender may be motivated by other motives, but mercenary motives are considered to be the most typical [12, p. 114].

The vast majority of those who commit human trafficking may not have a previous criminal record. Among individuals convicted of human trafficking, only 20% had a previous criminal record, while the rest committed the crime for the first time [13, p. 106]. The above statistics indicate that the offender convicted of human trafficking in most cases belongs to the "situational" type. This is evidenced by the study of verdicts in criminal proceedings related to human trafficking. At the same time, according to 2020 data, 0% of persons prosecuted for human trafficking have a previous criminal record [14, p. 390; 15, p. 339]. For example, in the verdict of the Leninsky District Court of Kharkiv in case No. 642/7708/13-к of September 13, 2013, PERSON_2, convicted of a crime related to human trafficking, had no previous conviction. However, with the intention of human trafficking, he recruited PERSON_5 for the purpose of transferring the victim to unidentified persons for further sexual exploitation [16]. Also, the person who committed the crime of human trafficking in criminal proceedings No. 641/3421/19 was not previously convicted. The verdict of the Kominternivskyi District Court of Kharkiv recognized that PERSON_5, who had not been previously convicted, committed a crime in January 2019 with the intent to commit human trafficking and recruitment of women using their vulnerable state for the purpose of transportation for further sexual exploitation in the Republic of Cyprus [17]. According to the court verdict in case No. 369/4565/21,

PERSON_5, who recruited PERSON_6 for the purpose of the subsequent illegal transaction against her, had not been previously prosecuted [18].

The Criminal Liability Law stipulates that an offender liable for human trafficking is a private, legally sane individual, aged 16 or older. At the same time, Ukrainian citizenship is not compulsory, as human trafficking is not only national, but also transnational, depending on the modus operandi and criminal group structure. For instance, according to the data provided by Andrushko, the majority of persons convicted of human trafficking are of Ukrainian citizenship (88.6%), however, there are cases of foreigners being convicted (11.1%). The lowest number (0.3%) were individuals who had multiple citizenship [11, p. 240].

The vast majority of crimes are committed in complicity. The analyzed verdicts in recent years show that crimes related to human trafficking are committed in cooperation. For example, in 2021, in case No. 640/6588/19, PERSON_8 was found guilty of acting as a group with other individuals, implementing a criminal intent to recruit a person for the purpose of exploitation and transferring him or her to the Kingdom of Spain [19]. Another example indicates the crime of human trafficking committed by PERSON_6, PERSON_10 and PERSON_11, who committed the crime of recruiting girls for sexual exploitation, by deception and taking advantage of their vulnerable condition [20]. In general, the more branched the structure of organized groups and criminal organizations, the more individuals are involved in the criminal activity process, and therefore the more difficult it is to identify and solve criminal offenses related to human trafficking. For example, in 2020, 34.5% of convicted criminals were part of a group, 20.7% were part of an organized group, and none were part of a criminal organization [21, pp. 1010–1013]. The complexity of identifying crimes committed by organized group crime is related to the degree of its organization, cohesion and technical equipment. Meanwhile, the Criminal Code of Ukraine Article 27 [22] emphasizes that criminals may perform various roles. Along with the perpetrator, an organizer, instigator and aider and abettor are recognized as accomplices to the crime. Article provisions of aforementioned article substantially reveal the essence of the above concepts, such as:

1. Part 2 of the aforementioned Article defines the principal (co-principal) as a person who, in association with other criminal offenders, directly or through other persons who are not subject to criminal liability for their actions under the law, has committed a criminal offense under this Code;

2. Part 3 of Article defines an organizer as a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization;

3. Part 4 of the Article states that an abettor is a person who, has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise;

4. Part 5 states that an accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions,

or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.

In turn, M.I. Andrienko [23, p. 32-33] proposes a slightly different classification of criminal groups depending on their stability and orientation:

1. Situational groups - formed under the influence of situational factors (relatives, friends, acquaintances). Criminal offenses committed by such groups are characterized by the spontaneous nature of the participants' actions, episodic nature (often limited to one episode of the tort), lack of preparation and planning, and lack of clearly defined functions.

2. Stable groups focused on committing various offenses, including human trafficking. Compared to the preceding group, such groups are distinguished by a more organized manner of criminal activity and a clear function breakdown (according to criminal skills, occupational skills, etc.). The crimes are usually prepared and are managed by a control center (represented by an organizer or several leaders). Key motivations include profit and attempts to expand the area of criminal influence. In addition to human trafficking, the criminal activities of this group may include drug trafficking, arms trafficking, pimping and running brothels, forcing or engaging in prostitution, distributing pornography, fraud and other related crimes. For example, citizen PERSON_4, as a nightclub co-owner, recruited girls to appear in striptease shows and then provide commercial sexual services to the club's clients [24].

3. Stable groups that have been purposefully organized for human trafficking. These groups are distinguished by a high level of organization, a detailed criminal business plan for human trafficking, and clear participants role distribution according to the stages of criminal intent implementation.

In our opinion, according to the forms of criminal offenses it is important to distinguish other accomplices who have certain functions within organized groups and criminal organizations structure, in particular:

1. Recruiters are individuals who commit intentional criminal acts targeting people and encouraging them to take certain actions (to be employed by a particular organization, to travel abroad, etc.). Recruiters are aware of further victim exploitation;
2. Kidnappers - individuals who abduct victims and then hide them, usually abusing them mentally and physically. These are men aged 25-40, characterized by a neglectful attitude towards community members (especially women), brutal behavior, good physical fitness, and a commitment to apply brute force both to overcome the victim's physical resistance and to stop the victim's disobedience, to "prevent" the victim's actions;
3. Accomplices who transport people – individuals who facilitate the victim's actions to transfer them to their destination. This definition should be applied in cases when a victim voluntarily travels to the destination, but the journey is against the person's will. That is, an offender, by deception or taking advantage of one's helpless state, commits activities that,

against the will of the person, are aimed at changing their abiding-place. In most cases, such displacement involves the use of coercive actions, which often accompany the abduction, hiding and subsequent delivery to a buyer;

4. Accomplices in human trafficking are individuals who impose control over the victim's behavior through recruitment (deception) or abduction, and who also transfer and hide such a person;
5. Accomplices who receive and exploit people are individuals who, at the final stage of human trafficking, fulfill the ultimate goal of obtaining the main benefit from exploiting the biological, physiological and mental victim capabilities. The bottom line is that criminals who receive a person enslave victim's will by using physical or mental violence, restricting freedom of movement and creating special detention conditions, or under the influence of deception or abuse of trust, force them to perform actions in their favor, control their behavior in order to obtain material or other benefits.

The mentioned classification of offender's personality is consistent with criminal law provisions and depends on offender's involvement in the crime, but criminological publications usually distinguish a broader offender's classification. In particular, I. M. Danshin claims that it is appropriate to classify a criminal depending on his or her attitude towards general social values. Scientist distinguishes between "accidental", "situational", "unstable", "malicious" and "particularly dangerous" criminals [25, p. 12]. An "accidental" type suggests that a person has committed a criminal offense for the first time, which contradicts the general socially positive orientation characterized by previous positive moral behavior. A "situational" type indicates that the person has committed a criminal offense under an unfavorable external circumstances for the offender, with a generally socially positive personality. An "unstable" type is defined as a criminal who has committed a criminal offense for the first time, but has previously committed minor offenses and immoral misconduct. "A "malicious" type of offender is characterized by repeated criminal offenses, including those with a criminal record. A "particularly dangerous" type of offender is characterized by repeated commission of serious criminal offenses, which defines him as a particularly dangerous repeat offender.

A comprehensive judicial court practice analysis of prosecuting human trafficking offenders demonstrates that most offenders are of the "situational" or "unstable" type. For instance, Crime Combating Department officers, during operative measures to detect human trafficking, detained a 25-year-old woman and her 44-year-old mother in a village in the Starosyniavskyi district of Khmelnytskyi region who were attempting to sell a child for UAH 50,000. His grandmother, who initiated the child's sale, justified the crime by the family's financial difficulties and lack of a permanent employment [26]. In our opinion, such actions of boy's mother and grandmother shall be classified as "situational" in accordance with the offender's type classification. Another example is human trafficking against Ukrainian refugees. According to The Washington Post, young women arriving to Europe are being recruited for further exploitation by

individual criminals, particularly targeting Ukrainian women [27]. This example clearly demonstrates the "situational" type of traffickers who seek to take advantage of Russian Federation's armed aggression for their own enrichment.

Conclusions. Human trafficking is a socially dangerous transnational criminal area, involving significant monetary assets. A mercenary intent is notable for human trafficking. The main reasons for victimity of human trafficking are low living standards, gender inequality, a high unemployment rate, forced emigration due to Russian Federation armed aggression, etc. According to court practice and open-source statistics, a typical human trafficking offender is a male who has not been previously prosecuted. Meanwhile, a trafficker's personality is characterized as a mercenary-minded man aged 18 to 50, with a matured character but deformed will, consciousness and values. In many cases, human trafficking is committed by prior conspiracy, but cases of human trafficking without complicity are no less common. The above demonstrates that a typical trafficker may belong to the group of "situational" and "unstable" criminals, as they usually do not have a criminal record, but under the influence of unfavorable living and development circumstances or a persistent immoral lifestyle, they commit a crime.

References:

1. Irish escort website encouraged men to live out their 'war-inspired fantasies' by paying for sex with Ukrainian refugees. *Independent*. URL: https://www.independent.ie/irish-news/irish-escort-website encouraged men-to-live-out-their-war-inspired-fantasies-by-paying-for-sex-with-ukrainian-refugees-41667273.html (дата звернення: 10.02.2023).
2. Vysvitlennia v zasobakh masovoi informatsii problemy torhivli liudmy [Media coverage of human trafficking]: posibnyk dlia zhurnalistiv. Kyiv: Ofis Koordynatora proektiv OBSIe v Ukraini, 2007. 161 s. [in Ukrainian].
3. Mizhnarodna orhanizatsiia z mihratsii. [International Organization for Migration]. URL: https://www.iom.int/migration-sustainable-development-and-2030-agenda (data zvernennia: 10.02.2023) [in Ukrainian].
4. OON dopomahaie zakhystyty ukrainskykh bizhentsiv vid torhovtsiv liudmy. [The UN is helping to protect Ukrainian refugees from human traffickers].Orhanizatsiia Obiednanykh Natsii. URL: https://news.un.org/ru/story/2022/04/1421832 (data zvernennia: 10.02.2023). [in Ukrainian].
5. Pro protydiiu torhivli liudmy: Zakon Ukrainy [On combating human trafficking: Law of Ukraine] vid 20.09.2011 r. № 3739-VI. Ofitsiinyi visnyk Ukrainy. 2011. № 80. S. 7 [in Ukrainian].
6. Piaskovskyi V. V. Poniattia ta kryminalistychna kharakterystyka torhivli liudmy. [Concept and forensic characteristics of human trafficking] Visnyk prokuratury. 2003. № 5. S. 69–75 [in Ukrainian].
7. Punda A.V. Osnovni prychyny ta peredumovy torhivli liudmy v Ukraini. [The main causes and prerequisites of human trafficking in Ukraine]. Derzhavne upravlinnia: udoskonalennia ta rozvytok. 2013. № 12. URL: http://www.dy.nayka.com.ua/?op=1&z=668 (data zvernennia: 11.02.2023) [in Ukrainian].

8. Akhtyrska N.M. Torhivlia liudmy v Ukraini: pro shcho svidchyt sudova praktyka. [Human trafficking in Ukraine: what is evidenced by judicial practice].Kyiv, 2006. 83 s. [in Ukrainian].
9. Skhidne mizhrehionalne upravlinnia Derzhavnoi sluzhby Ukrainy z pytan pratsi. Torhivlia liudmy – tse ne mif, tse realnist! Cherez viinu Rosii proty Ukrainy zrostaiut ryzyky torhivli liudmy. [Human trafficking is not a myth, it is a reality! Due to Russia's war against Ukraine, the risks of human trafficking are increasing]. URL: https://smu.dsp.gov.ua/news/torhivlia-liudmy-tse-ne-mif-tse-realnist-cherez-viinu-rosii-proty-ukrainy-zrostaiut-ryzyky-torhivli-liudmy/ (data zvernennia: 10.02.2023) [in Ukrainian].
10. Verbenskyi M.H. Kryminolohichna kharakterystyka transnatsionalnykh zlochyniv u sferi nezakonnoho obihu narkotychnykh zasobiv. [Criminological characteristics of transnational crimes in the field of illegal drug trafficking]. Pravo i Bezpeka. 2009. № 5. S. 103–106 [in Ukrainian].
11. Andrushko A.V. Kryminolohichna kharakterystyka osib, yaki vchynyly torhivliu liudmy z metoiu seksualnoi ekspluatatsii. [Criminological characteristics of persons who committed human trafficking for the purpose of sexual exploitation]. Kyivskyi chasopys prava. 2021. № 4. S. 238–243 [in Ukrainian].
12. Niebytov A.A. Seksualna ekspluatatsiia v Ukraini: kryminalno-pravovyi ta kryminolohichnyi analiz: monohrafiia. [Sexual exploitation in Ukraine: criminal legal and criminological analysis: monograph]. Kyiv: Osvita Ukrainy, 2016. 464 s. [in Ukrainian].
13. Andrushko A.V. Kryminolohichna kharakterystyka torhivli liudmy, vchynenoi z metoiu prymusovoho vtiahnennia v zainiattia zhebratstvom. [Criminological characteristics of human trafficking committed with the aim of forced involvement in begging]. Prykarpatskyi yurydychnyi visnyk. 2019. Vyp. 4 (29). T. 1. S. 104–110 [in Ukrainian].
14. Andrushko A.V. Teoretyko-prykladni zasady zapobihannia ta protydii zlochynam proty voli, chesti ta hidnosti osoby: monohrafiia. [Theoretical and practical principles of preventing and countering crimes against the will, honor and dignity of a person: monograph]. Kyiv: Vaite, 2020. 560 s. [in Ukrainian].
15. Andrushko A.V. Zlochyny proty voli, chesti ta hidnosti osoby (kryminalno-pravove ta kryminolohichne doslidzhennia): dys. … dokt. yuryd. nauk. [Crimes against the will, honor and dignity of a person (criminal legal and criminological research): thesis. … Dr. law of science]. Uzhhorod, 2021. 675 s. [in Ukrainian].
16. Vyrok Leninskoho raionnoho sudu m. Kharkova vid 13 veresnia 2013 r. u spravi № 642/7708/13-k. URL: https://reyestr.court.gov.ua/Review/33451873 (data zvernennia: 10.02.2023) [in Ukrainian].
17. Vyrok Kominternivskoho raionnoho sudu m. Kharkova vid 08 lypnia 2020 r. u spravi № 641/3421/19. URL: https://reyestr.court.gov.ua/Review/90275299 (data zvernennia: 10.02.2023) [in Ukrainian].
18. Vyrok Kyievo-Sviatoshynskoho raionnoho sudu Kyivskoi oblasti vid 11 chervnia 2021 r. u spravi № 369/4565/21. URL: https://reyestr.court.gov.ua/Review/97594752 (data zvernennia: 10.02.2023) [in Ukrainian].

19. Vyrok Kyivskoho raionnoho sudu m. Kharkova vid 10 liutoho 2021 r. u spravi № 640/6588/19. URL: https://reyestr.court.gov.ua/Review/100963351 (data zvernennia: 10.02.2023) [in Ukrainian].
20. Vyrok Uzhhorodskoho miskraionnoho sudu Zakarpatskoi oblasti vid 31 travnia 2022 r. u spravi № 308/470/16-k. URL: https://reyestr.court.gov.ua/Review/104587374 (data zvernennia: 10.02.2023) [in Ukrainian].
21. Yevgen Golovin. The Identity of the Offender as an Element of Forensic Characteristics of Crimes Related to Human Trafficking. Traektoriâ Nauki = Path of Science. 2021. Vol. 7. No 8. p. 1009–1015 [in English].
22. Kryminalnyi kodeks Ukrainy: Zakon Ukrainy [Criminal Code of Ukraine: Law of Ukraine dated] vid 05.04.2001r. № 2341-III. Vidomosti Verkhovnoi Rady Ukrainy. 2001. № 25-26. St. 131 [in Ukrainian].
23. Andriienko M.I. Rozsliduvannia torhivli liudmy: navch. posib [Investigation of human trafficking: training. manual] / za red. P.V. Koliady. Kyiv: Konus-Yu, 2010. 190 s. [in Ukrainian].
24. Vyrok Halytskoho raionnoho sudu m. Lvova vid 11 sichnia 2022 r., sudova sprava № 461/3792/17. URL: https://reyestr.court.gov.ua/Review/102658238 (data zvernennia: 10.02.2023) [in Ukrainian].
25. Danshyn I.M., Holina V.V., Valuiska M.Yu. Kryminolohiia: Zahalna ta Osoblyva chastyny: pidruchnyk [Criminology: General and Special parts: textbook]. / za zah. red. V.V. Holiny. Kharkiv: Prapor, 2009. 2-he vyd. pererob. i dop. 288 s. [in Ukrainian].
26. Maty ta babusia vystavyly na prodazh 2-richnoho khlopchyka. [A mother and grandmother put a 2-year-old boy up for sale]. Ukrainska pravda. URL: https://life.pravda.com.ua/society/2011/08/2/82730/ (data zvernennia: 10.02.2023) [in Ukrainian].
27. Ukrainians suffered at home. They are preyed on as refugees, too. *The Washington Post.* 5 February 2023. URL: https://www.washingtonpost.com/opinions/2023/02/05/ukraine-refugees-war-sex-trafficking/ (access date: 10.02.2023) [in English].

HOME FOR PECULIAR CHILDREN AS A PLOT STRATEGY IN FANTASY METAGENRE OF THE FIRST DECADES OF THE XXI CENTURY

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Annotation. The active development of fantasy in the XXI century with a powerful self-rethinking within the metagenre contributes not only to the renewal of the subgenre spectrum of this literature, but also brings to the fore questions that were not investigated in the previous period due to their absence. Genre progression contributes to the formation of synthetic elements of image and plot systems, that can serve as ready-made structures in future fantasy modeling. The synthetic plot model "home for peculiar children" is outlined in some fantasy works of the late XXI century in a very aspectual way, but takes shape in 2010–2020s. In our article we define for the first time the plot model "home for peculiar children" as a recurring stable plot element in fantasy prose of the of the XXI century. We also characterize the main artistic parameters of this plot link and the possible ideological and thematic vectors of its metaphor in representative texts of the contemporary metagenre.

The semantic core of the plot model or strategy, that we describe, is a kind of collective hero, presented in a number of synonymous images according to a certain criterion. These images motivatedly concentrated in a certain local spaces with or without an accompanying time limiter. The actual "home for peculiars" in the artistic works can be a literal object, a place dreamed by the characters, to which they are heading, or a metaphorical image. The possible ideological and thematic vectors of the metaphor of the plot-figurative construct "home for peculiar children" are determined based on its artistic valence. At the same time, this valence of the model can be expanded by the imperative laid down by the author in his book

In "Miss Peregrine's Home for Peculiar Children" by R. Riggs the model "home" is a temporary shelter for Jewish children during the Second World War, which in a literal and metaphorical sense is a plot attribute of the entire story. The destruction of the Home for peculiar children here (but also its finding in the final part) can also be seen as a metaphor in the context of Jewish history. In A. Zakordonets' trilogy about Hran we find an original and nationally reinterpreted fragmentary borrowing of material from the cycle "Miss Peregrine's Home for Peculiar Children" by R. Riggs for the first time. National memory is also a priority

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concept in this Ukrainian artistic work. In M. Petrosyan's "The House in Which…", the pupils of the boarding school, protected from the "outside", experience the subjective time of their House and can transit to the irrational world; many of them also have unusual abilities. The building of the House, that was ruined, metaphorizes the image of the Soviet Union. The ideological and thematic vector of "The House in the Cerulean Sea" by T. J. Klune is significantly different. We can see the ideas of associated with the possibility of an individual to choose sexual orientation here. Unlike the children of Miss Peregrine in R. Riggs' hexalogy or the pupils by M. Petrosyan, who, despite all their differences, are the same within their community, the children of Klune's House do not belong to the human race. The principles of good and evil are reinterpreted here from the point of view of the ethics of evaluation.

The analyzed novels by R. Riggs, M. Petrosyan, and T. J. Klune, as well as by A. Zakordonets are examples of the variable ideological and content meaning of the model we identified – from national to sexually marked.

Key words: fantasy, model, reception, paradigm, vector, typology.

The relevance of the research topic. The corpus of mass literature, saturated with formulaic solutions, often arouses the skepticism of the recipient, although sometimes we record here the elevation of this or that artistic work to the level of intellectual reading. Such an artistic overgrowth of the format in the first decades of the XXI century is more often demonstrated by fantasy authors armed with an innovative arsenal of artistic techniques and tools of this metagenre. Basic attention to the quest during the evolution of fantasy, to the concepts of its hero and his opponents, to the part of the popular images of the characters determines the relative level of research of the principles of these elements in the most famous works (by J.R.R. Tolkien, T. Pratchett, U. Le Guin, etc.) with significant temporal and nationally motivated limitations of the material. The active development of fantasy in the XXI century with a powerful self-rethinking within the metagenre contributes not only to the renewal of the subgenre spectrum of this literature, but also brings to the fore questions that were not investigated in the previous period due to their absence. We mean the creation of a new triune fantasy paradigm with an intermediate connecting constant between the traditional poles of good and evil (Gurduz, 2022), accompanying processes of transformation of the image of the hero, of installed legendary-mythological structures, etc. The gradual intellectualization of this sphere leads to the complication of image models and synthetic structures close to them, to the emergence and consolidation of new associative complexes, and to the development of new meanings. The listed aspects are a spectrum of actual tasks of studying modern fantasy.

The models of the quest or artistic reality as a whole, traced on the classic samples of the metagenre, are largely the basis of attempts at metagenre systematization (Manlove, 1999), which are marked by convention even at the time of development (James, Mendlesohn, 2012, p. 2). The image of the fantasy hero, as well as his key conflict, at the beginning of the XXI century. significantly evolved and survived the definitions established in special sources (Encyclopedia

of Fantasy, 1997, p. 422), and the actualization of individual plot schemes without proper study in the coordinates of fantasy prose gave birth to studies with hasty proof of even ethically incorrect provisions (first of all, regarding the influence of Potterian by J. K. Rowling to later examples of the metagenre (Grimes, 2002, p. 108). At the same time, genre progression contributes to the formation of synthetic elements of image and plot systems, that can serve as ready-made structures in future fantasy modeling. Accordingly, tracing the functioning of new plot and figurative fantasy structures is fundamentally important, because it contributes to the understanding of the formation of the current panorama of this metagenre and the trends of the nearer perspective of its development.

The synthetic plot model "home for peculiar children" is outlined in some fantasy works of the late XXI century in a very aspectual way (with certain earlier exceptions such as "The Midwich Cuckoos" (1957) by John Wyndham), but takes shape in 2010–2020s. As a completely new phenomenon in the metagenre, this structure deserves a comprehensive study, especially in the context of the contemporary tendency of dominant Joycean myth-making.

Analysis of recent research and publicatioms. The legendary-mythological unit of various levels of organization, which is important in the fantasy corpus, still remains virtually unexplored and was considered in literary variations mainly till the end of the XX century with certain exceptions of samples of artistic works of the beginning of the XXI century (for example, see: Nyamtsu, 2007; Baumann, 2018). Meanwhile, such unit is often the basic element of forming the synthetic structure of an image or plot in the metagenre. In addition, the analysis of artistic works is complicated by the mostly metaphorical interpretation of the process and result of myth-making, although the types of creation of authorial myths in fantasy are academically studied – Joycean and Kafkaesque. The strategy of the formation of the "home for peculiar children" model is based on both of the specified types of creation of the author's myth, it can be traced in a number of artistic works and is confirmed by the frequency of writers' appeal to it, but has not yet been discovered in the fantasy metagenre. Accordingly, it is impossible to talk about the state of research of this model even at the descriptive level. The metaphorism of the images of peculiar children in the first parts of the R. Riggs' hexalogy "Miss Peregrine's Home for Peculiar Children" falls into the focus of researchers (among the most thorough, here is the article by A. Zarzycka, which emphasizes the Jewish belonging of the heroes as a key factor in modeling the artistic reality of this cycle (Zarzycka, 2016)), but is considered exclusively within the framework of this hexalogy and only in connection with the specific historical events of the Second World War. We single out this artistic work in the contemporary context, as the plot model, that we find and nominate, is articulated in its title. At the same time, a number of novels written before and after R. Riggs' hexalogy and which contain this construct to a greater or lesser degree of expression, are often not considered by researchers, although it is the comparative approach that allows us to identify this model in the plot, describe its characteristics and define its typology.

The basis of our concept is the principle of a consolidated consideration of plot and image elements in fantasy, similar to the one very successfully applied in the classification by F. Mendlesohn (Mendlesohn, 2008, p. xiv).

Formulation of the purpose and tasks of the article. The purpose of our article is to define for the first time the plot model "home for peculiar children" as a recurring stable plot element in fantasy prose of the XXI century. We also must characterize the main artistic parameters of this plot link and the possible ideological and thematic vectors of its metaphor. The tasks of the article correspond to the three indicated components of the purpose and include, in addition, a thesis outline of the semantic vectors of the model "home for peculiar children" in representative texts of the contemporary metagenre: "Miss Peregrine's Home for Peculiar Children" by R. Riggs, "The House in Which…" by M. Petrosyan, and "The House in the Cerulean Sea" (2020) by T.J. Klune.

Presentation of the main research material. The plot model or strategy, that we describe, finds a representative nomination in the key part of the title of the first book of the hexalogy "Miss Peregrine's Home for Peculiar Children" (2011) by R. Riggs. The semantic core of this construct is a kind of collective hero (paraphrasing J. Campbell, it is a conditional "the Hero with a Thousand Faces" (Campbell, 2004)), presented in a number of synonymous images according to a certain criterion. These images motivatedly concentrated in a certain local (closed literally and / or metaphorically) spaces (home, boarding school, school, island, headquarters, etc.) with or without an accompanying time limiter. The postmodern cultivation of the ambivalent image of the Other in literature, the hypotheses of psychologists about the genetic renewal of humanity (the indigo generation, etc.) spread since the end of the XX century, the constant popularity of the figure of a superhero in the Western and, later, in the Eastern world (with a certain degree of fatigue of a single such image) contributed to the formation of a new figurative complex in literature and cinema, the subjects-components of which have the features of the supernaturally gifted heroes of previous artistic works; they retain the status of the Other, often not directly accepted by society, but one that has a socially significant mission. In addition, such a figurative complex is fenced off from the general community and, due to its content, is able to model its own internal relationships, even friendship or love lines between characters, the development of which the recipient observes as for a kind of internal society. The revelation of secrets, missions, and the life of such a micro-society in general occurs, as a rule, through the prism of the perception of the hero, who enters this world and later often reveals his own peculiarity. These are Jacob Portman in "Miss Peregrine's Home for Peculiar Children" by R. Riggs, the Smoker in "The House in Which…" (2009) by M. Petrosyan, Inspector Linus in "The House in the Cerulean Sea" (2020) by T.J. Klune, etc.

The actual "home for peculiars" in the artistic works can be a literal object, a place dreamed by the characters, to which they are heading, or a metaphorical image. These three possible its hypostases can be combined, as demonstrated by "Miss Peregrine's Home for Peculiar Children" and "The House in the Cerulean Sea"; we record the combination of the two named hypostases in "The House in Which..." etc. Special specificity and sharpness of the intrigue is added here by

the appeal to the images of children or characters with conventional childhood. A plastic image of a child or a group of children / adolescents can be included in almost any, especially experimental and provocative artistic situation: recall «Lord of the Flies» (1954) by W. Golding, «Ender's Game» (1985) by O.S. Card or «The Girl with All the Gifts» (2014) by M. Carey.

The possible ideological and thematic vectors of the metaphor of the plot-figurative construct "home for peculiar children" are determined based on its artistic valence. At the same time, this valence of the model can be expanded by the imperative laid down by the author in his book (for example, the imperative of defense, as in the novels by R. Riggs or T.J. Klune). It is truth, that in the fantasy of the first decades of the XXI century, the named novels by R. Riggs, M. Petrosyan, and T. J. Klune are especially vivid regarding the context we are analyzing.

"Miss Peregrine's Home for Peculiar Children" by R. Riggs, in particular due to the expressiveness of the title, can be considered in the article first. Its success among the audience is achieved by the synthesis of a plot model relevant in popular fantasy and a nationally connected problem-thematic complex. The model "home" here is a temporary shelter for Jewish children during the Second World War ("Miss Peregrine's Home"), which in a literal and metaphorical sense is a plot attribute of the entire story. The factor of novelty here was formulated by A. Zarzycka: it is an installation in the context of the Holocaust of the fantasy trope (Zarzycka, 2016, p. 232). The leitmotif of the Holocaust is strengthened by the play of words, because the central negative concept of the hexalogy is emptiness, the manifestations of which in the novel correspond in one way or another to the images of fascists and their supporters. In the postmodern prose, the concept of emptiness by R. Riggs is organic, genre-consistent with modeling by S. Green, A. Zakordonets, or V. Pelevin.

The artistic vibration of R. Riggs' heroes is provided by their conditional childhood age, they are actually many years old (Riggs, 2013, p. 209). This realises the philosophical reflections of the heroes and fits into the ideological plane outlined by the author: the Jewish people are quite young in spirit despite their ancient history. The destruction of the Home for peculiar children here (but also its finding in the final part) can also be seen as a metaphor in the context of Jewish history. R. Riggs' combination of the themes of the persecution of Jews during the Second World War and slavery in the USA, as well as later racism, in the same context is seen as new for the conversation about the Holocaust. The parallel introduction of the topics of slavery and racism into the discourse on the Holocaust prompts a direct juxtaposition of these historical tragedies, forming a single context of the victim as such in the memory of humanity.

The formal analysis of this hexalogy shows elements of formulaic literature in it. After all, the community of peculiars with various superpowers in the Home of Miss Peregrine can also be perceived as a modified group of contemporary superheroes united by a common goal in artistic works such as "The Avengers" (USA) dir. J. Whedon and brothers A. and J. Russo or "X-Men" from the films of the same title by dir. B. Singer and others.

The reception of the material of R. Riggs' hexalogy is first detected by us in the trilogy about Hran by A. Zakordonets. Some plot decisions of the first

book of the cycle of the American writer are borrowing in the last volume of the Ukrainian trilogy "Purple Falcon": in the story about the role of the new generation of the people of the Valley – the supernaturally gifted children, "young sorcerers" (Zakordonets, 2018, p. 111, 116) – we can identify the features of the story about "peculiars" by R. Riggs. Despite the subgenre and thematic differences, the American and Ukrainian cycles in general reveal a number of close artistic solutions in the plot, system of images, mythopoetics, etc., being original and oriented to national issues. Pagans from the Valley, to whom the cycle by A. Zakordonets about Hran is actually dedicated, are associated with ancient Ukrainians, that is, the story can be perceived as an original alternative history of our ancestors. "Strange children" (Zakordonets, 2018, p. 105) here symbolize the national renewal of the people, their composition in terms of age and abilities strongly resembles and sometimes coincides with the age and talents of the young psychics from the text of the American writer.

Ukrainian author emphasizes the outsiderness of "young sorcerers" among their tribe, which does not recognize and despises its representatives of the new generation. "Young sorcerers" also live compactly: they are forced to leave their native village and gather in the house of the old sorcerer Naru. Correlation of the images of Naru and the Peregrine ymbryne, as well as the circular composition of the juxtaposed cycles regarding "peculiars" and "stranges" deserve special attention.

In A. Zakordonets' trilogy, in this way, we find an original and nationally reinterpreted fragmentary borrowing of material from the cycle "Miss Peregrine's Home for Peculiar Children" by R. Riggs. National memory is also a priority concept in this Ukrainian artistic work. The close approaches of these writers to the concept of the Other, that is cultivated in postmodernism. In the text of Ukrainian writer, the Other is not only another, but also new, appropriate for the future. But Others in the text of American writer are only another and more related to the old times.

"The House in Which…" by the transnational writer M. Petrosyan is one of the most notable phenomena of the first decades of the XXI century in Armenian literature, but the question of its genre affiliation still remained open. Refuting the view of this novel as an example of magical realism, we argue for its presence in the force field of fantasy of the XXI century (Gurduz, 2021). In M. Petrosyan's text, the pupils of the boarding school, protected from the "outside", experience the subjective time of their House and can transit to the irrational world; many of them also have unusual abilities. The worlds of "peculiar" children are depicted in the novels by R. Riggs and M. Petrosyan, respectively, through the prism of the perception of the main characters, who, after getting here, also reveal their own unusualness.

Miss Peregrine's Home is located on an island, M. Petrosyan's House is "between two worlds" (Petrosyan, 2015, p. 7). Life in the Home of Miss Peregrine is cyclical within a day, and after the destruction of this structure by a German shell peculiar children are forced to seek a similar shelter. M. Petrosyan's House also undergoes physical destruction over time and lives in cycles of seven years; going beyond the special time-space of the House is tantamount to death for its

pupils (Petrosyan, 2015, p. 299), as it was for R. Riggs characters at first. In both artistic works, the children's age of the characters is conditional, since in the House by M. Petrosyan time also does not flow objectively. Metaphorically, the strangeness of boarding school teenagers is the difficult childhood of disabled people with their early adulthood. In these "homes", their inhabitants in the American and Armenian authors are equal and normal, but in real society they are negatively unusual (Petrosyan, 2015, p. 304). Despite the fact that M. Petrosyan, as a transnational writer, declares a non-national approach in the novel, the Jewish affiliation of the key character can also be clearly read in her work: he is the only boy in "The House in Which...", endowed with the name and surname, Eric Zimmerman.

The building of the House metaphorizes the image of the Soviet Union. The seventy-year history of the House has been mentioned several times in the text (Petrosyan, 2015, p. 22).

About the unfolding of events at the end of the XX century the musical preferences of the pupils are evidenced; looking at the booklet about the House, designed in Soviet traditions, the Smoker thinks: "It is enough to see the House to understand: it began to fall apart already in the last century" (Petrosyan, 2015, p. 19). The words "fall apart" accurately reflects the essence of the disintegration of the USSR into individual republics. In the context of the aggravation of identity problems, indicated by us, it is natural attraction of the pupils of the House to Western pop-music; their anticipation of the end of the era; the statement that the House itself makes of once "normal people" (Petrosyan, 2015, p. 18) Pheasants (only they are comfortable in the House (Petrosyan, 2015, p. 18)); closed windows of the House, etc. The only member of the House with a name and a future, Eric, can be perceived as a collective image of an immigrant, who in later life seeks to believe in the charm of the past (Petrosyan, 2015, p. 935). The metaphor of the image of the Sleepers is also transparent – these are people who did not want or could not adapt to post-Soviet life.

The ideological and thematic vector of "The House in the Cerulean Sea" by T.J. Klune is significantly different from examples of previous texts. In inspector Linus Baker's business trip to a secret orphanage on the island, in the sympathy and love for the unusual pupils of the director Arthur Parnassus, in the protection of this House before the "Extremely Upper Management" of the Department of Magical Youth, in the subsequent decision of the hero to move into this House himself, – in all of these reasons we can find the ideas of associated with the possibility of an individual to choose sexual orientation, find like-minded people and live in an organic environment (Linus and Arthur Parnassus in the finale of the novel decide to be together and adopt a child).

The subtext, unobtrusively emphasized by the title of the novel, determines the character of the images of the pupils of a special orphanage. Unlike the children of Miss Peregrine in R. Riggs' hexalogy or the pupils by M. Petrosyan, who, despite all their differences, are the same within their community (respectively, differently gifted metaphorical Jews and invalids with supernatural properties received from the House), the children of Klune's House are so different from each other that sometimes they do not belong to the human race (the dwarf

Talia, the jellyfish Chauncey, etc.). Such an emphasized difference from ordinary people is motivated by a plot requirement: the fear of the local residents of the coast before the strange house on the island is due to the ignorance of the people with these children, and explaining the features of the boarding house to those around them is needed to remove their fear.

Formed in the fantasy of the first decades of the XXI century the triune paradigm "good – (conditionally neutral) variable – evil" (Gurduz, 2022) is reflected in the text by T.J. Klune. At the same time, the concept of the border is especially emphasized. In Linus' defense speech before "Extremely Upper Management", it is heard: "It cannot be boiled down to black and white. Not when there is so much in between" (Klune, 2020, p. 289). In the relational plane, by the way, one can read the black-white division of witches in "Half-Life" by S. Green, where the question of non-traditional sexual orientation is also raised. The specificity of the approach to the images of "peculiar children" in text by T. J. Klune is, in particular, that the focus of attention is transferred from their unusual abilities to the perception of these children by society. That is, the principles of good and evil are reinterpreted from the point of view of the ethics of evaluation. Responding to Arthur Parnassus' remark about the category of morality in the teaching of I. Kant, Linus notes: "The very definition of immorality is wickedness" (Klune, 2020, p. 143).

It is noteworthy that, like Miss Peregrine, Arthur Parnassus, according to his abilities, is a werewolf, able to take on the symbolic form of a phoenix in the novel. In the context of the regularities of the "winginess" of the female image in artistic work by D. Korniy with a close tendency in fantasy by O. Pechorna, as well as the conditional "grounding" of the male image in the world fantasy of 2000–2020s (by H. Weker, A. Sapkowski, Y. Katorozh, A. Zakordonets, M. Semenova, etc.) the wingedness of Klune's Parnassus is very important.

The heightened didacticism of "The House in the Cerulean Sea" draws attention. Inspector Linus' thesis: "We are who we are not because of our birthright, but because of what we choose to do in this life" (Klune, 2020, p. 289), finds its most complete embodiment in the case of the plot "justification" of the boy Lucy (Lucifer), whom the director Parnassus, in view of the current success of upbringing and the purely declarative threats of this child (as the son of the unclean) to those around him, plans to raise him as an ordinary normal person, thereby diverting Apocalypse. The principle of such "justifications" of the representatives of the forces of evil in the first decades of the XXI century is gaining more and more scope in fantasy and is connected with the tendencies of the opposite mutual reinterpretation at this time of traditional images – embodiments of the forces of good and evil.

Conclusion. The active development of the fantasy metagenre in the XXI century stimulates the activation of its theoretical research and operational professional assessment of the newest attistic works. In this regard, the priority here is to trace the latest genre phenomena of various artistic levels, especially those related to the formation of plot-figurative structures. Such a component is the model (analogous to the mythologem) "home for peculiar children", which has its own history of formation and over time becomes more and more widespread

in various national literatures, but in an original arrangement. The analyzed novels by R. Riggs, M. Petrosyan, and T. J. Klune, as well as by A. Zakordonets are recognized at the international level as original texts and are examples of the variable ideological and content meaning of the model we identified – from national to sexually marked. A kind of common denominator for named construct in these artistic works is the imperative of protection. Continuation of comparative studies in this direction is seen as very productive, in particular for forming a panorama of trends in modern fantasy and prognostic analysis of its development.

References:

1. Baumann, Rebecca (2018). Frankenstein 200: The Birth, Life, and Resurrection of Mary Shelley's Monster. Indiana: Indiana University Press; The Lilly Library. xx, 169 p.
2. Campbell, Joseph (2004). The Hero with a Thousand Faces / introd. by C.P. Estés. Commemorative ed. Princeton; Oxford: Princeton University Press. lxvi, 403 p.
3. Encyclopedia of Fantasy, The (1997). Ed. J. Clute, J. Grant. London: Orbit Books, 1997. xvi, 1076 p.
4. Grimes, M. Katherine (2002). Harry Potter: Fairy Tale Prince, Real Boy, and Archetypal Hero. *The Ivory Tower and Harry Potter: Perspectives on a Literary Phenomenon* / ed. L.A. Whited. Columbia; London: University of Missouri Press, pp. 89–122.
5. Gurduz, Andriy (2021). "Dim, v yakomu…" Mariam Petrosyan u fenteziynomu poli kintsya XX – pershykh desyatylit' XXI st. ["The House in Which…" by Mariam Petrosyan in the Fantasy Field of the End of the XX – the First Decades or the XXI Cenrury]. *Naukovyy visnyk Mizhnarodnoho humanitarnoho universytetu. Seriya: Filolohiya* [*International Humanitarian University Herald. Philology*]: a collection of scientific papers. Odesa: Helvetyka. Iss. 47. V. 2. pp. 203–206 (in Ukrainian).
6. Gurduz, Andriy (2022). Paradyhmalnyy zsuv u fenteziyniy romanistytsi pershykh desyatylit XXI st.: etychnyy aspekt. [A Paradigmatic Shift in Fantasy Novels of the First Decades of the XXI Century: the Ethical Aspect]. *Aktualni pytannya humanitarnykh nauk: mizhvuz. zb. nauk. pr. molodykh vchenykh Drohobytskoho derzhavnoho pedahohichnoho universytetu imeni Ivana Franka.* [*Topical Issues of the Humanities: an intercollegiate collection of researchers working with young people with Drohobych workers at Ivan Franko University*]*:* Drohobych: Helvetyka. Iss. 53. Vol. 1. pp. 187–193. DOI: https://doi.org/10.24919/2308-4863/53-1-27 (in Ukrainian).
7. James, Edward, Mendlesohn, Farah (2012). Introduction. *The Cambridge Companion to Fantasy Literature* / ed. E. James, F. Mendlesohn. New York: Cambridge University Press. pp. 1–4.
8. Klune, Travis John (2020). The House in the Cerulean Sea. New York: Tor: A Tom Doherty Associates Book. 326 p. *Yes PDF*. URL: https://yes-pdf.com/electronic-book/3316.

9. Manlove, Colin (1999). The Fantasy Literature of England. Basingstoke: Palgrave. 222 p.
10. Mendlesohn, Farah (2008). Rhetorics of Fantasy. Middletown, Connecticut: Wesleyan University Press. 307 p.
11. Nyamtsu, Anatoliy (2007). Mif. Legenda. Literatura (teoreticheskiye aspekty funktsionirovaniya). [Myth. Legend. Literature (theoretical aspects of functioning)]: a monograph. Chernovtsy: Ruta. 520 s. (in Russian).
12. Petrosyan, Mariam (2015). Dom, v kotorom… [The House in Which…]. Moscow: Livebook. 960 p. (in Russian).
13. Riggs, Ransom (2013). Miss Peregrine's Home for Peculiar Children. Philadelphia: Quirk Books. 307 p. URL: yes-pdf.com/book/701.
14. Zakordonets, Arthur (2018). Bahryanyy sokil. [Purple Falcon]: a novel-fantasy. Lutsk: Tverdynya. 216 p. (in Ukrainian).
15. Zarzycka, Agata (2016). The Gothicization of World War II as a Source of Cultural Self-Reflection in *Miss Peregrine's Home for Peculiar Children* and *Hollow City*. *War Gothic in Literature and Culture* / ed. A.S. Monnet, S. Hantke. New York; London: Routledge; Taylor & Francis Group. pp. 229–244.

THE CATEGORY OF "DOCTRINE" IN THE CHINESE THEORY OF INTERNATIONAL LAW: CONTENT ANALYSIS

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Annotation. This study is devoted to highlighting the main approaches of Western and Chinese science of international law to determining the status of the doctrine of international law (or in the terminology of the Statute of the International Court of Justice – "teachings of publicists"). The article analyses some views of prominent Western international lawyers, such as Ian Brownlie and Hugh Thirlway, as well as leading Chinese scholars, for example, Zhou Gengsheng, Wang Tieya, Wei Min, and others. As a result of comparative legal research, it was concluded that the views of Chinese international lawyers on the doctrine, in contrast to their colleagues from other countries of the world, are a specific, but somewhat expanded understanding (the doctrine is not only a "subsidiary means for the determination of rules of law" within the meaning of the ICJ Statute Article 38, but also a source of international law in a broad historical sense). The author also provides a definition of the doctrine of international law proposed by the famous Ukrainian international lawyer Volodymyr Denisov. According to it, the concept of the "doctrine of international law" is used mainly in two independent meanings: the first one is determined by Article 38, the second meaning characterizes doctrine in terms of the positions of the subjects of international relations on political issues, which are often an expression of their foreign policy and may have international legal consequences. To analyse the content of the Chinese doctrine of international law, we propose to apply the approach proposed by Volodymyr Denisov, which will allow us to demonstrate how these two understandings of the doctrine are manifested in the Chinese theory of international law. Thus, the concept of the Chinese doctrine of international law covers not only theoretical works of leading experts in the field of international law but also relevant publications (in particular, colour books) that define the official position of the PRC. Moreover, this study examines what contributions this doctrine has made to the general theory of international law (the five principles of peaceful coexistence, the doctrine of "unequal treaties", Chinese views on sovereignty, etc.).

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Key words: doctrine of international law, teachings of publicists, China, colour books.

Formulation of the problem. Probably every authoritative publication on the general theory of international law considers it necessary to describe the sources of international law, in particular the status of the international legal doctrine. It is clear that in different legal systems the attitude to the doctrine is not the same and, as a rule, authors illustrate it through examples of Anglo-Saxon (common law) and Romano-Germanic (continental / civil law) legal traditions. Since it does not take into account the understanding of the doctrine by other key players in international relations (first and foremost China), such an approach to explaining the doctrine of international law is currently unacceptable and should be supplemented accordingly, particularly by the Chinese vision.

The purpose of the article is to analyse Chinese views on the status of "teachings of publicists" in international law compared with the opinions of Western lawyers and briefly examine what contributions this doctrine has made to the general theory of international law.

Presenting main material. A large majority of Chinese scholars agree that the Chinese position on the sources of international law, including the teachings of publicists, was uncertain until the mid-1960s because no textbooks on international law had been published and only a few scholars had made brief comments on this matter. Then Professor Zhou Gengsheng (周鲠生) (Lee, 1997, p. 13) wrote in his treatise on international law ("国际法" completed in 1964 and published in 1976) "there may be two meanings of the term "sources of international law". One meaning indicates the method or process of formulating valid legal norms in international law (formal sources); the other meaning refers to the place where norms of international law first appeared (material sources). If one speaks of the latter meaning of the term, then writers' opinions could be included".

In 1981, the PRC published its first international law textbook. The editors, Professors Wang Tieya (王铁崖) and Wei Min (魏敏), described modern (at that time) Chinese views on the present issue. The textbook reflected a more neutral approach to the issue of the sources of international law. According to it (Lee, 1997, p. 19), "whether there are other sources of international law, aside from treaties and customs, is a controversial question. With respect to the status of the "teachings of publicists" in the hierarchy of sources of international law, the textbook regards these as "subsidiary means for the determination of rules of law", as provided in Article 38 of the International Court of Justice Statute. Their role in this aspect is shrinking because of the increase in the availability of materials on international law". Moreover, Professor Wei Min considered that "it is inappropriate to take the position that the opinions of publicists, even most highly qualified ones, are capable of having legally binding force on a sovereign state". At that time, Wang and Wei were the only Chinese authors who commented on the status of publicists' writings. It has been noted by them (Chiu, 1987, p. 15) that the teachings of publicists "cannot directly express international law, but, like municipal court decisions, are more appropriately viewed as evidence of international law". The same view was also shared by other Chinese writers (e.g. Lan Haichang), as well as reflected in Chinese Encyclopaedias.

Obviously, it has been a long time since the publication of the first international law textbook in the PRC. However, the position of Chinese international lawyers regarding the status of publicists' teachings has not changed very much. Contemporary authors also view writings by experts in the context of Article 38 of the ICJ Statute – as "subsidiary means for the determination of the rules of law". They (Koroma, 2011, p. 62) explain, "Writings are not themselves direct sources of law, but can be referred to by the Court to determine what the law actually is. Their status as "subsidiary means" implies that the Court should refer to these sources when treaties, custom, or general principles are not directly controlling". At the same time, it is noted (Koroma, 2011, p. 155) that notwithstanding the reduction in requirements for the Court to rely directly on publicists to determine the law, the work of publicists continues to play an important role in the formation and development of international law in general, which for its part affects the Court's judgments.

At the same time, an alternative opinion can be found in the Chinese theory of international law. According to such an approach, there are two types of sources of international law. The first includes the sources of international law in the strict legal sense: treaties and customs. The second is the sources of international law in a broad historical sense, including general principles of law and subsidiary means for the determination of rules of law: judicial decisions, the teachings of publicists, and important decisions of international organizations.

Obviously, that there are no significant contradictions between the approaches we have analysed; the second approach does not oppose, but rather expands the understanding of the doctrine. The character of the doctrine as subsidiary means for the determination of rules of law is not denied, it is only emphasized that historically the works of lawyers have played an important role in the formation and development of international law.

Based on this, it can be concluded that the views of Chinese scientists on the status of doctrine in international law differ to some extent from the traditional Western understanding of this phenomenon presented in international legal literature. For instance, Sir Ian Brownlie (2008, p. 24), whose textbook "Principles of Public International Law" was translated into Chinese in 2001 (伊恩·布朗利 "国际公法原理"), wrote: "The Statute of the International Court includes, among the "subsidiary means for the determination of rules of law", "the teachings of the most highly qualified publicists of the various nations" or, in the French text, "la doctrine". Once again, the source only constitutes evidence of the law, but in some subjects, individual writers have had a formative influence… Whatever the need for caution, the opinions of publicists are used widely".

Another example is Professor Hugh Thirlway (2019, p. 131), who provided insight into the sources of international law. He stated, "Paragraph 1(d) of Article 38 of the ICJ Statute makes a clear distinction between, on the one hand, the sources mentioned in the preceding paragraphs, and on the other … teachings, inasmuch as it refers to the latter as being merely "subsidiary means for the determination of rules of law. … if a rule of international law is stated … in a textbook, it will be stated as a rule deriving either from treaty, custom, or the general principles of law".

This analysis helps draw the following conclusions: the views of Chinese international lawyers on the doctrine, in contrast to their colleagues from other countries of the world, are a specific, but somewhat expanded understanding (the doctrine is not only a "subsidiary means for the determination of rules of law", but also a source of international law in a broad historical sense). Therefore, for the purpose of this research, we propose to apply the approach proposed by Volodymyr Denisov, which will allow us to cover the scope of the Chinese theory of international law.

In conformity with it, the concept of the "doctrine of international law" is used mainly in two independent meanings (Denisov, 2014, p. 870): "the first one is determined by paragraph 1(d) of Article 38 of the ICJ Statute, according to which "the Court… shall apply… the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law"; the second meaning characterizes doctrine of international law in terms of the positions of the subjects of international relations (primarily states) on political issues, which are often an expression of their foreign policy and may have international legal consequences".

Let us consider in detail the first meaning of the international legal doctrine within the context of Article 38. Professor Sandesh Sivakumaran wrote what was meant by "the teachings of publicists". He (Sivakumaran, 2017, p. 4) explained, "The notion of a "publicist", the term that is used in paragraph 1(d) of Article 38, is an ambiguous one. During the drafting of the Statute of the Permanent Court of International Justice, members of the Advisory Committee of Jurists referred interchangeably to "authors", "writers", "jurists" and "publicists". The Committee agreed on the term "writers", but this was amended by the Drafting Committee to the term "publicists"; in both cases, the French term "publicists" was used. The Committee did not expand on the meaning of the term. Over time, the notion of a "publicist" has been interpreted broadly. It has been taken to include publicists in the ordinary sense, that is to say, a textbook writer or an author of a learned monograph; but also bodies such as the International Law Commission, the International Committee of the Red Cross, the International Law Association, and the Institut de Droit International".

This view was also expressed by Sir Ian Brownlie (2008, p. 25): "Sources analogous to the writings of publicists, and at least as authoritative, are the draft articles produced by the International Law Commission, reports and secretariat memoranda prepared for the Commission, Harvard Research drafts, the bases of discussion of the Hague Codification Conference of 1930, and the reports and resolutions of the Institute of International Law and other expert bodies".

Based on the fact that the notion of "publicists" is not a homogeneous one, Professor Sivakumaran (2017, p. 4) proposed to divide this category into three broad sub-categories with the objective of identifying the particular contribution of each type of publicist to the development of international law:

– entities that have been empowered by States to produce teachings;
– expert groups, both standing and ad hoc;
– ordinary writers.

It has been also added by Professor Sivakumaran (2017, p. 3) that, "as with the category of "publicists", "teachings" are also of different types. They include digests, which do canvass State practice, but also treatises, textbooks,

monographs, commentaries, journal articles, and blog posts. It is important to divide this category, as different types of teachings serve different purposes and are of benefit to different audiences. Only by breaking down the category of teachings of publicists into its various types can their influence on the development of international law be properly gauged".

In this connection, it is also necessary to highlight that the Chinese version of the ICJ Statute uses the word "学说" which can be translated into English as doctrine, theory, and teaching. In our study, we will use all these categories interchangeably. The full paragraph reads as follows:

一、法院对于陈诉各项争端，应依国际法裁判之，裁判时应适用：

（卯） 。。。各国权威最高之公法学家学说，作为确定法律原则之补助资料者（国际法院规约 official website).

We will start analysing the first category of publicists. Professor Sivakumaran (2017, p. 5) gave the following observation: "it is the publicist that has been empowered by States to draw up a particular teaching. A number of entities have been created by States, or otherwise later empowered by States, and granted authority to make decisions or take actions, such as developing, interpreting, applying, and enforcing international law. These entities are of different types, and some of the work they undertake involves the conclusion of teachings".

We can assume by analogy with state-empowered entities listed by Sandesh Sivakumaran and Ian Brownlie that there are the following ones in the PRC. Since the early 1980s, academic engagement with international law was reflected in the establishment of international law research centres at Peking (北京大学国际法学院) and Wuhan (武汉大学国际法研究所) Universities. The expansion of international law research at the Chinese Academy of Social Sciences (中国社会科学院) and at regional social sciences academies in Shanghai and elsewhere reflected the government's commitment to developing China's policy and research capacity in international law (Potter, 2013, p. 170).

The CASS Institute of International Law (中国社会科学院国际法研究所) can illustrate the significant role of such entities. As stated on its official website, "the Institute has undertaken many national-level key research projects (such as "Studies on the International Covenant on Civil and Political Rights", "Analysis of the Status of International Treaties in the Chinese Legal System and Studies on Related Institutional Designs" etc.). Moreover, it has submitted to relevant state decision-making organs legislative proposals, research reports and legal opinions in different fields of international law".

In addition to the abovementioned entities that directly develop the Chinese doctrine of international law, we cannot fail to mention the important role in making interdisciplinary research on foreign policy, international relations, and international law played by think tanks (智库). According to some estimates (Izimov, 2015, p. 2), China has around 426 officially registered think tanks created by the Chinese government in order to improve the quality of its intelligence-based decision-making. They can be divided into three conventional categories:

- state analytical centres (官方智库);
- specialized academic research institutes (中国社会科学院研究所);
- analytical centres affiliated with universities (高校智库).

The think tanks of the first category are the most influential because of their close ties with the State Council and other public authorities. Their main mission is to prepare analytical papers and deliver them to decision-makers. It is not rare for authorities to make state-level decisions based on these analytical notes. The Chinese Institute of Contemporary International Relations, the sixth Central Committee of the Communist Party of China, the Development Research Centre of the State Council, and Shanghai Academy of International Studies are among the think tanks of the first category.

Then the last example on the list of state-empowered entities is the Chinese Society of International Law (中国国际法学会). It conducts research, development, dissemination, and promotion of international law in China. For instance, in 2018 the Society made a 500-page critical study of the awards on jurisdiction and merits in the South China Sea arbitration (Moynihan, 2018, p. 4). It was published in the Chinese Journal of International Law and sets out a robust criticism of each argument made against China in the arbitration. This was observed to be an interesting example of Chinese efforts at soft power, with articles by 70 academics working under the supervision and leadership of the Foreign Ministry.

The second category of publicists is the expert group or learned society that does not have a mandate from states. The category in question includes groups that are permanent in nature, as well as groups that are established to carry out a specific project and then cease to operate (Sivakumaran, 2017, p. 7).

From our point of view, we can primarily call the editorial boards of Chinese journals of international law (e.g. Chinese Journal of International Law, Chinese Yearbook of International Law (中国国际法年刊), Wuhan University International Law Review (武大国际法评论), Chinese Review of International Law (国际法研究), International Commercial Law Review (国际商法论丛), Journal of International Trade Law (国际贸易法论丛), etc.) as such expert groups. As you can see from these titles, the Chinese Journal of International Law is the only journal in the PRC published in English in association with the Chinese Society of International Law.

Professors Wang Tieya (王铁崖) and Sienho Yee (易显河) (2002, p. 3) said: "Indeed, the lack of the English language journal of international law emanating from China was a reason for its creation. So it is only natural that the international community would need to have access to viewpoints and materials from and about China". Obviously, this attracts a broader readership and makes use of the articles more likely. The Chinese Journal of International Law was established to enable the international community to access the views and positions of China and "to inform decision-making in international law and relations, promote research and teaching in China".

As China's presence on the international arena has broadened and deepened, groups of experts from different fields are increasingly involved in consulting China's delegations to the talks and carrying out relevant analytical work. This trend is especially true in foreign economic policy-making as illustrated by China's entry to the WTO. From China's request to resume its status as a contracting party to the GATT to its final accession into the WTO, it took China 15 years to

go through intense and protracted talks. However, typically Chinese delegations to such negotiations were noticeably large. We can assume that delegations, except of policy-makers themselves, also included highly specialized experts and scholars from different inter-related disciplines. In addition, thanks to that, the precedent for other trade negotiations was set.

Perhaps the category, which is most familiar, is that of the ordinary publicist. The terms "ordinary" or "individual" publicist are used to differentiate that category from the abovementioned state-empowered entities and expert group publicists. Their teachings also contribute to the emergence of new ideas (Sivakumaran, 2017, p. 10). For instance, in the 70s international law research was not completely interrupted due to the need arising from "diplomatic struggles". At this time, prominent figures that must be referred to were Professors Zhou Gengsheng (周鲠生), Chen Tiqiang (陈体强), and Li Haopei (李浩培). For example, Zhou's discussion on the Five Principles of Peaceful Co-existence, PRC's international recognition, succession, state responsibilities, sovereign sea and the representation in the United Nations, the nationality of overseas Chinese and their protection, foreigner's privileges in old China and unequal treaties are full of Chinese discourse (Kong, 2017, p. 16-17).

In 1978, China began to implement an open door and reform policy (改革开放). Consequently, the teaching of international law began to prosper. Some scholars called this time as the foundation ten years of international law in China. At this time, the leading figures were Wang Tieya (王铁崖), Han Depei (韩德培), Yao Meizhen (姚梅镇), etc. All of these professors made a great contribution to the revival of the teaching of international law. It was Wang Tieya that organized a dozen of Chines international law professors to write a new textbook on international law in 1981, full of Chinese discourse of international law in the open-door period. It was hailed as "an exemplary work of international law with Chinese characteristics" and an excellent textbook on international law that laid down the foundation of international law teaching in China (Kong, 2017, p. 17).

To the second meaning of the doctrine of international law we now turn. It should be reminded that it implies the following: the doctrine serves as the state's position in the process of defining and implementing its foreign policy, the fulfilment of which has international legal consequences (Denisov, 2014, p. 871).

In this aspect, we can put forward the following hypothesis: one of the important features of the international legal doctrine in China is the publication of colour books (皮书). Encyclopaedia of Public International Law (2014, p. 26) gives the next definition: "Colour books are official compilations of diplomatic documents and internal papers and reports of a government. Their purpose is to inform the parliament and the public about foreign policy, especially during political crises… In some states colour books are also used to document domestic events". China's experience has shown, however, that the concept of colour books is understood much broader and used both in foreign and domestic state policy. Moreover, as far as we know, the language of colour in China itself is one of the key elements in its culture and philosophy.

With regard to the foreign policy dimension, the PRC issues white papers (白皮书) and yellow books (黄皮书). In the Historical Dictionary of Chinese Foreign

Affairs (2018, p. 405) a white paper is described as follows: "An authoritative report or guide to inform readers about complex issue or problem and present the basic underlying philosophy involving the matter, white papers are major instruments for governments to explain publicly crucial decisions".

Modern China is increasingly trying to convey to the international audience its vision of global problems. That is why since 1991 China's State Council Information Office has published numerous white papers. Taking into account the fact that they explain China's relationship with a changing world, as well as its perspectives on international issues, white papers deserve to be read and assessed by scholars from around the world. For instance, the term "community of shared future for mankind" (人类命运共同体) was first officially used in relation to other sovereign states in the 2011 White Paper on the Peaceful Development of China ("中国的和平发展" 2011年). We will name some of them that are directly related to the problems of international law: "China and the World in the New Era" ("新时代的中国与世界" 2019年), "China and the World Trade Organization" ("中国与世界贸易组织" 2018年), "China's Arctic Policy" ("中国的北极政策" 2018年), "The Facts and China's Position on China-US Trade Friction" ("关于中美经贸摩擦的事实与中方立场" 2018年), "China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea" ("中国坚持通过谈判解决中国与菲律宾在南海的有关争议"2016年), "China's Foreign Aid" ("中国的对外援助" 2014年, 2011年) (the complete list is available at the State Council Information Office official website).

Yellow books, as opposed to white papers, are published by Social Sciences Academic Press and prepared by different SACC institutes (e.g. Institute of Latin America, Institute of Russian, Eastern European and Central Asian Studies). They usually concern the issue of China's cooperation with certain regions of the world: "Yellow Book of Latin America and the Caribbean" ("拉美黄皮书" 1999年~2019年), "Yellow Book of Russia" ("俄罗斯黄皮书" 2018年), "Yellow Book of Central Asia" ("中亚黄皮书" 2014年), etc.

Although this does not apply to the foreign policy and diplomacy of the PRC, one cannot fail to mention the fact that China also has red, green, and blue books. Red books are published by the people's governments of the PRC provinces (e.g., "Red Book of the Performance Evaluation of the Guangdong Province Local Government" 广东省地方政府整体绩效评价红皮书 2008年). Green and blue books, as well as yellow books, are published by the Chinese Academy of Social Sciences. Its official website states that from an international point of view, they are an important window through which China is understood by the international community, as well as a tool for strengthening China's international influence and implementing the function of public diplomacy. In general, such research is carried out in the following areas: economy, social policy, culture and mass media, regional development, industry, and international issues. In addition, there is a special series of blue books devoted to the rule of law (法治蓝皮书): "Report on the Development of the Informatization of China's Judicial System" (中国法院信息化发展报告 2021年), "Report on the Development of the Rule of Law in the Field of Health Care in China" (中国卫生法治发展报告 2021年),

etc. We believe, the role of these colour books should be carefully examined and evaluated in terms of relevant social sciences as well.

After analysing the Chinese views on the doctrine of international law, we turn to the description of some significant features of the PRC's international legal doctrine. Interestingly, back in 1996, Professor Li Zhaojie (李兆杰) (Li, 1997, 415) concluded that although the quantitative and qualitative growth of literature on international law during the 1980s, "there is as yet no coherent or sanctioned Chinese theory on international law. Actually, the Chinese international law community is self-consciously cautious in grand theorizing about international law. Wang Tieya is constantly urging Chinese scholars to concentrate on specific issues rather than abstract theories in teaching and research of international law in China".

In 2020, Professors He Zhipeng (何志鹏) and Sun Lu (孙璐) (2020, p. 1) again have drawn attention to the fact that, "up to now, China's theory of international law has not yet formed its own characteristics, and thus has not got sufficient status in the field of international law academia and the system of China legal theory". They use the term "theory of international law with Chinese characteristics" apparently bearing in mind that China's theory of international law itself is in the process of formation. Nevertheless, the professors (He and Sun, 2020, p. 4) give the following definition: "the Chinese theory of international law refers to the concepts, propositions, ideas raised by Chinese jurists and the theoretical circles in China on international legal issues with their own originality and characteristics". In the present research, we use the abovementioned terms, as well as the "Chinese doctrine of international law" as synonymous, mindful, however, of the continuous development of China's theory of international law.

The Five Principles of Peaceful Coexistence (referred to as the FPPC hereinafter), the Ten Principles of the Bandung Conference (the "Bandung Line"), the eight principles of foreign aid, Chinese views on sovereignty, the doctrine of "unequal treaties", and others are among the pillars of China's positions on international law that may be considered as its contribution to the general theory of international law.

The FPPC, namely, mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, no interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence, has become the hard core of the PRC's foreign policy and remain a cornerstone of China's approach to international law. The 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations reasserted the essence of the FPPC. In this regard, Zhou Gengsheng (周鲠生) (Li, 1997, p. 357) expounded on the FPPC as "the quintessence of modern international law". This view is representative of most of the international law scholars in mainland China. Wang held the view that the Principles constitute fundamental principles not "of a special branch of international law, but of the whole system of international law", and adds that the PRC government and Chinese scholars do not regard the Principles as the only fundamental principles of the international legal order, but "the core, or at least the main part, of the fundamental principles of international law" (Chan, 2014, p. 882).

As Professor Chen Tiqiang (陈体强) (1984, p. 24) commented, "while it is true that each of the individual principles constituting the FPPC has long existed and was not initiated by the PRC, putting the five together as an integral whole is something unprecedented and of great significance. By being put together, the Five Principles individually and as a whole acquired new meanings. They are a reflection of the new international situation created by the rise and growing role of Third World states". Professor Li Zhaojie (李兆杰) (1997, p. 360) added: "While Chinese scholars do not think that the initiation of the FPCC is a revolutionary innovation in the development of international law, they do see it as the Chinese contribution to the evolution of the UN Charter-based international legal order". Currently, these principles remain as true as ever being included in the PRC's treaties with ASEAN, SCO states, and others. Therefore, they have received widespread support and recognition. Moreover, the Ten Principles proclaimed as the basis of friendly cooperation among participating states were a corollary and development of the FPPC. The eight principles are principles China has followed and would continue to follow in giving aid to foreign countries. Professor Chen Tiqiang (陈体强) (1984, p. 27) rightly stated, "These principles are unfrequented in their generosity and unselfishness. They are the concrete manifestation of the FPPC in the field of foreign aid".

Another core concept in China's approach to international law is its "strong vision of state sovereignty" mentioned by Xue Hanqin (薛捍勤) (DeLisle, 2014, p. 853). Wim Muller (2013, p. 56) emphasized that "in its relationships with the outside world, sovereignty to China means independence and non-interference in what it considers Chinese affairs". The same understanding China applies to the other countries, as reflected in China's "opposition to humanitarian and other intervention and to the imposition of heavy burdens on poor countries to address climate change" (DeLisle, 2014, p. 855). For example, when NATO intervened in Kosovo, China strongly condemned such actions, arguing that NATO "violated the principle of non-interference in the internal affairs of a sovereign country" (Jacob, 2018).

The doctrine of "unequal treaties" 不平等条约 (the actual number of which is unclear and varies from 500 to over 1000) can also be considered as China's contribution to the theory of international law. When China negotiated revision of treaties with foreign powers that it considered to have been concluded by Qing China under duress, it invoked the doctrine of rebus sic standibus, which has since been affirmed as a rule of customary international law and incorporated in the Vienna Convention on the Law of Treaties (Chan, 2014, p. 874). Furthermore, China follows Articles 52 and 53 of it and considers that "unequal treaties" violate not only the law of treaties, but also the principle of sovereign equality, and the abolition of those treaties, therefore, constitutes a lawful exception to the pacta sunt servanda rule (Pan, 2011, p. 242). Wang Dong (王栋) (2003, p. 401) argued that "China was the first nation to challenge the legal validity of its treaties with foreign countries, a type of action not mentioned in the earlier standard treatises on international law by Grotius, Pufendorf, and Vattel"; the doctrine "helped change the received assumptions in international law to include an acceptance that a treaty imposed upon a defeated/weak state under duress

is not viable" China's efforts to renegotiate and replace unequal treaties gave Chinese international lawyers a platform to broadly apply their legal training and understanding of law to China's foreign policy goals (Chan, 2019, p. 35).

Conclusions. With regard to theoretical approaches to understanding the category of doctrine ("teachings of publicists") in modern international law, the Chinese approach, as discussed above, is different from the traditional Western understanding (the doctrine is not only a "subsidiary means for the determination of rules of law", but also a source of international law in a broad historical sense) and deserves more detailed consideration in the terms of different disciplines. In order to comprehensively analyse the components of the Chinese doctrine of international law we suggest considering it in the context of the definition proposed by Volodymyr Denisov, i.e. not only in the traditional sense of Article 38 of the ICJ Statute (as "subsidiary means for the determination of the rules of law") but also in a broader sense (as the positions of subjects of international relations on political issues, which are often an expression of their foreign policy and may have international legal consequences). Such an understanding of the doctrine allows for a systematic and comprehensive analysis of the structure and features of the Chinese doctrine of international law. Thus, the concept of the Chinese doctrine of international law covers not only theoretical works of leading experts in the field of international law but also relevant publications (in particular, colour books) that define the official position of the PRC. We believe that our understanding of Chinese characteristics of its doctrine of international law is one of the important conditions for effective cooperation with the PRC in particular and balanced development of international law in general.

References:

1. A Brief Introduction to the Institute of International Law, Chinese Academy of Social Sciences. URL: http://www.iolaw.org.cn/global/en/news14.asp.
2. Brownlie, Ian (2008). Principles of Public International Law. New York: Oxford University Press.
3. Chan, Mitchell (2019) "Rule of Law and China's Unequal Treaties: Conceptions of the Rule of Law and Its Role in Chinese International Law and Diplomatic Relations in the Early Twentieth Century." Penn History Review, Vol.25, pp. 9–49.
4. Chan, Phil CW. (2014) "China's approaches to international law since the Opium War". Leiden Journal of International Law, No. 27.4, pp. 859–892.
5. Chiu, Hungdah (1987) "Chinese Attitudes toward International Law in the Post-Mao Era, 1978-1987". The International Lawyer, pp. 1127–1166.
6. Chiu, Hungdah (1987) "Chinese views on the sources of international law." Harvard International Law Journal, Vol. 28, No. 2, pp. 289–307.
7. DeLisle, Jacques (2014) "Chinese Contemporary Perspectives on International Law: History, Culture and International Law. By Xue Hanqin." American Journal of International Law, Vol. 108, No. 4, pp. 850–856.
8. Encyclopedia of international law (2014) [Entsyklopediia mizhnarodnoho prava: u 3 t. / redkol.: Yu.S. Shemshuchenko, V.N. Denysov, V.I. Akulenko [ta in.]. Kyiv: Akademperiodyka, 2014. T. 1: 2014. 920 s.] (in Ukrainian)

9. Functions of Colour Books (in Chinese) [皮书的功能] URL: https://www.pishu.cn/gyps/hwps/448559.shtml.
10. He, Zhipeng, and Sun, Lu (2020) A Chinese Theory of International Law. Singapore: Law Press China and Springer Nature Singapore.
11. Izimov, Ruslan (2015) "Chinese think tanks and Central Asia. A new assessment." Voices from Central Asia, No. 23, pp. 1–5.
12. Jacob, Maya (2018) "Historical Roots of the Chinese Approach to International Law." Michigan Journal of International Law.
13. Kong, Qingjiang (2017) "International Law Teaching in China: Engaging in a Pedagogical Reform or Embracing Professionalism and Internationalization?" Cambridge Journal of China Studies, No. 12(1), pp. 11–25.
14. Koroma, Abdul G. (2011) "The Sources of International Law in Article 38 of the Statute of the Court and Their Application by the Court." Collected Courses of the Xiamen Academy of International Law, Vol. 4, pp. 56–156.
15. Lee, Tahirih V. (1997) Foreigners in Chinese Law. New York & London: Garland Publishing.
16. Li, Zhaojie (1997) International law in China: legal aspect of the Chinese perspective of world order. Canada: University of Toronto.
17. Moynihan, Harriet (2018) "Exploring Public International Law Issues with Chinese Scholars". International Law Programme Roundtable Meeting Summary, Part 4, pp. 1–17.
18. Muller, Wim (2013) "China's sovereignty in international Law: from historical grievance to pragmatic tool." China-EU Law Journal. No. 1, pp. 35–59.
19. Pan, Junwu (2011) "Chinese philosophy and international law". Asian Journal of International Law, No. 1, pp. 233–248.
20. Potter, Pitman (2013) China's legal system. Cambridge: Polity Press.
21. Sivakumaran, Sandesh (2017) "The influence of teachings of publicists on the development of international law." International and Comparative Law Quarterly, Vol. 66, pp. 1–37.
22. Sources of international law (in Chinese) [国际法的渊源] URL: http://www.xcjxzjg.com/article-22-108808-0.html.
23. Statute of the International Court of Justice (in Chinese) [国际法院规约] URL: https://www.un.org/zh/documents/statute/index.shtml.
24. Sullivan, Lawrence R. (2018) Historical Dictionary of Chinese Foreign Affairs. The USA: Rowman & Littlefield.
25. Thirlway, Hugh (2019) The Sources of International Law. New York: Oxford University Press.
26. Tiqiang, Chen (1984) "The People's Republic of China and Public International Law." Dalhousie Law Journal, Vol. 8, pp. 3–31.
27. Wang, Dong (2003) "The discourse of unequal treaties in modern China." Pacific Affairs, Vol. 76, No. 3, pp. 399–425.
28. Wang, Tieya and Sienho, Yee (2002) "Foreword." Chinese Journal of International Law, No.–1.
29. White Papers (in Chinese) [政府白皮书] URL: http://www.scio.gov.cn/zfbps/.

THE MAIN REASONS FOR COMMITTING ECONOMIC CRIMINAL OFFENSES IN CYBERSPACE

Dumchykov Mykhailo[1]

Annotation. It is worth noting that the main causes of economic crime in cyberspace can be conditionally divided into general and special. The general general reasons for the commission of economic criminal offenses are characteristic of all economic crime in general. Special determinants are defined as a set of certain reasons and conditions that are characteristic exclusively for economic criminal offenses committed in cyberspace.

Common determinants for all economic criminal offenses will be: a sharp decrease in the exchange rate, a sharp increase in retail prices for basic necessities, a decrease in the standard of living, an economic crisis, and an increase in unemployment. Note that the determinants of economic crime in cyberspace are, first of all, determined by the specific features of cyberspace and the means of committing criminal offenses in it.

The relevance of the research lies in establishing the reasons and conditions for committing criminal offenses in cyberspace. In our opinion, it is precisely thanks to the definition and analysis of the main reasons and conditions for committing criminal offenses in the financial sector that is the basis for building a system to counter such a negative phenomenon.

The aim of the work is to analyze the main conditions for committing economic criminal offenses in cyberspace, and to give them a general description. Among the main determinants of economic crime in cyberspace, we singled out: anonymity, imperfection of legislation, transnationality, the possibility of obtaining a large income with minimal costs, technical imperfection of cyberspace and the lack of digital cybernetic ethics among the population.

Key words: criminal offenses in cyberspace, cybercrime, cyberfraud, fraud, Internet fraud.

Introduction. It is worth noting that the main causes of economic crime in cyberspace can be conditionally divided into general and special. The general general reasons for the commission of economic criminal offenses are characteristic of all economic crime in general. Special determinants are defined as a set of certain reasons and conditions that are characteristic exclusively for economic criminal offenses committed in cyberspace.

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Review and discussion. Using the capabilities of cyberspace facilitates the process of learning criminal offenses at each stage, while allowing you to remain anonymous and not attract unnecessary attention from law enforcement agencies, and also reduces the risk of being caught. Therefore, in connection with the topic of the study, in our opinion, special attention should be paid to the special determinants of economic criminal offenses committed in cyberspace.

Analysis of scientific publications. Among the scientists who deal with the issues of normative and legal regulation in the field of criminal offenses in cyberspace, we singled out G.S. Rymarchuk, who deals with the issue of defining the legal nature of cybercrimes. V.P. Dulepa examines cybercrime in the context of forensic research, V.G. Kundes defines transnationality as the main determinant of the occurrence and commission of cybercrime

The first feature that we would like to draw attention to is the anonymity of cyber space. Anonymity of cyberspace, information and telecommunication networks and cyberspace users themselves, in our opinion, is one of the main determinants of the occurrence of cybercrime. If in the material world a thief has to hide his face and make certain efforts so as not to leave traces of the commission of a criminal offense, then in cyberspace this has already been done for him.

Anonymity of cyberspace is the main principle of its existence. All users of sites, forums or social networks in cyberspace initially have neither names nor appearance - they are ephemeral, and often information resources themselves give such users the name “anonymous”. The sites offer each user to choose a name and appearance independently, and in the vast majority of cases, users abuse this opportunity, introducing themselves with other people’s names and using other people’s photos [1].

The next level of anonymity is hiding your technical data (IP address, computer port number, data stream, etc.). Thus, entire anonymous information and telecommunication networks (TOP, ANts P2P, Freenet) are created.

Economic cybercrimes such as fraud (the main component), fraud in the field of computer information, extortion, obtaining information constituting a commercial, tax or banking secret, which constitutes the bulk of the total number of economic cybercrimes, can take place anonymously.

In our view, anonymity in cyberspace is a major determinant of cybercrime and a factor in the high latency of cybercrime. Of course, the most effective countermeasure to this problem is the personalization of access to cyberspace through the development and implementation of biometric technologies (fingerprint scanner, user face scanner).

Imperfect legislation creates conditions for the existence of cybercrime. The domestic legislator often does not have time to respond to the new challenges of cybercriminals. The speed of development of cyberspace and the speed with which new ways of committing crimes appear exceed the speed of response to them from the side of the state. At the same time, taking into account the technical vulnerabilities of the cyberspace itself, existing today and possible in the future, an opinion is formed about the ineffectiveness of legal regulation. The current Criminal Code of Ukraine raises a number of questions, as its provisions were not focused on the emergence of new technological types of crimes and new ways of committing them [2].

In our opinion, the improvement of criminal legislation should become an integral component of combating cybercrime. It is necessary to highlight the use of cyberspace for the purpose of committing a crime as an aggravating circumstance; to add clarity to the wording of Article 190 of the Special Part of the Criminal Code of Ukraine in terms of the term “fraud” used; supplement the elements of extortion and coercion to commit a deed with a new type of threat (threat of destruction of information).

Transnationality of cyberspace is an important determinant of the existence of economic cybercrimes. Crimes committed using the Internet often fall under multiple jurisdictions due to its global and transnational nature. In particular, O. Goni determines that a specific feature of cybercrimes is precisely their international nature. They can take place anywhere in the world where the Internet is available. At the same time, it will not be important for the criminal in which country the object of the criminal offense is located [3].

As G. Kundeus rightly points out, a criminal and a victim can be separated by several meters to several thousand kilometers, although in cyberspace they can be regular visitors to the same site or social network. At the same time, the victims of a single cybercrime can be counted in tens or hundreds, while they can live in different countries of the world, like the criminals themselves, if they acted in complicity. Subjectively, the guilty person considers socially insignificant such an act as stealing electronic or non-cash money of a foreigner, or deceiving a citizen of another country. The fact that a person commits a crime against the interests of foreign citizens or organizations subjectively relieves him of responsibility and frees his hands [4, c. 44].

This problem greatly complicates the work of the investigation, proof, extradition process and creates the problem of criminalization of the action.

Some economic crimes committed in cyberspace in Ukraine are either not criminalized at all or are administrative offenses.

The possibility of obtaining excess profit for minimal costs in cyberspace is one of the main socio-economic reasons for economic cybercrime.

With the economic situation that has developed in the country, in particular, the armed aggression of the Russian Federation, the creation of new enterprises and new jobs has slowed down, and the flow of personnel who have graduated from educational institutions and received special technical or higher professional education is increasing every year. Consequently, a large group of undemanding specialists is created, who are forced to use the acquired knowledge independently, using improvised means, in particular the Internet network. However, if some are engaged in legal activities in cyberspace (freelancers), others are looking for an easy way - a criminal one (organizing casino sites, engaging in fraud, extortion, hacking user accounts, embezzlement or trading in malicious programs).

In our opinion, this circumstance forms conditions in cyberspace under which it is possible to obtain extra profit through criminal means with minimal costs and risks. Given the anonymity and cross-border nature of cyberspace, as well as the many technical vulnerabilities of the latter, this circumstance can be a catalyst that encourages certain groups of the population to engage in criminal activity. The possibility of obtaining excess profit at minimal costs and minimal risk is an objective determinant of economic cybercrime, as it encourages the perpetrators to commit economic cybercrimes [5].

This problem, in our opinion, can be solved by prevention of cybercrime among the population and popularization of legal ways of obtaining large incomes in cyberspace, for example, “crowdfunding”.

In our opinion, it is the technical imperfection of cyberspace and the presence of technical vulnerabilities, loopholes, and simply mistakes in it that negates almost all cybercrime countermeasures.

Software vulnerabilities allow unauthorized access to the victim’s computer information and thereby open the possibility to commit, for example, embezzlement from online bank systems, illegal acquisition of information constituting a commercial secret, and many other crimes.

The physical vulnerabilities and imperfections of cyberspace include the set of material limitations of the Internet, computers, and other devices.

In our opinion, too little attention is paid to the problem of technical imperfection of cyberspace both by the legislator and in the scientific community. As history shows, the ineffectiveness of legal regulatory measures was that they were applied hastily, without taking into account that in a virtual environment they can be easily circumvented. Many services, such as Internet shopping and Internet banking, were presented as a boon, but the issue of their security was not given attention.

In cyberspace, there are no rules of conduct as such, so many site or forum administrators are forced to invent their own, while the sanctions that can be imposed by the administration are limited to warnings, access restrictions, and blocking access to the resource (“ban”). Such sanctions are ineffective, since the number of similar sites in cyberspace is quite large, and if a violator is blocked on

one site, he can freely register on another, or he can re-register on a blocked site under a different name. In this regard, it is more effective to block non-users and IP addresses, but this ban can also be bypassed in the form of special programs or by accessing from another device.

The habit of checking a digital device for computer viruses, not visiting suspicious sites should be developed in the citizens of our country at the same level as the habit of washing hands before eating and not starting conversations with strangers - these are elementary precautionary rules that are discussed in cyberspace they forget.

The only effective solution to this problem, in our opinion, is the prevention of information security among the population. It is necessary to inculcate the basic rules of behavior in cyberspace from an early age, for example, by conducting special classes in high school.

The lack of uniform and clear rules of behavior in cyberspace has led to the emergence of new subcultures, such as the subculture of hackers, cyber pirates and many others.

Free access to information in cyberspace is the main reason why this technology has become so popular, but such access is possible only with the permission of the author. Nowadays, there are many sites in cyberspace from which films, music, books and programs are made available to the public without the author's permission.

Many users of such resources did not suspect that they were violating someone's copyright, believing that if the film is posted on the network, then there is no harm in watching it. Such an opinion strengthened in the mind of the average user of cyberspace and gave birth to a subculture of cyber pirates.

The subculture of hackers (hackers) also has a significant impact on all cybercrime - it is a kind of promotion of the lifestyle and values of a computer criminal to the masses, advertising that makes the criminal path attractive1.

Society does not see a threat from hackers, considering their activities interesting and exciting. This opinion forms in the average user of cyberspace until he becomes a victim of such a hacker. At the same time, hacking has ceased to be entertainment, but is a serious source of income.

Thus, the real state of affairs in this field is many times worse than it is indicated in the criminal statistics. However, in the absence of reliable official statistics on cybercrime, the accuracy of such figures is questionable.

Such a high level of latency is due to many reasons. As V. Dulepa rightly points out, the main one is the illusion of insignificance of the victim's harm, against problems that may arise during the investigation. A similar reason exists in the event that the victim is a credit organization: the investigation of most types of cyber fraud is hampered by the lack of necessary information about the facts of such crimes from credit organizations, since many banks, fearing for their business reputation, are extremely reluctant to turn to law enforcement agencies for help. Bodies [6, c. 594].

G. Rymarchuk notes that the main reason for the latency of cybercrimes is that business representatives hide the facts of embezzlement and cyberattacks, fearing damage to their reputation [7, c. 58].

Conclusions. Summarizing the above, it can be noted that the main determinants of the commission of economic criminal offenses in cyberspace are:

– the possibility of obtaining a large income in cyberspace with minimal costs and low risk, be it illegal Internet entrepreneurship, legalization (laundering) of funds obtained through criminal means;

– low level of awareness in the field of information security among users of Internet banking systems (remote banking) and users of Online wallets, in particular, among mobile users of these systems.

– the anonymity of users of the global information network «Internet», the existence of other anonymous information and telecommunication networks, such as «TOR», the anonymity of financial transactions in information and telecommunication networks.

The latency level of economic cybercrime is incredibly high. Only one fifth, at best, one fourth of all committed economic cybercrimes becomes known to law enforcement agencies.

References:

1. Muthu Dayalan. Cyber Risks, the Growing Threat. DOI: 10.1726/IJNRD.17046. URL: https://www.researchgate.net/publication/320753018_Cyber_Risks_the_Growing_Threat.
2. Syed Meharanjunisa. Global Perspective: Cyberlaw, Regulations and Compliance. URL: https://www.researchgate.net/publication/342898826_Global_Perspective_Cyerlaw_Regulations_and_Compliance.
3. Osman Goni. The Basic Concept of Cyber Crime. DOI: 10.5281/zenodo.6499991. URL: https://www.researchgate.net/publication/360454079_The_Basic_Concept_of_Cyber_Crime.
4. V.G. Kundeus. Ponyattya ta vidi kiberzlochiniv. Derzhava i zlochinnist. novi vikliki v epohu postmodernu. Harkiv, 2020. URL: https://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/7723/Poniattia_Kundeus_2020.pdf?sequence=1&isAllowed=y.
5. Shivani Kandwal. Global Outlook of Cyber Security. DOI: 10.1007/978-981-19-2065-3_30. URL: https://www.researchgate.net/publication/362480243_Global_Outlook_of_Cyber_Security.
6. V.P. Dulepa. Kriminologichna harakteristika kiberzlochinnosti. Yuridichnij naukovij elektronnij zhurnal. № 11/2021. DOI https://doi.org/10.32782/2524-0374/2021-11/147. URL: http://lsej.org.ua/11_2021/149.pdf.
7. G.S. Rimarchuk. Yuridichna priroda kiberzlochiniv. Naukovij visnik Uzhgorodskogo nacionalnogo universitetu. Seriya PRAVO. Vipusk 24. Tom 4. URL: https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/6537/1/%D0%AE%D0%A0%D0%98%D0%94%D0%98%D0%A7%D0%9D%D0%90%20%D0%9F%D0%A0%D0%98%D0%A0%D0%9E%D0%94%D0%90%20%D0%9A%D0%86%D0%91%D0%95%D0%A0%D0%97%D0%9B%D0%9E%D0%A7%D0%98%D0%9D%D0%86%D0%92.pdf.

FEATURES OF THE HISTORICAL VOCABULARY IN THE FORMATION OF THE SYSTEM OF CATEGORIES AND MOTIVATION

Kocherha H.[1]

Annotation. The article characterizes a word formation, in particular a verbal one, which in the history of its development appeals to the Proto-Slavic heritage and produces the fundamental features of derivation. Transformations of verb-suffix word formation, which is an indicator of segmental changes in categorical, motivational, and semantic-cognitive aspects, have been clarified. It is noteworthy that the word on the basis of which the derivative is formed, since its connections with several creative ones are equally possible, because the specificity of word formation is in its multifacetedness, in the versatility of its connections, and therefore any one-sided consideration of word formation processes ceases to reflect the actual state of affairs and significantly limits its own problematic of word creation. In order to analyze the actual material, the methodological apparatus of Ukrainian derivation (word formation) was applied, other linguistic methods – descriptive with the methods of classification (systematization of the language material), comparative-historical with the methods of etymology, general scientific (induction, deduction, classification, systematization, modeling), cognitive-onomasiological, which makes it possible to characterize the grammatical system of the Old Ukrainian literary language of the 14th – 17th centuries, in particular its word-forming subsystem at the functional and motivational levels. The purpose of the article is to find out the categorical-motivational and structural-word-forming features of the word-forming processes of the denominative verb derivatives in the Old Ukrainian language of the 14th – 17th centuries. The description of the morphological system and structure of the Ukrainian language, based on the main fundamental principles of motivation and categorization of grammar, will contribute to the creation of a conceptually whole, consistent description of the grammatical systems of the modern Slavic languages, the development of typological studies in the grammatical Slavic studies [Gramatiki, 2013, p. 14]. The motivational processes of the Old Ukrainian denominative verbs of the 15th - 17th centuries can be traced both in propositional-dictum and associative-terminal

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motivations, where the usual connections of the motivating word and their reproduction in the semantics of the derivative are an important feature of the semantic structure of derivatives. Cognitive and onomasiological analysis of the denominative verbs in the segment of functionality and categorization will serve as a perspective for further scientific studies. The history of the derivational processes of the language of the Ukrainian nation, recorded in the written records of the Old Ukrainian period of the 14th – 18th centuries, presents the stages of formation of the verbal word-formation system and demonstrates the implementation of those changes that format the grammatical structure of the language at a certain historical stage.

Key words: denominative verbs, a word formation, a functionality, a motivation, a categorization, the Old Ukrainian language, a conceptuality.

Formulation of the problem. The problem of the historical verbal word-formation, its functionality, the functionality of grammatical forms, the grammatical categories, the grammatical structure of the language, the problem of the relationship between language and thinking, in the context of the general philosophical concept of the linguistic picture of the world, remains **relevant** and **perspective** in modern linguistics. “No part of the language has undergone as many changes and transformations as the Slavic verb, and most of them belong to the prehistoric period of the Slavic languages. Under such conditions, only a comprehensive analysis of all aspects of the development of the Proto-Slavic verb will give a more or less satisfactory answer to the existing questions, which, however, is unlikely to ever be comprehensive and final” [Pivtorak, 2015, p. 202]. The study of language as a means of reflecting the national mentality, culture, and worldview is recognized as a priority direction of the modern Ukrainian linguistics. The study of the onomasiological structures of the Ukrainian denominative verbs in the projection onto the psychomental structures of consciousness is promising and important, because the name and the verb have always been opposed as two main grammatical classes of words, and nominative verbs combine certain conceptual features of these two classes [Kocherha, 2003, p. 5]. “The onomasiological sign as a component of the semantic criterion indicates their difference from part-linguistic classes that name objects, actions, states, other signs of the surrounding world, because they express connections and relations between objects and phenomena of this world, but not independently, but together with words, sentences and in interaction with other grammatical, functional means” [Vyhovanets, 2004, p.5]. This determines the **importance** of the choice of the researched material.

Analysis of recent research and publications. Researchers O. Melnychuk, S. Bevzenko, L. Bulakhovskyi, F. Nepiyvoda, I. Kernytskyi, V. Rusanivskyi, H. Pivtorak, A. Svashenko, O. Potebnia, A. Meillet, O. Guyer, V. Humboldt, and others considered the problem of verbal word formation in diachronic and synchronic aspects. O. Potebnia in his theory of understanding the nature of the word invests the provisions of V. Humboldt’s theory about the internal

form. According to this concept, a word has two meanings. One is objective, which is close to the etymological meaning and has one onomasiological feature. The second meaning is subjective, combining many signs: "The first is a sign, a symbol that replaces the second for us" [Potebnia, 1926, p. 34]. The objective meaning of the word is the form in which the content of the thought is presented to our consciousness: "... if we exclude the second, subjective... single meaning, then only the sound, that is, the external form, and the etymological meaning, which is also the form, only internal, will remain in the word. The internal form of the word is the relation of the content of the thought to consciousness: it shows how a person imagines his personal thought" [Potebnia, 1981, p. 77-78].

The motivation and direction of derivation in the word formation can be clarified by studying the concept of O. Potebnia, in which the researcher tried to get closer to the evolution of the elements of human thought in the study of the history of parts of speech [Potebnia, 1926]. "A word at the beginning of the development of thought," he wrote, "does not yet have the meaning of quality for thought and can only be an indication of a sensory image, in which there is no action, no quality, no object taken separately, but all this in an indivisible unity ... The formation of a verb, a name, and other parts of speech is already such a decomposition and modification of a sensory image that involves other, simpler phenomena that follow the creation of a word" [Potebnia, 1888, p. 25]. According to the researcher, the differentiation of sensual images began with the formation of such words, where the functions of the future main parts of speech – noun and verb – have not yet been dissected. These are the so-called primary participles. The original participle embodied two opposite principles – a noun and a verb, of which the noun was stronger and more expressive, and the verb was weaker, devoid of such essential verb features as tense and state. The primitive participle was more like a noun in that, like the modern participle, it depicted a sign, a consequence of the subject's activity, but in such a way that it excluded the thought of this activity – the sign appeared ready-made, given. Potebnia saw approximately the same thing in the modern noun, but in the latter there is not even a hint of the activity that gave rise to the sign [Potebnia, 1926]. Still, the primacy in the creation of grammatical forms in the human language does not belong to the participle – it belongs to the interjection. In the participle, which appeared after the exclamation, in its oldest form, the direction of derivation of modern parts of speech can be traced [Kiiak, 1988, p. 5–9], indicated by the development of the structure of the original adjective. In its development, it was more similar to a name than to a verb, and first of all, the grammatical categories of the name, i.e. substance, were separated from the original participle, and this was the time when the world was imagined by human thought as a collection of spiritualized things made in the human image and likeness, internally static, but at the same time connected with the real world and influencing it. A person is used to seeing substantiality in everything, but in the process of historical development, as substantiality gradually declines, the motivation

changes and a new observation appears in thinking, which is the basis of the phenomena of objective reality, thus a new category of thought emerges – a verbalism. It was formed from the original participle no later than the noun (hypothetically), which served to form the infinitive (initially it was a noun, and then acquired the characteristics of a verb) [Bevzenko, 1958, p. 33]. Complex processes of abstraction and complication of human thought provide the opportunity for the development of a deeper grammaticalization of the verb, which prompted the verb, in addition to the infinitive stage, to develop such a form that would tie the action to the person, to the moment of speech, to its performer and object, in other words - connected it with reality [Pogyba, 1979, p. 75–87]. Based on the views of V. Humboldt and G. Shteinthal, the researcher created a kind of philosophical-linguistic theory of verbality, which became an important basis of his teaching about the historical development of the main categories of language and thinking [Potebnia, 1888]. In the linguistic concept of O. Potebnia, the verb acts as the highest, most abstract and flexible, constructive and constantly progressing category of the human language. The process of emergence and formation of the verb, which reflected an important stage in the intellectual development of a person, took place with the transition from the ancient nominal sentence structure to the verb structure [Boychuk, 1997].

The purpose of the article – to find out the categorical-motivational and structural-word-forming features of the word-forming processes of noun-verb derivatives of the Old Ukrainian language of the 14th – 17th centuries.

Presentation of the main research material. The verb system of the Old Ukrainian language was inherited from the Proto-Slavic era and, with the slightest changes, is reflected in the system of the Old Slavic verb. In the history of development, the formation of individual Slavic languages underwent changes regarding the integrity and purity of the inherited types, and regarding the productivity of the individual verb formants. The transformation of different verb bases, on the one hand, created new types of verbs, on the other hand, gave rise to the emergence of parallel synonymous types of verbs. When forming verbal units in all Slavic languages, an ancient suffix *-i- was used, which takes its origins in the Proto-Slavic language.

The Old Ukrainian denominative verbs with a suffix -и- are characterized by motivational processes, and the type of motivation, its variety and component, verbalized in the onomasiological sign of the denominative verbs, determines the semantic group of predicates marked by the verbal derivatives. The denominative verbal unit motivated by the dictum is a sign of the central component of the situation, and its motivator is a certain argument of the situation, which makes it possible to distinguish types of propositional-dictum motivation based on the choice of the motivator from the following arguments of the dictum:

of a subject represented by **a relative** – a subject of a certain social relationship: **ДЬЯЧИТИ**. Perform the duties of the deacon. Тотъ попъ не поетъ нынh у тое церкви, у которой тотъ диякъ диячитъ. АИ I, 144. XVIв. [Materialy, B. 1, p. 63]; **АРХИМАНДРИТИТИ (АНХИМАНДРhТИТИ).** Act as Archimandrite (1572): Владыка Леонидъ учалъ говорити [архимандриту Юрьева

монастыря] Феоктисту: почему деи и ты.. мнѣ своей настольной грамотѣ не кажешь и не (по)дписываешь? как ди ты анхимандрѣтишь? Новг. II лет. 113. **ВАТАМАНИТИ.** To be a vataman, to act as a vataman. Взяли у Микитки у Лодыги на сына гривну Варсоноф<ь>ева долгу в Неноксе ватаманилъ. Ки. прих. Корел.м.№939,5об.1571г. [Materialy, B. 1, p. 71]; **ВОЕВОДИТИ**. To be a leader, lead an army. И сия отмьщати повелѣваемъ не тъчию гражаньскыимъ, нъ и воеводящиимъ къняземь. Ефр. Корм., 788. XII в. [Materialy, B. 1, p. 71]; **ВОЦАРИТИСЯ.** Take the throne, become a king. И вскорѣ треклятый воцарися того же 113 году, июля въ 1 день недѣльный, и пача многия пакости въ царствующемъ градѣ творити. Ин. Сказ., 55. XVII в. [Materialy, B. 1, p. 71]; **ВОЦѣСАРИТИСЯ.** The same as to reign. Поите, яко царь всеи земли бьгъ, поите разумно. Въцсарися бьгъ надъ языкы (Сл. мт. Илариона) Мус.–Пушк. сб., 57. 1414 г.~ XI в. [Materialy, B. 1, p. 73]; **ГОСУДАРИТИСЯ.** Take over the power of the sovereign; govern the state. И мною владѣсте, и всю власть съ меня снясте, и сами государилися, какъ хотѣли, а съ меня есте государство сняли: словомъ язъ былъ государь, а дѣлом ничево не владѣлъ. (Ив. Гр. Посл. II,120.XVIIв.~1577г.) [Materialy, B. 1, p. 79]. In the process of creating Old Ukrainian denominative verbs, represented by a relative - the subject of a certain social relationship is a direct motivation with the arguments of the dictum, which establish cognitive connections with the predicate of the verbal unit, and is used as one of the most essential features of the subject, which is the object of the name,.

In Old Ukrainian denominative verbs with a suffix **-и-** during word formation, motivational processes take place due to the diffuse nature of integration by analogy of two conceptual spheres in the absence of a transfer algorithm, the motivator of a verb is connected not with one component of a dictum, but with a whole complex of associations. This type of motivation includes **diffuse-metaphorical**: **ВОЗДИЧИТИСЯ.** To resemble a wild animal, to rage. Своего цесара не пощадѣша и своего > сродника.. тако ся въздичиша. Флавий. Полоню Иерус., II, 4. XVI в. ∞ XI в. [Materialy, B. 1, p. 41]; **ЗВЪРИТИСЯ.** To get angry, to rage. Толико есть смиреномудрие добро! толико есть прибытокь не хапатися еже отъ инѣхъ укоризнами, ниже звѣритися противу искрѣняго досадамь. ВМЧ, Сент. 14-24, 835. XVI в. [Materialy, B. 1, p. 65]; **ЗАЮШИТИСЯ**, v. Get mad, become bloodthirsty. Яко волци пастырообразные на стервѣ церковного лихоимства крѣпко сѣдять и заюшилися суть. АЮЗР. II, 240 (И. Выш); **БѣСОВАТИСЯ,** v. (About smth) To be mad, to rage: Дл¤ чого(ж) теды бѣсию(т)с¤ на бльгочестїе, если нѣ мае(т) мисu а ты мисо(м) его ведешъ, который есть вышше вс¤кого примише(н)¤ (Вільна, 1596 З. Каз. 90 зв.) [SUM, edit.3, p. 151]; **Заядовитися** v. To get angry, to become enraged, to go into a frenzy. тые жолнере мѣстцы поведали wп#т своимъ, иж зъ wчю того жолънера, хтоколвекъ былъ, бо не вѣдали жебы то Атыл# был, искры >къ бы wгнистые блискали с#, кгды на них за>довитившы с# гледел (Атыла, 222) [Materialy, B. 1, p. 101]; **ВЗБѣСИТИ.** 1. To bring into infuriation, frenzy, strike with madness, frenzy. а тебя взбесила или варагуша подымала. Сказ. о куре и лисице, 194. XVIII в. XVII в. [Materialy, B. 1, p. 78]; **ЗАПѢНИТИСЯ, Запѣнився.** Foaming at the mouth from rabies. В тож время услышаше лоскотъ и сапание

по лѣсу, понеже кабанъ устрашенъ и раздраженъ видя ихъ толь мало, бежа на нихъ запѣнився. Мелюзина, 88. XVII в. [Materialy, B. 1, p. 61]. Therefore, the diffuse nature of the transformation of the two concepts of the denominative verbs in the Old Ukrainian language occurs with the help of a number of associations, motivated on the basis of analogies with the surrounding world, and are fixed as false metaphorical designations.

In the Old Ukrainian literary language, the denominative verbs are marked with **an experiential** as a carrier of mental activity**: БЛАЗЕНЪ** ч. (стп. blazen) 1.(a person at the court of a king or prince who entertained guests with various jokes, antics) joker, jester. 2. A fool, a joker, a buffoon. **БЛАЗНЬ** ж (цсл. блазнь) temptation, error, deception. **БЛАЗНИТЕЛЬ** ч. (цсл. блазнитєль) seducer, deceiver, swindler. – **БЛАЗНИТИ,** v. (цсл. блазнити) (anyone without an object) to tempt, to deceive, to cheat: не блазнѣте себе маючимъ ядѣние(м) (1489 чет. 304 зв.) [SUM, edit.2, p. 111]; **БЛАЗНИТИСЯ** v. (цсл. **блазнитисѫ)** 1.(by smth) To be deceived, to be tempted, to make a mistake: не блазнитесѫ мыслью вашею (1489 чет 43 зв.). 2. (About smb) (speak badly about someone, harm someone's good name) compromise (someone): Ликавые дшѣ нечистого сумнѣнѫ и w христѣ блазнѫтсѫ, не тольно w добром человѣцѣ (поч. XVII ст. Вол. В. 97); 3. (For what) to be indignant about (by what): И такъ ся блазнили жидове тоты и ище за едно слово (XVI ст. НЄ 44 зв.) [SUM, edit. 2, p. 111]; **БЛЮЗНѢРЦА,** с.м. (пл. bluźnierca). A reproacher, a detractor; a blasphemer. **БЛЮЗНИТИ,** v. (пл. bluźnić). To vilify, to slander; to blaspheme. Бер. 188. Мл. Сл. 7. Сирійчики блюзнили Бога Ізраилского. Рук. хр. 115 [Materialy, B. 1, p. 59]; **БЛЮЗНИТИСЯ,** v. To blaspheme. И многіи пойдуть вслѣдъ ихъ нечистотъ, презъ которыхъ дорога истинная блюзнити ся будетъ. Пал. 315 [Materialy, B. 1, p. 59]. Old Ukrainian denominative verbs expressed by the subject, which is the carrier of mental activity, as well as in the modern Ukrainian literary language, have a high degree of expressiveness, denoting the peculiarities of human behavior. They usually have a mostly negative assessment.

The productivity of the motivator of **the mediative** as an auxiliary material, or an indirect means of action of the Old Ukrainian denominative verbs is wide: **ОГНОИТИ**, v. To cover with new wood; to desecrate. Огноити дворъ. АЮЗР. I, 79 (1531). Образъ Божій огноили есте. АЮЗР. II, 226 (И. Выш.) [Materialy, B. 1, p. 111]; **УБОЛОТИТИ,** v. To soil with dirt, to pollute. Я (правѣ) умыю ноѕѣ того убогого уболоченые. Рад. 84 [Materialy, B. 2, p. 411]; **ЗАМУСОРИТИ**. To litter. Отъ самаго Царяграда и Чернаго моря по всему Бѣлому морю не сыщешь нигдѣ ни единаго мѣста чистаго, гдѣ мы ѣхали, но вездѣ засорено и замусорено бѣлымъ камнемъ. Арс. Сух. Проскинитарий, 25. 1653 г. [Materialy, B. 1, p. 57]; **ЗАПОРОШИТИ,** v. To clog, to bring in dust. Запорошити око. АЮЗР, II, 237 (И.Выш.) [Materialy, B. 1, p. 283]; **ЗАПОТИТИ**, v. To cover with sweat. Не проливши кровѣ и чола добре не запотивши не взяти Варшавы. Вел.I 251 [Materialy, B.1, p. 283]; **ЗЛОТИТИ** v. (стп. zlocic) (to cover something with gold or gilding) to gild: Злочи deauro (Уж. 1645, 68) [SUM, edit. 12, p. 23]; **ВЫЗВѢЗДИТИСЯ**, v. Get covered with stars. Ночъ около полночи вызвѣздилась зъ морозомъ. Дн. Марк. III, 58 [Materialy, B. 1, p. 137]; **ПОСМОЛИТИ,** v. To tar. Смолою кораблъ посмолилъ. Рук. хр. 7 [Materialy, B. 2, p. 183]. The examples

prove that the mediative is an indirect means of action of the representative and is studied as a separate component. The mediative is the motivator of the Old Ukrainian denominative verbs of the agentive physical activity of additional action.

The transgressive as a result of the causation of the transformation of the meanings of nouns is numerous among the denominative derivatives: **ПОКОЗА×ИТИСЯ, ПОКОЗА×hnnbnbNNNTИ,** v. To become Cossacks. Инніе сами боячися пановъ своихъ и жолнhрства, же будучи мужиками покозачились, за Хмелницкимъ на Украину уступовали. Гр. 102. Жителh тамошніе также покозачhли. Вел. IV. 76 [Materialy, B. 2, p. 153]; **ПОТУР×ИТИСЯ**, v. To become Turkish. Ся Луцкій владыка потурчилъ. АП. 1246. [Ивоня] для богатства потурчился, Боб. 291 [Materialy, B. 2, p. 196]; **ОТИРАНИТИ**, v. To make tyrannical. Римскій епископъ.. имя отиранилъ посполитое. АП. 1676 [Materialy, B. 2, p. 63]; **ГНОИТИ**. 1. To rot (to bring to decay). Поставилъ тотъ Ларионъ дворъ себѣ... и съ своихъ хоромъ водной потокъ попустилъ на наши домовые Никольские дворишка и заплоты и хоромы у нашихъ дворовъ гноитъ. АХУ III, 64. 1628 г. 2. To fertilize. Преж тамо насѣютъ бобу... после его заоруют... и тѣмъ то добрѣ гноятъ землю. Назиратель, 302. XVI в. [Materialy, B. 2, p. 51]; **ГНОИТИСЯ.** Гноиться [Materialy, B. 2, p. 51]; **ОМЕДВИТИ, омедвлю**. To make sweet. Сладостию словесъ твоихъ миръ весь омедви, въ всю землю изыдоша глаголи твои (ἐγλύκανεν). (Ж. Ио. Злат.) ВМЧ. Ноябрь 13-15, 1130. XVI в. [Materialy, B. 2, p. 111]; **ОСМОРОДИТИСЯ**, v. To stink. Которыми [смолою, дегтемъ] бысь моглъ и помазати и осморoдити. Пал. 657 [Materialy, B. 2, p. 91]. The sphere of the transgressive is diverse among the motivated nouns and numerous among the Old Ukrainian denominative verbs as a result of causation of transformation.

The Old Ukrainian denominative verbs are delineated by **the locative** - the spatial component differentiates verbal derivatives to indicate labor activity: **ПЛОТИТИ.** To create, to tie rafts, to carve. Кладутъ ихъ хрестьяне дрова на рекh на своемъ берегу да плотятъ деи плоты по своимъ берегомъ. Арх. Стр. I, 131. 1507 г. – Ср. плотати; **ОБТЫНИТИ**, v. To surround (wattle). Въ гумне клуня тыномъ обтыненая. Кн. Луцк. 1571, л. 213 [Materialy, B. 2, p. 21]; ОСТРОГЪ, с.м. The palisade. **ОСТРОЖИТИ**, v. To pale. Сторона двора от ставу.. острогом острожена. Пам. III, 72(1566) [Materialy, B. 2, p. 58]. The dictum of such verb derivatives indicates the appropriate localization relative to a person to other things.

A numerical group of nominative verbs in the Old Ukrainian literary language use **the instrumental** as a motivator to indicate activity with the help of a tool: **СУРМИТИ**, v. To play Surma. [Тренбачи] въ сурмы сурмятъ. Клим. 209 [Materialy, B. 1, p. 379]; **ПОСКОРОДИТИ,** v. To harrow before sowing. [Нивы] п. Кривицкий поралити и поскородити казалъ. Кн.Луцк.1574, л. 281 [Materialy, B. 2, p. 181]; РАЛО, с.ср. A plow. An ancient tool for plowing the land - **РАЛИТИ,** v. To plow. Онъ на тое поведилъ: правда, же твои нивы оралъ и ралю и еще буду большей ралити готовое роли. Кн. Луцк. 1574, л. 282 [SUM, edit. 2, p. 266]; **ВЫБРИТВИТИ** v. (What) To shave close: а ты што розимhе(ш) w собh, выбри(т)вивъши потылицю, макге(р)ки Веръ(х) рога головного повhсивши..

тобыли пок#нї# не треба (п. 1596 Виш. Кн. 233 зв.) [SUM, edit. 5, p. 112]; **ЗАТРУБИТИ** v. (To start blowing a trumpet, to make sounds with a trumpet, summa) blow the horn: трибы агглскии тогды затриб#(т) (Вільна, 1596 З. Каз. 74) [SUM, edit. 11, p. 8]; БУБЕНЪ, с.м. A drum. **БУБНИТИ,** v. To beat (the drum). [Довбишh] въ бубны бубнятъ.Клим.209 [SUM, edit. 2, p. 56]. Motivated by the instrumental denominative verb derivatives in their structure have a high degree of manifestation of the onomasiological feature. In the denominative verbs marked with an instrumental, the main role is given to the semantics of the subject of an active action directed at the object, and not at the tool with which it operates.

In the Old Ukrainian literary language, the phenomenon of **pseudo-motivation** can be traced in the denominative verb word-formation. It is notable that, unlike motivation, pseudo-motivation is distinguished by the random choice of the motivator of the word, which is not provided by motivational and semantic connections. Pseudomotivation is characterized by the presence of a formal, conditional motivator in the word-making process. Example: **ДОЖДИТИ** v. (цсл. дъждити) 2. Figurative sense. Sleep well, abundantly: А Панъ дожди(л) на Содоми и Гомори chркою и огнемъ w(т) Пана з҃нба (Київ, бл. 1619 О обр. 141) [SUM, edit. 2, p. 85]; **ВИХРИТИ**, v. To stir up, stir up discord, turmoil. А чортъ абы между народомъ людскимъ вихрилъ и на злое привелъ, з своей стороны вhншовалъ народу людскому. Рук. хр. 8. Ахавъ реклъ до Іліи: ты то вихришъ въ земли Ізраилской. ib. 112 [Materialy, B. 2, p. 61]; Голчити v. To roar, to cry, to make noise. пришолъ исUсъ в҃ домъ҃ кн̃жий и Uвидевши писчъки и тижьбу голчачи (Цяп., 12, 1457 г.); ШКАРОДА, с.ж. A vileness, an abomination – **ШКАРАДИТИ,** v. (пл. szkaradzic). To make dirty; defile. Гробу Христового трупами не шкарадили. Пал. 777 [Materialy, B. 2, p. 496]; БЛЮДОЛИЗЪ, м. Someone who likes to profit at the expense of others. **БЛЮДОЛИЗИТИ.** Look for other people's meals, overeat at someone else's expense. На Павла митрополита что глядишь? Тотъ не живалъ духовно, - блинами все торговалъ, да оладьями, да какъ учинился попенкомъ, такъ по боярскимъ дворамъ блюдолизить научился (Ав.Кн.бес., 336.1675 г.) [Materialy, B. 2, p. 47]. Pseudomotivation in word-forming processes, in the semantic and morpheme structure of a word is explained by the etymological, diachronic processes. Pseudo-motivated denominative verbs are mostly stylistically marked and have a high degree of expressiveness [Kocherha, 2003]. In the word-formative verb system of the Old Ukrainian literary language, the affixal types characteristic of the modern Ukrainian literary language have already been fully formed, as evidenced by written records. In the history of the formation and development of the Ukrainian language, the general composition and semantics of the verbal affixes have undergone the least changes, but the composition of prefixes capable of performing a formal function has changed.

The deominative derivatives in the Old Ukrainian literary language are characterized by the structural and motivational processes, and the type of motivation, its variety and component, verbalized in the onomasiological sign of nominative verbs, determines the semantic group of predicates marked by the

verbal units. The motivational processes of Old Ukrainian denominative verbs can be traced both in the propositional-dictum and in the associative-terminal motivations. The propositional-dictum motivation of Old Ukrainian denominative verbs is the most common in the verb system of the 14th-18th centuries, the motivators of verbs are chosen from the sphere of the predicate-argument structure of the concept and have direct meanings. The associative-terminal motivation of noun derivatives in the verb system of the Old Ukrainian literary language can be traced to the choice of the motivator from the component of untrue, metaphorical knowledge.

Conclusions and perspectives. The description of the morphological system and structure of the Ukrainian language, based on the main fundamental principles of motivation and categorization of grammar, will contribute to the creation of a conceptually whole, consistent description of the grammatical systems of modern Slavic languages, the deployment of typological studies in grammatical Slavic studies [Gramatyky, 2013, p. 14].

Motivational processes of the Old Ukrainian denominative verbs of the Old Ukrainian language of the 15th – 17th centuries can be traced both in propositional-dictum and associative-terminal motivations, where the usual connections of the motivating word and their reproduction in the semantics of the derivative are an important feature of the semantic structure of derivatives. Cognitive and onomasiological analysis of the denominative verbs in the segment of functionality and categorization will serve as a perspective for further scientific studies.

References.

1. Bevzenko, Stepan (1958). Iz istorii slovotvoru diiesliv ukrainskoi movy, Science collection Uzhhorod University, Vol. 35, 75 str.
2. Boichuk, Vitalii (1997). Typolohiia vnutrishnoi formy slova u desubstantyvnomu slovotvori: Avtoref. dys…kand. filol. nauk: 10.02.01, Ivano-Frankivsk, 18 str.
3. Vykhovanets, Ihor (2004). Teoretychna morfolohiia ukrainskoi movy, Kyiv, 400 str.
4. Hramatyky slov'ianskykh mov: osnova typolohii i kharakterolohii (2013). Zbirnyk materialiv XV Mizhnarodnoho z'izdu slavistiv. NAS of Ukraine, Ukrainian Committee of Slavists, Kyiv, 89 str.
5. Humetska, Lukiia (1958). Narys slovotvorchoi systemy ukrainskoi aktovoi movy XIV – XV st. Edition of the Academy of Sciences of the Ukrainian SSR, Kyiv, 297 str.
6. Kiyak, Taras (1988). Motivirovannost leksicheskih edinic, Lviv, 161 str.
7. Kocherha, Halyna (2003). Motyvatsiia vidimennykovykh diiesliv u suchasnii ukrainskii movi (kohnityvno-onomasiolohichnyi aspekt):Dys… kand.filol.nauk:10.02.01, Odesa, 200 str.
8. Tymchenko, Yevhen (2002–2003). Materialy do Slovnyka pysemnoi ta knyzhnoi ukrainskoi movy XV–XVIII st. [Tekst]: u 2 kn. [Upor. V.V. Nimchuk, H.I. Lysa], Kyiv - New York, [Pam'iatky ukrainskoi movy. Seriia slovnykiv], Kn. 1-2.

9. Pivtorak, Hryhorii (2015). Istoryko-linhvistychna slavistyka. Vybrani pratsi. NAN Ukrainy, Institute of Linguistics named after O.O. Potebnia, Kyiv, 516 str.
10. Pohyba, Liudmyla (1979). Semantychne pole vidimennykovykh diiesliv spilnoi dii v suchasnii ukrainskii movi // Pytannia hramatychnoi budovy ukrainskoi movy: Zbirn. nauk. Prats, Kyiv, S. 75–87.
11. Potebnianski chytannia, (1981). Zb. nauk. pr. Institute of Linguistics named after O.O. Potebnia, Kyiv, 183 str.
12. Potebnya, Aleksandr (1926). Mysl i yazyk. A. Potebnya. Edit. 5, 214 str.
13. Potebnya, Aleksandr (1888). Iz zapisok po russkoj grammatike. T. II, Kharkov, 198 str.
14. Hrynchyshyn, Dmytro (1994 –2005). Slovnyk ukrainskoi movy KhVI – pershoi polovyny KhVII st. [Tekst]: u 28 vyp. [Vidp. red. D. Hrynchyshyn ta in.] NAS of Ukraine Institute of Ukrainian Studies named after I. Krypyakevych, Lviv, Vyp. 1–12.

LEGALISATION OF PROCEEDS OF CRIME THROUGH THE USE OF VIRTUAL ASSETS: CRIMINOLOGICAL AND CRIMINAL LAW ASPECTS

Krasyliuk Maksym [1]

Annotation. The emergence of cryptocurrencies in 2009 opened up wide-ranging opportunities for the development of new private methods of making payments and transferring and storing information, the dissemination and use of which is beyond the control of monetary authorities. At the same time, the specific characteristics of cryptocurrencies, in particular the extraordinary complexity of verifying the counterparties involved in cryptocurrency transactions, allow economic actors to evade taxes and shift their activities to the shadow sector. In this context, the question arises of the need to study cryptocurrencies and their consequences in order to identify the risks and threats they pose in the global economic area.

Money laundering and terrorist financing are gradually becoming an increasingly popular area in which cryptocurrencies are used and deployed. It is worth noting that the forms and methods of legalising (laundering) the proceeds of crime through cryptocurrencies are diverse. Moreover, these forms and methods are constantly evolving in the context of the constant digitalisation of society and the increasing awareness of the public.

Key words: legalisation of proceeds of crime, virtual currency, cryptocurrency, blockchain.

Introduction. In recent years, the use of so-called virtual currencies or cryptocurrencies for money laundering and terrorist financing has become increasingly common worldwide. Therefore, we consider it appropriate to examine virtual currencies as one of the ways to legalise the proceeds of crime.

The existing risks and threats to the circulation of virtual currencies are explained by the special characteristics of blockchain technology, which is a kind of ledger. A blockchain (chain of blocks) works without server centres. The information blocks in the chain are distributed among all connected computers in the network, which achieves system stability and a high level of security, eliminates the risks of hacker attacks and ensures accessibility for all system participants. The combination of these indicators, in turn, makes virtual currency

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a unique financial instrument that increases security due to its anonymity and the impossibility of reversing the transaction.

The aim of the work is to study the criminological and criminal legal aspects of the legalization of criminal income through the use of virtual assets.

Review and discussion. For the first time, Europol spoke about the risks of using blockchain products. In its 2015 report, it analysed trends in the turnover of cryptocurrencies and concluded that the new financial instruments are most popular in the criminal sphere (corruption, drug trafficking, money laundering). Most often, cryptocurrencies are used on the illegal internet (darknet) for the purchase of substances and products that have been withdrawn from circulation. By the end of 2018, the number of areas in which cryptocurrencies are used criminally has increased significantly, but the use of digital money as a method of money laundering and payments in shadow markets on the internet still ranks first [6, p. 150].

From a legal perspective, cryptocurrencies cannot be classified as legal currencies under Ukrainian law, the official currency in Ukraine is the hryvnia, and the issuance and circulation of other monetary units as well as the use of monetary surrogates as a means of payment in Ukraine are prohibited [2]. In 2014, the NBU stated in its Letter No. 29-208/72889 (NBU Letter) that "Bitcoin, as a type of cryptocurrency, is a monetary surrogate that has no real value".

Thus, the NBU generally classified cryptocurrencies as money surrogates, and this position has been relied upon in court practice. In addition, banks were found to have no legal basis for crediting foreign exchange from the sale of cryptocurrencies abroad. On 22 March 2018, the NBU issued Letter No. 40-0006/16290, which found the NBU letter recognising bitcoin as a monetary surrogate to be outdated. It is therefore hoped that the NBU letter and clarification in question will no longer apply and that cryptocurrency holders will no longer risk recognising cryptocurrencies as monetary surrogates [3].

In my opinion, cryptocurrency should be understood as a digital currency (virtual, without a physical form) whose creation and control is based on cryptographic methods and is fully decentralised, which guarantees the correctness of operations in the system, including the absence of the possibility to influence the transactions of cryptosystem participants.

Money transfers with a low cost per transaction and without the possibility of cancelling them, complicated transaction data blocks and the lack of legal regulations contribute to the increase in the number of money laundering and terrorist financing offences involving cryptocurrencies.

The widespread use of virtual currencies as a means of committing money laundering offences is characterised by a number of technical features:

Anonymity of the virtual currency. The use of cryptography and decentralised registers makes it very difficult to identify the user. The demand for cryptocurrencies in the criminal community makes it necessary to increase their level of anonymity. Cryptocurrencies have been created that use various methods to cover the traces of cryptocurrency transactions. The European Parliament considers Monero, DASH and Zcash as such cryptocurrencies [7].

Privacy in virtual currency transactions can be described as uncontrolled transactions of virtual currencies between different virtual accounts. As each transaction is accessible to everyone and can be traced back in the blockchain, there is no reference to a specific user, be it an individual or an organisation, who carried out the transaction.

Transnationality of the virtual currency. This characteristic means that there is no way to draw boundaries when conducting transactions.

Decentralisation of cryptocurrencies. They allow users to exchange financial values directly, without intermediaries. The main strategy is to control a third party that is in between the parties involved in the transaction in order to limit the possibilities of criminal actors to transfer financial assets in an uncontrolled way. Conducting cryptocurrency transactions without middlemen makes the traditional approach irrelevant, and the anonymity of conducting virtual currency transactions makes it even more difficult to identify the user [5, p.40].

The problem of legalising the proceeds of crime has been greatly exacerbated by the emergence of innovative blockchain tools: P2P peer-to-peer transactions, cryptomat, software mixer.

However, while in drug trafficking anonymity is an important marketing feature of virtual currencies, in money laundering it is the legal vacuum and lack of legal status of cryptocurrencies [1, p. 71].

As the consumer market for cryptocurrencies grows, so does the number of legalisation factors associated with their use. If four years ago this segment of crime accounted for 5–7% of the total volume of cryptocurrency crime, in 2020 it increased 15-fold [4].

The multiple increase in the volume of this segment of cryptocrime is due to a number of factors:

1. there is a need to find qualitatively new mechanisms for laundering criminal proceeds as their volume grows online. This conclusion is confirmed by the following data: About 80% of the clients of money laundering organisations are large illegal services for the sale of pornography and psychotropic substances.

2. the legal vacuum regarding the status of cryptocurrencies and their financial control system is a strong incentive for the development of quasi-financial structures that ensure the security of money flows using blockchain technology or convert cryptocurrencies into fiat currency. In 2019, about a quarter of the funds transferred to the accounts of conversion services came from organisations involved in illicit activities.

Currently, no records are kept of criminal proceeds legalised through the use of virtual currencies, either in Ukraine or worldwide. However, this does not prevent the identification and analysis of certain criminological trends. In particular, it is important to pay attention to the extensive development of services for the exchange of cryptocurrencies and the disbursement of fiat funds. As a rule, these are P2P (person-to-person) transactions using crypto exchanges and cryptomats. According to the Coin ATM Radar service, there are currently more than a thousand such devices installed in the world, and if we take into account the latency of the data, we can talk about 30 times more14. For a

commission of 15%, the service guarantees uninterrupted translation and the anonymity of the client.

When considering the possibility of using virtual currencies for tax evasion, it is important to bear in mind that offshore jurisdictions have traditionally been used to transfer funds to the illicit sector of the economy. The general and growing pressure from developed economies has led to an increase in the price of this tool. A virtual wallet used to store and trade cryptocurrencies is characterised by the fact that it does not belong to any state. In addition, virtual assets are not taxed in most countries around the world, which contributes to the growth of trading cryptocurrencies as a means of payment.

A new and popular way to legalise criminal proceeds is to launder them through gambling websites. About 1/3 of all dirty virtual money is laundered through these services. Criminals are increasingly using gambling currencies to obtain the value of cryptocurrencies. For this purpose, they buy the currency of the most popular virtual games. It is sold for cryptocurrency and then exchanged for fiat currency via special exchange services.

Another method of legalisation is the use of "shuffling schemes". They offer customers the opportunity to confuse their transaction history or launder their income by buying goods online for another person with "dirty" money. The buyer compensates the customer for their expenses, except for the commission amount. As a result, the client of the service receives "clean" money and the buyer receives a discount on the goods.

Specialised sources often point out the high risks of using cryptocurrencies in financing terrorism. In our opinion, these forecasts are somewhat exaggerated at present. The experts underestimate the traditional nature of this segment of crime and do not take into account the unwillingness of terrorists to use new technologies to organise criminal proceeds. For most terrorist organisations, the physical transport of cash is the only way to obtain a tranche. However, with the increasing use of cryptocurrencies and the development of transaction infrastructure, virtual currencies will be increasingly used to finance terrorism.

It is worth noting that the actual cost of virtual currencies consists mainly of electricity costs, which are a prerequisite for the functioning of the entire system. At the same time, part of the cost is included in the cost of the commission charged to the user for carrying out a transaction with virtual currency. It should be noted that the price of such transactions remains quite low compared to bank rates. At the same time, many experts in the field argue that commissions on virtual currency transactions are likely to increase over time, as the total amount of cryptocurrency created through mining is likely to decrease and, accordingly, the cost of mining is likely to increase significantly over time, reducing the extent of this risk in the area of money laundering and terrorist financing.

Another risk associated with the use of virtual currencies for money laundering purposes is the difficulty in identifying the taxpayer and the beneficiary. In our opinion, this may be due to the peculiarities of virtual currencies, such as anonymity and decentralisation. It is also worth noting that cryptocurrencies are a tool for extracting so-called «grey» funds from the country, as it is impossible to disclose information about the ownership of crypto-wallets and their contents.

It remains unclear which jurisdiction owns these assets and who has and should have the right to control them. The theft of virtual assets is an urgent risk to the global economy in terms of money laundering.

Stolen money contributes to the growth of illicit businesses, slows down the economic growth of a state and increases the crime rate in that country. Currently, there is no universally accepted position in the global community on the innovative, fast-growing virtual currency market. In most countries, there is no legal regulation of this area, and top management is limited to the recommendations of national regulators on cryptocurrencies, defining them as a financial instrument with increased risk.

Conclusions. Although the use of virtual currencies for money laundering is becoming more common, it still accounts for an insignificant share of criminal business. As their market grows, the risks in this area will become increasingly important to the global economy. The existence of the above risks has led to the need to extend anti-money laundering regulations to cover relationships related to the use of cryptocurrencies. It is extremely important to ensure the regulatory and legal regulation of virtual currencies in the interest of the development of both the global economy and the national financial system, and to increase the effectiveness of the anti-money laundering mechanism.

References:

1. Arkhipov, V.V. (2014) Virtual property: systemic legal problems within the framework of developing the industry of computer games, Zakon = Law, 2014, № 9, p. 69–90.
2. Law of Ukraine: On the National Bank of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/679-14#Text.
3. Official website of the National Bank of Ukraine URL: https://bank.gov.ua/.
4. O'Leary, R.R. Europol Warns Zcash, Monero and Ether Playing Growing Role in Cybercrime. URL: https://www. coindesk.com/europol-warns-zcash-monero-and-ether-playing-growing-role-in-cybercrime.
5. Palant, A.Y. (2020) Cryptocurrency: Challenges and threats to the global economy in the field of combating money laundering and terrorist financing, Ekonomika i biznes, № 3 (69), p. 38–42.
6. Sidorenko, E.L. (2017) Criminological risks of cryptocurrency turnover, Ekonomika. Taxes. Pravo, 2017. № 6, p. 147–155.
7. Virtual currencies and terrorist financing: assessing the risks and evaluating responses. May, 2018. URL: https://www.europarl.europa.eu/RegData/etud es/STUD/2018/604970/IPOL_STU(2018)604 970_EN.pdf.

PERCEPTION OF THE ANIMATED MOVIES IN TEACHING AND LEARNING ENGLISH FOR SPECIFIC PURPOSES (based on the ESP course for the biotechnology students)

Naumenko Nataliia[1]

Annotation. The teachers of National University of Food Technologies, upon delivering the course "English for Specific Purposes" to the first-year students majoring in biotechnology, affirm the artistic education as the important factor of forming professional skills and abilities, which is evident in using the animated movies as much frequently. Primarily, these movies are retrieved from the Internet and then spoken in class; furthermore, the students get eager to make such cartoons on their own. Hence the purpose of this work is to confirm the esthetic and educational role of animated movies applied to teaching and learning the basics of foreign language for biotechnologists; to achieve this purpose, the didactic, perceptive esthetics, scientific modeling, and communication methods were used.

Traditionally, the characters of educational animated movies are not only people, but also, even far more frequently, unanimated objects; this is why the first-year students gets involved in such a creative work, developing their language competencies as well as the team work skills. Generally, the first step of figuring out an animated movie is writing a script; the practice shows that any specific reading text from an ESP workbook can be transformed into an interesting and capacious story. The next stage is selection of visual images: unlike any action movie, an animated one is able to display the momentary transformations of one object into another and teleportation from one location to another, which is an expedient method to give as much material within a short period of time. Finally, the cartoon is planned to be presented and discussed in class.

Overall, it was asserted that working with animated movies represents the motivational pedagogical phenomenon: for a teacher, it is to reveal one's awareness of various areas of science; for a student, it is to apply the creative approach to comprehend the foreign-language material, to boost the skills to analyze and furthermore to present it successfully. On the other hand, it is the good method to organize language learning and to self-assess the individual

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skills and abilities in language mastering as well as in profile subjects to be taught in English.

Key words: students, animated movie, creativity, English for specific purposes, natural sciences.

The relevance of the research topic. According to Scott Thornburry, a word is a microcosm of human consciousness [9, p. 1]. This thesis is consonant to the one by the Ukrainian philologist Oleksandr Potebnya, declared more than a hundred and the half years ago, who asserted that human consciousness is able to create the picture of the world through the sequence of words; meanwhile, the semantics of notions allows a human to express one's attitude to the environment, and also to participate in cognition of unrecognizable things around [5, p. 116]. Language, as well as the entire human culture, exists in the shape of the special reality to be defined as 'human-within-the-world' and 'world-within-the-human.'

These concepts can be embodied by the means of the cartoon movie whose possibilities are extraordinarily wide, primarily due to the novelty informational technologies. A cartoon movie may represent any genre, for instance a comedy, a drama, a suspense film, a biopic, a scientific-popular picture; thenceforth, it is still remaining the part of a 'must-see' massive among young people.

On the other hand, any kind of animated movie can be didactic somehow, especially for Ukrainian students, because it would boost at least listening and use-of-language competencies while being watched. Consequently, apparent is the reason to use its potentials in elaboration of Anglophone didactic materials that would combine the elements of various subjects from the course curriculum, in compliance with the principles of interdisciplinary connections.

Analysis of the recent researches and publications. Movies of any genre can be very effective in teaching vocabulary, grammar and syntax of any language. Wu She [10, p. 21] holds that the objectives of teaching and learning through motion pictures are to build up interpretation, listening, speaking, grammar, and vocabulary skills of any language, which would be doubtlessly helpful for students in preparing to the United Entrance Exam in the foreign language to the master's program (implemented in Ukraine in 2020), to the First Certificate Exam and so on. In the same way, Zhao Baohe signified that an innovative motion picture would be extremely inspiring and thought-provoking and thereinafter can make language learning more pleasant [11, p. 849].

As the Pakistani pedagogues Mushtaq Hammad and Zera Taskeen noticed, "Animated movies like *Tangled* are generally meant for the purpose of entertainment and amusement of younger students who like to watch movies, and if these feature films function to teach the students as well as entertain them, a double purpose is served. Students tend to learn more when they are taught using visuals i.e. movies, video clips, etc., than by regular mode of verbal teaching. Their vocabulary and pronunciation can be improved through the use of movies in language classrooms" [2, p. 79].

Upon using the statistic methods in evaluation of the individual level of mastering English vocabulary (before and after watching the certain kinds of cartoon movies), Indonesian specialists in teaching methodic came to conclusion

that not only students, but also a teacher should be creative enough to make students' motivation increased in using media or strategy that make students do not feel bored in the class [1, p. 26].

Scott Thornburry outlines four indicators of teaching vocabulary [9, p. 27], which we also would like to comment upon:

1. **Pronunciation**. Research shows that words that are difficult to pronounce are more difficult to learn. Potentially difficult words will typically be those that contain sounds that are unfamiliar to some groups of learners (such as *'tourist,' 'either,' 'earth,' 'thirteenth'* for Ukrainian speakers. Many of the latter find the words with clusters of consonants, such as *strength* or *straightforward* or *breakdown*, too problematic, owing to the fact that euphony, particularly alternation of vowels and consonants, is highly appreciated in Ukrainian language. – N.N.)
2. **Spelling**. Sound-spelling mismatches are likely to be the cause of errors, either of pronunciation or of spelling, and can contribute to a words difficulty. While most English spelling is fairly law-abiding, there are also some glaring irregularities. Words that contain silent letters are particularly problematic: *foreign, listen, headache, climbing, bored, honest, cupboard, muscle*, etc.
3. **Meaning**. When two words overlap in meaning, learners are likely to confuse them. Make and do are a case in point: you *make breakfast and make an appointment*, but *you do the housework and do a questionnaire*. Words with multiple meanings, such as *since* and *still*, *else* and *also,* can also be troublemakers for Ukrainian learners. Having learned one meaning of the word, they may be reluctant to accept a second, totally different, meaning. Unfamiliar concepts may make a word difficult to learn. Thus, culture specific items such as word and expressions associated with the game cricket (a sticky wicket, a hat trick, a good innings) will seem fairly opaque to most learners and are unlikely to be easily learned.
4. **Using word**. The latter is the most authentic, but even that task is constrained by a contrived situation in which the test taker, usually in matter of seconds, has to come up with an appropriate sentence, which may or may not indicate that the test taker "knows" the word.

Formulation of the purpose and tasks of the article. The purpose of this article is to confirm the esthetic and educational role of animated movies applied to teaching and learning the fundamentals of foreign language for biotechnologists, which combine the elements of biology, microbiology and chemistry. The main tasks of this work is to observe the specifications of animated movies as the specific artistic genre, to highlight their possibilities in showing any scientific phenomenon in dynamics and therefore to conclude about the relevance of including it into the course curriculum as the part of students' independent work.

Presentation of the main research material. At National University of Food Technologies (hereinafter named NUFT), working with artistic phenomena on the foreign-language classes is aimed at not only boosting the students' soft skills, including various language competencies, but also confirming the specifications

of the creative collaboration between students and teachers [8, p. 6]. This is completely correspondent to the novelty principles of 'student-oriented education,' when a student is not an object, but a valid subject of educational process.

The scientific data about the role of arts in forming the students' soft skills and broadening their worldview are of the great significance today. The specialists in age psychology share the opinion that effective and full-fledged learning is possible only when accompanied by creative work [6, p. 110]. On the other hand, essential are the perception channels, according to which people are usually categorized into four groups: visuals (with eyesight and the visual memory as the triggers of the mental activity); audials (perceiving primarily the audible component); kinesthetics (perceiving the world in movement); discretics (are interested in 'what is inside').

Along with that, the didactic materials are expedient to be based on the combinations of visible, audible and tactile components, in accordance with 'the golden rule of didactics' formulated by Jan Amos Komeński, which predicts the activity of all sensory organs in comprehension and interpretation of any scientific data, even of utmost difficulty [11, p. 72].

The teachers of NUFT, upon teaching the course "English for Specific Purposes" to the first-year students majoring in biotechnology, affirm the artistic education as the important factor of forming both soft and hard skills, using the animated movies more and more frequently. For the time being, these movies are retrieved from the Internet, mostly from YouTube hosting; furthermore, the students are determined to make didactic cartoon by their own.

It is also necessary to regard some terminological aspects of the problem. Since 1989, while the large cinema festival 'Krok' (The Step) was being held in Ukraine, the term 'animated movie' was used in the newspapers for the first time, thanks to which the accents shifted from multiplication of a visible image to its 'animation.'

Talking about the didactic movies whose substantial core centers are the main notions from chemistry, biology, microbiology and so on, their authors traditionally tend to express the essence of sciences and the possibilities of embodying their concepts by the means of arts and language. Therefore, a many-dimensional semantic space, indicated by the term 'ecphrasis' in art and literary criticism [7, p. 85], is being created; within the framework of educational activity, in our opinion, the term 'scientific and popular animation' appears to be more capacious.

The high-quality animated movie is the products of synthesis of the following arts [4, p. 122]: literature (writing a story), dramaturgy (setting up the script), painting and graphics (the figures of characters, backgrounds, and footage), theatrical art (movements and poses of the characters, changes of scenery), cinema and photo (dynamic or static images shooting), music and sound recording (figuring out the soundtracks). Many examples of how the authors of the didactic cartoon movies on the foreign language comply with these rules can be found in large amounts in the Internet, mostly on the YouTube, where the best specimens in this genre are uploaded.

Nowadays, taking into account the development of updated informational technologies and enhancement of their role in didactics, it is expedient to design the animated movie (drawn, puppet or 3D one) based on every point of the curriculum of the course "Foreign Language for Specific Purposes."

A possible method to do it is the Microsoft Office Power Point software that includes the 'Animation' function [3, p. 43]. Though it is not yet an animated movie itself but just making a visual object (a picture, a letter, a sequence of letters) move, it would be very fruitful in learning the basics of cartoon movie making, in addition to comprehension of fundamental notions in biology, chemistry or microbiology.

As a preliminary stage, the students of the faculty of biotechnology and ecological control, together with their teacher, launched a creative discussion about how the cartoon movies would benefit the studies of their professional language, regarding its specifications like using the large quantity of Latin-originated terms. The obtained opinions are presented in this article:

"Actually, the idea is great. As a matter of fact, the cartoon movie possesses enough means to combine the visual and audible elements in picturing a natural phenomenon or an experiment to be observed." (Maksym Klymenko)

"Students, the yesterday's children, are so fond of watching the moving pictures, the scenes changing every minute, and when to put the specific terms instead of people or animals into a story, it would be thenceforth easier to recognize them in any serious scientific text." (Tetyana Melnyk)

"The cartoon movies are quite useful, owing to the fact that the distant education, conditioned by either an epidemic situation or by wartime, cannot allow working at the laboratories. Hence the movie is the best way to show the course of an experiment and to help us comprehend its essence." (Anastasia Sakhnevych)

Subsequently, the first step of figuring out such an animated movie is writing a script. The practice shows that any specific reading text from an ESP workbook is open to transform into a page-turner; for instance, the topic "Laboratory Glassware and Equipment" may become a base for a virtual 'excursion' around the animated chemical laboratory.

This can be epitomized by the cartoon movie "Laboratory Tools and Equipment" uploaded on the "Free Animated Education" YouTube channel, in which every type of laboratory equipment and their functions are represented and commented with an expedient alternation of colloquial and academic speech elements. For example, the necessity to put on the safety gear before an experiment is accompanied with the narrator's humorous comment, "*This not only makes you look cool, or make you feel like a responsible scientist, but also protects you from all kinds of chemicals you may be coming in the contact with*" [13].

Showing a dynamic phenomenon, say a chemical reaction, is considered the special kind of scientific modeling (a system primarily hypothesized and afterwards accomplished in a real time) and otherwise the main rule to compose a story in which the animation means would be successfully used.

The next stage is selection of visual images. Traditional characters of educational animated movies are not only people (laboratory personnel,

academicians, lecturers or the ordinary citizens), but also, even far more frequently, unanimated objects – glassware, symbols of chemical elements, molecules, atoms and so on. Unlike any action movie, an animated one is capable of displaying the momentary transformations of one object into another and teleportation from one location to another; in other words, it activates some elements of either science fiction or fantasy as a literary genre, which is quite typical for cinema works favorite in student groups. This is believed to be the best way to expose a complicated process that would need several typed pages to be described in words.

The soundtrack to an educational animated movie traditionally consists of the Anglophone comments (in addition, some YouTube channels allow turning on the subtitles for better comprehension of unfamiliar words and easier copying them out) and alongside of the specially selected musical pieces.

The interesting epitome of the interaction between animated and action movie, music and poetry with the concept sphere of scientific (in this case biological) profile is the three-minute cartoon movie "Vitamania Song – Meet the Vitamins" represented on 'GenePoolTV' Australian YouTube channel.

It appears to be of the special interest for the first-year student majoring in biotechnology, thanks to the combination of the most remarkable musical styles (jazz, reggae, country, rap, chill-out) with the witty and easily comprehensible lyrics by Casey Bennetto, the interplay between actors and animated letters symbolizing vitamins (A, B group, C, D, E, K) within a vegetable market where the sources of these vitamins – carrot, avocado, sweet pepper, nuts, legumes and broccoli – are sold. To get convinced of the expedience and fruitfulness of such synthesis, it is necessary to quote just one stanza from the script telling about vitamin C:

> Good day, folks, they call me Vitamin C
> I'm a healer and protector, and I can always guarantee
> You're impervious to scurvy
> If you get your share of me
> Vitamin C, vitamin C, vitamin C [14]

All the factors noticed should not only help a student to memorize the active vocabulary on the topic 'Vitamins,' but also to form the skills to understand the essence of the specific terminology in studying the profile disciplines at the upcoming academic years.

Using the art works like those aforementioned as the didactic material in teaching English language to the future biotechnologists would comply with one of the key requirements to the contemporary education paradigm, which is the establishment of the interdisciplinary connections. Along with learning the specifications of the language for specific purposes themselves, the students would also have an opportunity to actualize the current linguistic skills and to acquire the new ones, to get acquainted with the newest data in the field of natural sciences and to formulate the individual trends of scientific researches.

Conclusion. Working with animated movies – either in the class or online – represents the motivational pedagogical phenomenon: for a teacher, it is to reveal one's awareness of various areas of science during selection of cartoons to be discussed and meantime to broaden one's worldview; for a student, it is to apply the creative approach to comprehend the foreign-language material through different perception channels, the skills to analyze and furthermore to present it successfully. On the other hand, it is the method to organize learning the language in its various aspects (predominantly listening / speaking competency) and to effectively self-assess the individual skills and abilities in language mastering as well as in profile subjects to be taught in English.

The perspective trend in mutual working between teachers and students of all specialties and academic levels is the usage of interactive technologies in individual creation of educational animated video on the certain topic in correspondence with a course curriculum. The fact is that, upon composing a movie, the students will not only enhance their phonetic and lexical skills, but also explore the fundamentals of animation art, in particular picturing a scientific phenomenon in dynamics and thereinafter improving its visual, audible and emotional perception.

References:

1. Fitria, Ulfa, Agus, Salim, Dira, Permana (2017). Teaching Vocabulary Using Cartoon Movie at SDN Bunklotok Batujai Lombok Tengah. *Journal of Languages and Language Teaching.* Vol. 5, issue 1. P. 23–27.
2. Hammad, Mushtaq, Taskeen, Zera (2016). Teaching English Grammar through Animated Movies. *NUST Journal of Social Sciences and Humanities.* Vol. 2, issue 1. P. 77–87.
3. Microsoft Power Point – 2010 (2011). Chapter 5: Animation. Watsonia Publishing. P. 43–52.
4. Naumenko, Nataliia (2020). "Sadok vyshnevyi kolo khaty" v aspekti animatsiynoho mystetstva [Sadok Vyshnevyi Kolo Khaty in the Aspect of the Anumation Movie]. *Taras Shevchenko "Sadok vyshneviy kolo khaty": tekst I kontekst. [Taras Shevchenko's Sadok Vyshnevyi Kolo Khaty]: The Text and the Context.* Cherkasy: Olha Vovchok Publishers. P. 121–126.
5. Potebnya, Oleksandr (1989). Estetyka i poetyka slova [Esthetics and Poetics of Word]. Kyiv: Naukova dumka. 314 p.
6. Romenets, Volodymyr (2002). Psykhologiya tvorchosti: navch. posibnyk [Psychology of Creativity: A Manual]. Kyiv: Lybid. 288 p.
7. Rubins, Maria (2000). Crossroads of arts, crossroads of cultures: Ecphrasis in Russian and French poetry. New York: Palgrave. 311 p.
8. Semenyuk, Hryhoriy, Hulyak, Anatoliy, Naumenko, Nataliia (2015). Literaturna maysternist pysmennyka: pidruchnyk [Literary Mastery of a Writer: A Workbook]. Kyiv: Stal Publishers. 405 p.
9. Thornburry, Scott (2002). How to Teach Vocabulary. London: Pearson Education Limited. 191 p.
10. Wu, She (2002). American Movies. Harbin, CHN: Harbin Engineering University Press. 158 p.

11. Żegnalek, Karol (2014). Dydaktyka Jana Amosa Komeńskiego [The Didactics of Jan Amos Komenski]. *Siedlieckie Zeszyty Komeniołogiczne. Seria Pedagogika*. Siedlce. Tom 1. S. 63–91.
12. Zhao, Baohe (2011). How to Enhance Culture Teaching in English Teaching Classes. *Theory and Practice in Language Studies*. Vol. 1, issue 7. P. 847–850.
13. Lab Tools and Equipment. Retrieved from: https://cutt.ly/X0vvrXd (access date 04.03.2023).
14. Vitamania Song – Meet the Vitamins. Retrieved from: https://cutt.ly/50vviP3 (access date 04.03.2023).

THEORETICAL AND LEGAL APPROACHES TO THE DEFINITION OF HUMAN AND CITIZEN RIGHTS AND THEIR TYPES

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Annotation. Rights are certain basic opportunities necessary for a dignified and free human existence and development. At the same time, these are the demands of a person, about which he justly declares. Human rights are natural, that is, determined by his human essence, and not by belonging to citizenship, a certain ethnic, religious or other group. Accordingly, the state cannot act as a source of rights, but is obliged to recognize and guarantee them. Rights are inalienable and inalienable, that is, they cannot be taken away and a person cannot renounce them by himself. Human rights are different in meaning. They can be absolute or almost absolute (relative).

Fundamental human rights are rights guaranteed to a specific country by its constitution or other laws. They may include rights that are recognized as universal human rights, but may also include other rights that reflect the specific needs and requirements of a country. Human rights and fundamental human rights are basically the same rights, but they can be used depending on the context and country. Hence, the difference between human rights and fundamental human rights is that the former are universal and guaranteed to every person everywhere, while the latter may include additional rights that reflect the specific needs and requirements of a country.

As for active and passive rights, then: active rights are rights that give a person the opportunity to perform certain actions and demand their performance from other persons or organizations, passive rights are rights that protect a person from illegal actions of other persons or organizations.

In turn, subjective rights are legal requirements that belong to a person as a subject of law. These rights give a person the opportunity to demand the performance of certain actions or non-interference from the actions of other persons or government bodies. A subjective right may be recognized in a law or other regulatory act.

The separate category of «citizen's rights» is interconnected with the concept of «human rights», but differs from one another. Human rights are universal and inalienable rights that belong to every person from birth and do not depend on nationality, race, gender, language, religion or other characteristics. Human

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rights include the right to life, freedom from violence, freedom of thought, conscience and religion, the right to equal access to education and health care, and other social and cultural rights. Citizen's rights are rights granted to citizens of a particular country based on their citizenship and the country's legislation.

Key words: human and citizen rights, war, military personnel, administrative and legal status, state guarantees.

Formulation of the problem. Rights are certain basic opportunities necessary for a dignified and free human existence and development. At the same time, these are the demands of a person, about which he justly declares. Human rights are natural, that is, determined by his human essence, and not by belonging to citizenship, a certain ethnic, religious or other group. Accordingly, the state cannot act as a source of rights, but is obliged to recognize and guarantee them. Rights are inalienable and inalienable, that is, they cannot be taken away and a person cannot renounce them by himself. Human rights are different in meaning. They can be absolute or almost absolute (relative).

The state of development of this problem. Scientific works of leading experts in the field of environmental and administrative law: V.B. Averyanova, V.I. Andreytseva, G.I. Balyuk, V.I. Boreyko, A.P. Hetman, V.A. Zueva, R.A. Kalyuzhny, T.S. Kichilyuk, V.K. Kolpakova, V.V. Kostytsky, N.R. Kobetskaya, M.V. Krasnova, V.I. Kurila, K.A. Ryabets, O.O. Pogrebny, Yu.S. Shemshuchenko.

The purpose of the article is a theoretical and legal approaches to the definition of human and citizen rights and their types.

Presenting main material. It should be noted that in addition to the generally accepted construction of «human rights», various international documents use such concepts as: «fundamental human rights», «subjective rights», «constitutional rights and freedoms», «basic (fundamental) human rights», «active and passive rights», «positive and negative rights», etc. The categories «personal rights» and «citizen's rights» are close to human rights. All these categories are freely used by theoreticians of various scientific fields due to the fact that today there is no precise and generally accepted definition of the concept of «human rights». G. Lohmann and S. Gossepat point out that «among professional theoreticians and practitioners there is no agreement on the understanding of human rights» [1, p. 16], continuing to think about the essence of the concept of «human rights», the scientists continue, «unfortunately, philosophy cannot master the problem of human rights on its own. Whatever the philosophical interpretation of human rights, the latter are rights defined by international agreements and recognized by specific states (fundamental rights, international rights, subjective rights). In view of this, they are an important topic of the theory of democracy, the theory of law, and the theory of international politics. The universality of the understanding of human rights determines the fact that any philosophical understanding of them is exposed to various problems of cultural differences and requires harmonious cooperation with the appropriate professional sciences of different cultures» [2, p. 17]. E. Brems argues that «an idea such as «human rights» must be significant in the whole world, at the same time it must take into account the heterogeneity of people,

and accordingly must take into account peculiarities, specificity, be aimed not at abstract, but at real people [3, p. 167]. Today, the universal approach to the understanding of the concept of «human rights» is questionable, as today there are different approaches to the cultural and religious customs of peoples, which in certain cases does not make it possible to form a single construction.

Encyclopedic sources give the following definitions of «human rights»:

«a set of rules that determine the legal status of a citizen, they are an inalienable property of a person from the moment of birth, a defining concept of natural and any right in general: rights characteristic of the very nature of a person, without which he cannot exist as a full-fledged human being. In their general form, they are a set of rights and freedoms constitutive of characterizing a person's legal status; human rights are indivisible and constitute a single complex. The basis of human rights are socio-economic rights. Rights are a natural opportunity provided and protected by the state to realize something, to do something, to have decent living conditions, to be protected from violence, etc.» [4, p. 628];

«Human rights are those rights that belong to an individual as a result of the fact that he is a human being. Rights are related to a wide continuum of values, which are essentially universal and in certain senses equally inherent to all human beings [5].

According to M.E. According to Stadler, one of the authors of the Philosophical Encyclopedia, human rights are an integral part of human dignity, which is expressed in certain forms of relations between a person and the state, and includes a group of political, social, economic and cultural rights [6, p. 474].

According to L.I. Kostenko, who is one of the authors of the «Legal Encyclopedia», human rights are moral principles and rules recognized by the state and guaranteed by law, which ensure the freedom, dignity and equality of every person before the law [7, p. 278].

In the philosophical and legal encyclopedia, the following definition of human rights is given, it is an integral element of the value system, which provides for the protection of human dignity, freedoms and rights from state and other violence, including discrimination, and is an important component of social justice and development personality [8]. In these definitions, you can see that human rights are an integral part of the dignity and freedom of every person, which guarantees their protection from any form of violence, discrimination and violation of rights.

As for the use of the term «fundamental human rights», its concept is proved by P.M. Rabinovych, who notes that «their fundamentality, fundamentality lies in the fact that they serve as a foundation, a base, a basis for ensuring existence and development both in nature and in society itself. Without such rights, without their use, human existence and development will not take place. Possibilities (of a person) are an ontological, essential, «substantial» characteristic of his fundamental rights, and their role and purpose is to mediate and instrumentalize the satisfaction of the fundamental, basic, insurmountable needs of a person living in society. So, this is an essentially anthropic (more precisely, anthropo-social) characteristic of rights. To this, the scientist adds, the fundamentality and fundamentality of human rights are determined not so much by the possible

ways and means of their protection, but primarily by their objective significance for human existence, life, and development [9, c. 336].

Fundamental human rights are rights guaranteed to a specific country by its constitution or other laws. They may include rights that are recognized as universal human rights, but may also include other rights that reflect the specific needs and requirements of a country. Human rights and fundamental human rights are basically the same rights, but they can be used depending on the context and country. Hence, the difference between human rights and fundamental human rights is that the former are universal and guaranteed to every person everywhere, while the latter may include additional rights that reflect the specific needs and requirements of a country.

As for active and passive rights, then: active rights are rights that give a person the opportunity to perform certain actions and demand their performance from other persons or organizations, passive rights are rights that protect a person from illegal actions of other persons or organizations.

In turn, subjective rights are legal requirements that belong to a person as a subject of law. These rights give a person the opportunity to demand the performance of certain actions or non-interference from the actions of other persons or government bodies. A subjective right may be recognized in a law or other regulatory act.

The separate category of «citizen's rights» is interconnected with the concept of «human rights», but differs from one another. Human rights are universal and inalienable rights that belong to every person from birth and do not depend on nationality, race, gender, language, religion or other characteristics. Human rights include the right to life, freedom from violence, freedom of thought, conscience and religion, the right to equal access to education and health care, and other social and cultural rights. Citizen's rights are rights granted to citizens of a particular country based on their citizenship and the country's legislation. These rights include the right to participate in elections and manage the affairs of the state, the right to work and social protection, the right to freedom of expression, the right to justice and others. So, the difference between human rights and the rights of a citizen is that human rights are universal and inalienable, while the rights of a citizen are granted on the basis of citizenship and the laws of a particular country.

The concept of «personal rights» also differs, to a certain extent, from the concept of «human rights», in the case of their comparison, it can be distinguished that these are rights that belong to each individual person on the basis of his status, attitude to the law or agreement with other persons . These rights can be guaranteed by the constitution, laws and other legal acts. Individual rights include the right to privacy, the right to property, the right to a fair trial, the right to equality before the law, and others. So, the difference between human rights and individual rights is that human rights are universal and inalienable, while individual rights can be granted based on status or agreement with other individuals and can be guaranteed by the laws of a country.

Summarizing the thoughts about the meaning of the term «human rights», it should be noted that human rights is a generic concept that includes all other

types of rights, including fundamental rights, constitutional rights and citizens' rights. This shows that human rights are universal and independent of national or cultural identity, political system, religious beliefs or other factors.

Human rights are enshrined in current international legal treaties that establish and regulate them, they are the result of a long historical development of socio-political thought, the gradual formation of standards that have become the norm of a modern democratic society. The formation of the concept of «human rights», the awareness of this problem as a scientific one, is inextricably linked with the emergence and spread of ideas of natural law. Even in the V-IV centuries. to n. e. ancient Greek thinkers (Lycophron, Antiphon, etc.) claimed that all people are equal from birth and have the same natural rights. Aristotle considered the right to private property to be one of the fundamental ones, which reflects the nature of man himself and is based on his love for himself. In the period of feudalism, some ideas of natural law were given a religious cover. Later, they were reflected and further developed in the writings of J. Locke, S. Montesquieu, J-Zh. Rousseau, I. Kant, I. Bentham and other thinkers. With the development of social relations, human rights gradually turned from an ideal category into a real reality, were enshrined in state legal and international legal documents, and acted as a criterion for the democratization of one or another legal and state system. One of the first legal documents reflecting human rights in a systematic form was the Virginia Declaration (1776) [10], which later became the basis of the Bill of Rights of the US Constitution (1791), which contained provisions on equality citizens before the law, democratic order, election to key positions, freedom of speech, press, religion, etc.[11]. The French Declaration of the Rights of Man and Citizen of 1789 has an important historical significance for the idea of enshrining individual rights in the social and state system of relations. It is based on the concept of equality and freedom that belongs to everyone from birth (that is, it reflected the idea of natural law, which in those days were a theoretical weapon of the struggle of all oppressed classes against the feudal system). Individual freedom, freedom of speech, freedom of belief, and the right to resist oppression were declared natural human rights. This declaration has not lost its relevance even today. In an expanded form, human rights were reflected in the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Racial Discrimination, and forms of discrimination against women in 1979, the Convention on the Rights of the Child in 1989, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment in 1984. Nowadays, human rights are widely reflected in constitutions and legislative acts most countries of the world [12, c. 7].

These documents presented a wide range of human rights that require regulation and protection. It was they who contributed to the possibility of distinguishing different types of human rights and classifying them by groups:

– civil, known in domestic literature as personal. The main characteristics of civil rights include: universality: civil rights are protected for all citizens, regardless of their status, race, nationality, religion or political opinion; inalienability: civil rights are inalienable and cannot be waived. This means that no official actions of the authorities, even in the most important cases, can be carried out under conditions that violate civil rights; equality: civil rights must be protected equally for all citizens. No one should be favored before the law because of their status, wealth, origin or other factors; independence: civil rights should not be dependent on other rights or limited to their implementation. For example, the right to freedom of speech should not be limited by the right to privacy; protection: civil rights must be protected from any violation, regardless of the actions of the person who violates the rights. The authorities must ensure the protection of citizens' rights and establish responsibility for their violation; freedom: civil rights ensure the freedom of citizens from any form of coercion or control that limits their rights and freedoms.

– political - these are the rights guaranteed by the state to citizens to participate in the political life of the country and determine its governing body. These rights allow people to freely express their political views, elect and be elected to positions, gather in political groups and parties, participate in mass events aimed at forming public opinion and influencing the decisions of the authorities. Political rights are an important element of a democratic system, as they provide citizens with the opportunity to participate in making important decisions that affect the life and future of the country. Political rights usually include: the right to freedom of expression of one's views - this is the right to speak, write, talk about one's views on political issues without fear of persecution for it; the right to elections is the right to elect and be elected to positions in the state on the basis of general and direct suffrage; the right to participate in political parties and groups is the right to create, join and leave political parties and groups; the right to freedom of assembly and association is the right to gather with other people, to create public organizations, parties, unions, trade unions and other groups in order to influence political processes in the country; the right to freedom of thought, conscience and religion is the right to freely feel, think and not be persecuted for it, etc. These rights are necessary to ensure a democratic and legal state, where every citizen has the right to participate in the formation of decisions that affect his life and the future of the country. The state must guarantee these rights and ensure their observance in order to ensure the freedom and equality of citizens before the law and the authorities;

– socio-economic rights that provide citizens with a decent standard of living, in particular in the areas of health, education, housing, social protection and work. These rights are guaranteed by the state and must be ensured at the level of all citizens without discrimination on any basis, such as nationality, race, gender, religion, etc. Socio-economic rights usually include: the right to work and fair working conditions – this is the right to a well-paid job that ensures a sufficient level of income, safety and health of the employee; the right to social protection is the right to receive assistance in case of unemployment, illness, disability and other cases when a citizen cannot provide for himself; the right to economic

development is the right to ensure conditions for economic development and support of small and medium-sized enterprises; the right to housing is the right to adequate housing that provides adequate living conditions and protection against homelessness; the right to health care is the right to access to quality medical care and ensure the health of citizens; the right to cultural life is the right to access cultural and entertainment activities that contribute to the development of citizens' interests and creative abilities; the right to cultural life is the right to access cultural and entertainment activities that contribute to the development of citizens' interests and creative abilities;

– cultural – these are rights that provide citizens with access to cultural heritage, the opportunity to freely feel, understand, develop and express their cultural identity, as well as participation in the cultural life of the country. These rights are guaranteed by the state and are provided at the level of all citizens without discrimination on any basis, such as nationality, race, gender, religion, etc. Cultural rights usually include: the right to freedom of creativity is the right to free development and expression of creative abilities, including in art, literature, science and other fields; the right of access to cultural heritage is the right of access to cultural objects that have great historical, cultural or scientific value, including museums, libraries, archives, architectural monuments and others; the right to cultural education is the right to receive quality education in the field of culture and art, which ensures the development of intellectual and cultural abilities of citizens; the right to freedom of choice of cultural identity is the right to freely choose cultural identity and to freely feel and express one's cultural beliefs and views; the right to participate in the cultural life of the country is the right to participate in cultural events, such as concerts, exhibitions, festivals, theater performances, etc. [13].

Conclusions. The above provides an opportunity to state the author's position regarding the concept of human rights - these are universal, inalienable and inviolable rights that are guaranteed to every person and which are necessary to ensure his dignity and full life.

The main characteristics inherent in the concept of «human rights» are: firstly, they are universal, inalienable and inviolable, and the state must ensure their implementation and guarantee protection to every person, regardless of their characteristics, such as nationality, race, gender, age , religion, etc. Second, these rights must be protected by all countries and for all people, without any discrimination. Thirdly, human rights are inviolable and cannot be violated under any circumstances. Fourth, everyone has the right to protect their rights, which cover a wide range of areas of life, such as freedom of expression, freedom of thought, right to life, right to education, right to work, right to protection from violence, right to health. me and many others. Fifth, everyone has the right to protection of their rights and freedom from any discrimination on any grounds. Sixth, human rights are inalienable and cannot be prohibited or taken away by any person or state. And finally, the state must ensure the realization and protection of these rights for every person, regardless of their characteristics.

References:

1. Donnelli Dzh. (2003). Kulturnyi reliatyvizm ta universalni prava liudyny. Prava liudyny: kontseptsii, pidkhody, realizatsiia / per. z anhl.; pid red. B. Zizik. Kyiv: Ai Bi. S. 129–144.
2. Filosofiia prav liudyny. (2012) / za red. Sh. Gosepata ta G. Lomanna; per. z nim. O. Yudina ta L. Doronichevoi. 2-he vyd. Kyiv: Nika-Tsentr. 320 s.
3. Brems E. (2003). Vorohy chy soiuznyky? Feminizm ta kulturnyi reliatyvizm yak dysydentski holosy v rozmovi pro prava liudyny. Prava liudyny: kontseptsii, pidkhody, realizatsiia / per. z anhl. pid red. B. Zizik. Kyiv: Ai Bi. S. 145–173.
4. Barykhyn A. B. Bolshaia yurydycheskaia эntsyklopedyia. M: Knyzhnыi myr. 960 s.
5. The New Encyclopedia: Micropaedia (1988). Vol. 6. URL: https://en.wikipedia.org/wiki/ Encyclop%C3%A6dia_Britannica.
6. Filosofskyi entsyklopedychnyi slovnyk: эntsyklopedyia / NAN Ukrainy, In-t filosofii im. H.S. Skovorody; holov. red. V.I. Shynkaruk. Kyiv: Abrys, 2002. 742 s.
7. Yurydychna entsyklopediia: V 6 t. / Redkol.: Yu.S. Shemshuchenko (vidp. red.) ta in. K.: «Ukr. entsykl.», 2003. T. 5: P – S. 736 s.
8. Vasylieva M.S. Prava liudyny. Velyka ukrainska yurydychna entsyklopediia: u 20 t. T. 2: Filosofiia prava. Kh.: Pravo, 2017. S. 360-361.
9. Rabinovych P.M. Osnovopolozhni prava liudyny: do zahalnoteoretychnoi interpretatsii// Filosofiia prava i zahalna teoriia prava. 2015. № 1-2. S. 327–340.
10. Virdzhynska deklaratsiia. URL: http://osvita.khpg.org/index.php?do=print&id=946555693.
11. Bill pro prava Konstytutsii SShA. URL: http://uk.wikipedia.org/wiki/Popravky_do_Konstytutsii_SShA.
12. Nalyvaiko L.R., Stepanenko K.V., Shcherbyna Ye.M. N 23 Mizhnarodnyi zakhyst prav liudyny: navch. posibnyk / L.R. Nalyvaiko, K.V. Stepanenko, Ye.M. Shcherbyna. Dnipro: DDUVS, 2020. 260 s.
13. Priorytetom dlia bud-yakoi derzhavy maie buty dotrymannia prav i svobod liudyny URL: https://rv.tax.gov.ua/baner/vseukrainskiy-tijden-prava/398078.html.

FREEDOM OF EXPRESSION ON THE INTERNET

Popovych Tereziia[1]

Annotation. The aim of the work is to analyze the features of the implementation of the right to freedom of expression on the Internet.

The methodological basis of the study is a system of methods, scientific approaches, techniques and principles that were aimed at achieving the study objectives. Universal, general scientific and special legal methods were used. Thus, for example, the methods of analysis, synthesis, induction and deduction allowed to generalize the acquired knowledge, which became the basis of scientific intelligence.

Results. Freedom of expression on the Internet is a complement and expansion of the possibilities for exercising such freedom in objective reality, outside the virtual sphere. Internet users have the right to use freedom of expression, including the right to receive and exchange information. The Internet has undoubtedly created unprecedented opportunities for the exchange of information. At the same time, this access to knowledge inevitably involves serious risks and threats, such as threats of violence and hate speech, as well as coordinated campaigns to spread disinformation, trolls and bots.

Conclusions. Taking into account that the right to freedom of expression online is not absolute, there may be legislatively established restrictions on its implementation (censorship, Internet filtering, blocking of Internet resources, etc.) for various reasons – national security, territorial integrity or public safety, ideological or religious beliefs, for the prevention of disorder or crime, for the protection of health or morals, human rights protection, etc. At the same time, the main criterion for the necessity of a particular restriction in a democratic society is its proportionality. That is, the restriction should be always necessary to effectively protect legitimate goals.

Key words: freedom of expression, views, information, obligations, restrictions.

Introduction. Today, it is quite acceptable to talk about a separate cohort of human rights, which we will call “digital” (and which include freedom of expression on the Internet), which are related to the implementation of various opportunities on the Internet and are based on the progressive development of information and communication technologies. Perhaps it is not even necessary

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to talk about the Internet impact on both individuals and collective formations. Every day, we have the opportunity to experience this influence on ourselves, being involved in the sphere of virtual reality, which is a special part of reality that is built on the distribution, exchange, storage of information and provides for a global level of communication between people. At the same time, the main danger of virtual reality is that, while it initially complemented and expanded the possibilities of objective reality, it is now increasingly replacing and displacing the latter, as evidenced by the rapid development of the global computer network and other digital technologies.

Analysis of scientific publications. Despite the relative novelty of digital human rights phenomenon (including freedom of expression on the Internet), today this issue is increasingly attracting the attention of researchers, including growth of modern information and communication technologies. Among domestic and foreign scholars, it is worth noting such as: V. Buga, O. Vasylchenko, L. Vakariuk, V. Volodovska, M. Dvorovyi, O. Zhukovska, A. Kardash, O. Kalitenko, I. Mukomela, V. Politansky, Y. Razmetaieva, P. Sukhorolsky, O. Turuta, O.L. Yarmol, D. Banisar, J. Berman, L. Bygrave, S. Davies, F. Fabbrini, A. Guadamuz, W. Hartzog, K. Karppinen, M. Klang, R. Lemos, I. Lloyd, A. Lukács, K. Mathiesen, V. Mayer-Schönberger, D. Mulligan, A. Murray, H. Nissenbaum, A. Rengel, J. Rosen, A. Sebastion, D. Solove, C.A. Souza, G.W. Streich, F. Stutzman, I. Szekely, C. Terwangne, M. Viola, R.H. Weber, F. Werro and a number of others [1, p. 135-136].

The aim of the work. The aim of our study is to analyze the peculiarities of expressing the right to freedom on the Internet.

Review and discussion. Freedom of expression is one of the fundamental human rights enshrined in basic and regional international documents . If we summarize the international legal approach to the formulation of this freedom, it provides for the right to freely express views, the right to seek, receive and impart information and ideas in any way, without interference from the state and regardless of state borders [2; 3; 4; 5].It should be noted here that the international legal approach to understanding freedom of expression covers both the direct free expression of views and the free handling of information – its search, obtaining, dissemination, etc. According to the European Court of Human Rights principles, freedom of expression enables the public to obtain information and create new ideas [6, p. 206].

Turning directly to the freedom of expression problematics on the Internet (the content of which should correspond to the same right in the offline environment), we note that its implementation covers several important principles: no one should be forced to act or speak contrary to their beliefs; the right to seek and receive information means not only that the state should not impede when a person seeks information online, but also in some cases should facilitate access to such information, for example, by responding to information requests from citizens. This right includes not only the dissemination of neutral information, but also the dissemination of statements that may offend, shock or disturb. But only if they do not violate other rights and freedoms and are not illegal [7].

Thus, freedom of expression on the Internet is a complement and expansion of the possibilities for exercising such freedom in objective reality, outside the virtual sphere. Internet users have the right to use freedom of expression, including the right to receive and exchange information, through services, applications and devices in full compliance with Article 10 of the European Convention on Human Rights. The right of Internet users to receive and exchange information should not be restricted by blocking, slowing down, impairing or discriminating against Internet traffic or be dependent on specific content, services, applications and devices, or traffic related to services provided under exclusive agreements or tariffs [8].The Internet has undoubtedly created unprecedented opportunities for the exchange of information. At the same time, this access to knowledge inevitably involves serious risks and threats, such as threats of violence and hate speech, as well as coordinated campaigns to spread disinformation, trolls and bots. All of this generally makes access to truly valuable information more difficult and undermines trust in the media. On the other hand, attempts by states to counter these threats often create even more serious risks to freedom of expression online. This includes, in particular, blocking and filtering online content [7].

P.M. Sukhorolsky systematizes the positive state obligations to ensure freedom of expression as follows: 1) freedom of expression protection and defense in horizontal relations (from interference by private individuals); 2) creation and maintenance of proper information infrastructure and opportunities to enjoy the benefits associated with freedom of expression; 3) ensuring the pluralism of the information space; 4) providing access to certain types of information available to the State [9, p. 149]. This approach of the researcher is quite fair from the point of view of the international legal law interpretation under study, since the creation of proper infrastructure, formation of information space pluralism, and access to information are all direct mechanisms for ensuring and realizing freedom of expression both offline and online.

Continuing the study in the context of analyzing the state's obligations with regard to freedom of expression, including on the Internet, we can talk about: 1) negative obligations of the state connected with non-interference in person's freedom of expressing, and 2) positive obligations of the state covering the protection and defense of freedom of expression.

In the case of Delfi AS v. Estonia, the European Court of Human Rights was working on ensuring freedom of expression on the Internet. Thus, according to the case, an article concerning the Estonian shipping company activities was posted on the Delfi web portal. Under this article, a number of offensive comments were subsequently made against the company's shareholder. At the request of the shareholder's representatives, the comments on the Delfi web portal were removed, but the claim for non-pecuniary damage was not satisfied. Delfi complained to the Court that holding it liable for the readers comments on the Internet portal violated its right to freedom of expression guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Among the conclusions reached by the Court are the following:

firstly, the Internet, on the one hand, provides important advantages for the implementation of the right to freedom of expression, but, on the other hand, legal liability for unlawful statements should remain an effective remedy in case of violation of personal rights;

secondly, Internet portals like Delfi, which provide a platform for users to comment for commercial purposes, are subject to duties and responsibilities related to the respect of individual rights; in addition, Delfi should have foreseen the possible risks of human rights violations through comments on its Internet portal;

thirdly, Delfi's liability could have been significantly mitigated if the offensive comments addressed to the shipping company's shareholder had been removed immediately after their publication;

fourthly, the violation of Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms was not violated, and, in imposing liability on the applicant company, the national courts proceeded on appropriate and sufficient grounds, taking into account the margin of appreciation granted to the respondent state, and therefore the sanction imposed did not constitute a disproportionate restriction of Delfi's right to freedom of expression [10].

Based on these conclusions of the Court, we should talk about the following obligations while performing freedom of expression: on the one hand, the state must ensure the protection of this freedom, in particular, in the sense of bringing those guilty of its violation to legal responsibility, on the other hand, legal liability for unlawful statements should remain an effective remedy in case of personal rights violation; the obligations of Internet portals or services to take measures to prevent its violation, while they are also subject to duties and responsibilities related to the observance of personal rights; the state's obligations to ensure that restrictions on the right to freedom of expression online are proportionate.

Therefore, taking into account that the right to freedom of expression online is not absolute, there may be legislatively established restrictions on its implementation for various reasons – national security, human rights protection, ideological or religious beliefs, etc. According to the European Convention on Human Rights, the implementation of this right may be subject to such limitations as necessary in a democratic society and are justified by the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the the disclosure of confidential information prevention or for the maintenance of the court authority and impartiality [4]. At the same time, the main criterion for the necessity of a particular restriction in a democratic society is its proportionality [11]. That is, the restriction should be always necessary to effectively protect legitimate goals. In other words, it is necessary to find a balance between the goal and the right that is restricted: blocking the entire web resource or removing only illegal information. The state that restricts a right must provide sufficient and adequate grounds for such interference, i.e., motivate its decision [12, p. 17].

In its turn, the 2011 Joint Declaration on Freedom of Expression and the Internet by representatives of the UN, OSCE, Organization of American States

and the African Commission on Human and Peoples' Rights, emphasizing the fundamental importance of freedom of expression, states that the latter applies to the Internet like other means of communication. Restrictions on freedom of expression on the Internet are possible only if they comply with international norms, legal requirements and are necessary to protect interests recognized by international law. The Declaration defines the right of blocking of websites, IP addresses, network protocols or certain types of Internet resources (social networks) as an extreme measure, provided that they comply with international standards. However, Internet content filtering systems introduced by the state or a service provider, which are beyond the control of end users, are a form of censorship, a restriction on freedom of expression, and cannot be justified [13].

Significant restrictions on freedom of speech are observed in Muslim countries. The main ways of such restrictions are: criminal liability for statements that contradict religious law, as well as Internet filtering. For example, the goals of Internet filtering include strengthening national security (Morocco), maintaining political stability (Libya, Jordan), preserving traditional values (Sudan, Oman), or all of the above (Iran, Pakistan, Syria, Tunisia, Saudi Arabia, UAE). In Oman, according to the 1984 Press Law, the state can censor materials that it considers politically, culturally, or sexually offensive. Since 2002, Bahrain has been censoring Internet publications. The laws of Saudi Arabia and Tunisia provide a list of information that can be blocked. Interestingly, in Tunisia, not only open sources are subject to online control, but also users' e-mails and messages. After the events of the Arab Spring, Wikipedia, Hotmail, Amazon, and the social networks Facebook and Twitter were blocked in a number of countries (Egypt, Syria, Bahrain, etc.). It is also worth noting that Iran has tight control over Internet users. Among other things, the legislation provides for the possibility of criminal prosecution for violations on the Internet, including the possibility of the death penalty. For example, in 2014, Iranian blogger S. Arabi was publicly sentenced to death for insulting the Prophet Mohammad [14, p. 84–86].

Conclusions. Thus, as in the situation with the restrictions to access the Internet, which are enshrined in national legislation, similar restrictions on the grounds of national security, human rights, religious, ideological, etc. attitudes are observed in the sense of freedom of expression – censorship, Internet filtering, blocking of Internet resources, etc. If one tries to understand the need for conditioned restrictions on the Internet by the state, taking into account the different nature of the grounds, one should proceed from several points: first, each internationally recognized state has sovereignty over its territory, and therefore can independently establish rules and regulations, including in the sense of freedom of expression restrictions, which, however, should not contradict international rules and regulations; second, the establishment of legal liability for expressing positions or beliefs on the Internet (for the relevant reasons) is permissible, but the principle of fair and proportionate punishment should be observed; for example, sentencing a person to death or even another criminal penalty is beyond the limits of such proportionality; it is possible, in our opinion, to bring a person to civil or administrative liability, for example, for insult or defamation expressed online, if such facts are properly established

and proved; thirdly, restrictions on freedom of expression, if clearly provided for by national law, are possible for reasons of public morality (e.g., prohibition of pornographic materials for juveniles, etc.), as well as prevention of hate speech, hostility or aggression on the Internet.

References:

1. Popovych T.P. (2021) Osoblyvosti pravovoi pryrody tsyfrovykh prav liudyny [Peculiarities of the legal nature of digital human rights]. Chasopys Kyivskoho universytetu prava. № 1, 135–140 [in Ukrainian].
2. Zahalna deklaratsiia prav liudyny [Universal Declaration of Human Rights]. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text [in Ukrainian].
3. Mizhnarodnyi pakt pro hromadianski ta politychni prava [International Covenant on Civil and Political Rights]. URL: https://zakon.rada.gov.ua/laws/show/995_043#Text [in Ukrainian].
4. Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod [Convention on the Protection of Human Rights and Fundamental Freedoms]. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text [in Ukrainian].
5. Khartiia Osnovnykh prav Yevropeiskoho Soiuzu [Charter of Fundamental Rights of the European Union]. URL: https://zakon.rada.gov.ua/laws/show/994_524#Text [in Ukrainian].
6. Savchyn M. (2020) Porivnialne konstytutsiine pravo [Comparative constitutional law]. Kyiv: VAITE. 462 [in Ukrainian].
7. Volodovska V. Zaborony ta svobody v interneti: yak vyhliadatyme Deklaratsiia tsyfrovykh prav liudyny [Prohibitions and freedoms on the Internet: what the Declaration of Digital Human Rights will look like]. URL: https://zmina.info/articles/zaboroni_ta_svobodi_v_interneti_jiak_vigljiadatime_deklaracijia_cifrovih_prav_ljiudini/ [in Ukrainian].
8. Rekomendatsiia CM / Rec (2016) 1 Komitetu ministriv Rady Yevropy derzhavam-chlenam iz zakhystu y zaokhochennia prava na svobodu vyrazhennia pohliadiv ta prava na pryvatne zhyttia stosovno merezhevoho neitralitetu [Recommendation of the Committee of Ministers of the Council of Europe to member states on the protection and promotion of the right to freedom of expression and the right to privacy in relation to net neutrality]. URL: https://www.nrada.gov.ua/wp-content/uploads/2017/03/CoE_Recomendation_20016_1-UKR.pdf [in Ukrainian].
9. Sukhorolskyi P.M. (2015) Mizhnarodni standarty zabezpechennia svobody vyrazhennia pohliadiv v umovakh utverdzhennia kontseptsii pozytyvnykh oboviazkiv derzhavy [International standards for ensuring freedom of expression in conditions of approval of the concept of positive duties of the state]. Ukrainskyi chasopys mizhnarodnoho prava. № 1, 146–155 [in Ukrainian].
10. Delfi AS v. Estonia (2015). Application 64569/09, 16.06.2015. URL: https://hudoc.echr.coe.int/eng#{«itemid»:[«001-163044»]} [in English].
11. Zhukovska O. (2002) Pravo na svobodu slova ta informatsii v ukrainskomu zakonodavstvi ta sudovii praktytsi (deiaki aspekty problemy) [The right

to freedom of speech and information in Ukrainian legislation and judicial practice (some aspects of the problem)]. 7-a sesiia teoretyko-praktychnoho treninhu dlia advokativ: «Zastosuvannia Yevropeiskoi konventsii pro zakhyst prav liudyny ta osnovnykh svobod: stattia 10 – «Pravo na svobodu vyiavlennia pohliadiv», shcho provodytsia sumisno Spilkoiu advokativ Ukrainy ta Tsentrom INTERAITS» (Velyka Brytaniia, 04.12.2002). URL: https://khpg.org/1039004676 [in Ukrainian].

12. Volodovska V., Dvorovyi M. (2019) Prava liudyny onlain: Poriadok dennyi dlia Ukrainy [Human rights online: Agenda for Ukraine]. K.: HO «Laboratoriia tsyfrovoi bezpeky». 56 [in Ukrainian].
13. Sovmestnaya deklaratsiya o svobode virazheniya mnenii i Internete [Joint Declaration on Freedom of Expression and the Internet]. URL: https://www.osce.org/files/f/documents/6/d/78310.pdf [in Russian].
14. Salikov M.S., Nesmeyanova S.E., Mochalov A.N., Kolobaeva N.E., Ivanova K.A. (2019) Prava cheloveka v seti Internet [Human rights on the Internet]: Kollektivnaya monografiya. Yekaterinburg: Izdatelstvo UMTs UPI. 148 [in Russian].

DIE ENTSTEHUNG DER UKRAINISCHEN STAATLICHKEIT IN DEN JAHREN 1917-1918 IM KONTEXT DER BEZIEHUNGEN ZU RUSSLAND

Syniavska Olena[1]

Abstrakt. Die ukrainisch-russischen Beziehungen spielten eine wichtige Rolle für die Aussichten und die Zukunft der ukrainischen Nationalrevolution 1917-1921, und in der Endphase des Ersten Weltkriegs wurden sie von zwei wichtigen Komponenten bestimmt: den Beziehungen der ukrainischen Befreiungsbewegung zur Provisorischen Regierung und dem Krieg des bolschewistischen Russlands gegen die Ukrainische Volksrepublik. Ziel des Artikels ist es, die wichtigsten Aspekte der Interaktion zwischen der ukrainischen und der russischen Regierung im Zusammenhang mit der Legitimierung der Macht der Zentralrada während des nationalen Befreiungskampfes von 1917-1918 zu ermitteln. Es wird festgestellt, dass der Ausbruch der Februarrevolution in Russland den ukrainischen Führern Hoffnung gab, im postimperialen Raum einen Kompromiss für eine gleichberechtigte Koexistenz aller slawischen Völker zu finden. Leider scheiterten die Versuche, mit der Provisorischen Regierung einen Kompromiss über die Definition des staatlichen Status der Ukraine zu finden. Auch die Beziehungen zur bolschewistischen Regierung waren angespannt. Nach dem Oktoberputsch machten die russischen Bolschewiki deutlich, dass sie die ukrainische Staatlichkeit ablehnten. Sie setzten eine Alternativregierung in Charkiw ein und begannen einen Krieg gegen die Ukraine, der nur mit Hilfe der Mittelmächte gestoppt werden konnte.

Schlüsselbegriffe: Ukrainische Revolution, Zentrale Rada, Provisorische Regierung, Bolschewiki, Russisch-Ukrainischer Krieg, 1917-1918.

Einführung.

Heute hat die offene bewaffnete Aggression der Russischen Föderation gegen die Ukraine eine Reihe politischer, wirtschaftlicher und sozialer Probleme geschaffen, die über die Beziehungen zwischen den beiden Staaten hinausgehen. Der Krieg Russlands gegen die Ukraine begann 2014 und nahm mit dem Beginn der vollständigen Invasion der Ukraine durch russische Truppen

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im Februar 2022 globale Ausmaße an. Warum wurde die Ukraine zum Ziel des Einmarsches der russischen Behörden? Warum wurde es notwendig, ukrainische Gebiete zu «entmilitarisieren» und die Bevölkerung zu «entnazifizieren»? Dies waren die Begriffe, die Wladimir Putin in seiner Rede über den «Beginn der Militäroperation im Donbass» verwendete, und in der Tat, die Kriegserklärung, die er am frühen Morgen des 24. Februar 2022 verkündete. Heute werden diese Fragen von Politikern, internationalen Experten, Historikern, Journalisten und einfach besorgten Menschen aktiv diskutiert.

Aus historischer Sicht ist die Antwort klar: Russland versucht spätestens seit der Mitte des 17. Jahrhunderts, als der ukrainische Hetman Bohdan Chmelnyzkyj im Kampf gegen Polen-Litauen den Moskauer Staat um die Gewährung militärischen Schutzes ersuchte, die Ukraine unter Kontrolle zu bringen und zu halten. Die Umdeutung des Inhalts des von Chmelnyzkyj abgeschlossenen Vertrages über die Beziehungen zwischen dem Hetmanat und Moskau sowie das Bestreben, das politische Handeln der Nachfolger Chmelnyzkyjs zu kontrollieren, die allmähliche Aufhebung der Autonomie des Hetmanats im 18. Jahrhundert, das Verbot der ukrainischen Sprache im 19. Jahrhundert, der Angriff auf die ukrainische Kultur im frühen 20. Jahrhundert – dies sind nur die bedeutendsten „Leistungen" der verschiedenen russischen Regierungen in Bezug auf die Ukraine. [1] Aber es stellte sich heraus, dass es nicht so einfach war, den Selbstbehauptungswillen der Ukrainer zu brechen. Denn am Ende wurden die ukrainische Nation und der ukrainische Staat in diesem Kampf geboren. Veränderungen gab es auch im Russländischen Reich, das als erstes die Bewährungsprobe eines unter den Parolen der Volksfreiheit geführten Weltkrieges nicht bestand. Den „14 Punkten" des US-Präsidenten Woodrow Wilson zufolge sollte eines der zentralen Prinzipien des Friedens nach dem Ende des Ersten Weltkrieges die Selbstbestimmung der Völker sein, während im Russländischen Reich seit Beginn des Krieges den Angehörigen der verschiedenen Ethnien nationale Manifestationen strikt verboten waren.

Die Regierung und das politische System Russlands änderten sich, aber nicht die Haltung gegenüber den ukrainischen Ländern, da Russland diese Gebiete weiterhin als sein Erbe betrachtete. So waren die Beziehungen zwischen den ukrainischen und russischen Behörden im Jahr 1917 kompliziert und angespannt.

Wie alles begann.

Die Februarrevolution in Russland und die Abdankung des russischen Kaisers Nikolaus II. wurden zum Anstoß für den Beginn der ukrainischen Revolution. Am 17. März 1917 wurde in Kyjiv die Gründung der ukrainischen Zentralrada verkündet, einer öffentlichen Vertretungskörperschaft, die sich um die Zukunft der ukrainischen Länder kümmern sollte. Zum Vorsitzenden der Zentralrada wurde der damals in Moskau im Exil lebende Mychajlo Hruševs'kyj gewählt. Fedir Kryzhanivskyj, Dmytro Doroshenko und Dmytro Antonovych wurden seine Stellvertreter. Die Zentralrada informierte die Provisorische Regierung in Petrograd per Telegramm über ihre Gründung und veröffentlichte einige Tage später ihr erstes offizielles Dokument, den Aufruf „An das ukrainische Volk" [2, p. 38-39], in dem sie für die Ukraine territoriale Autonomie – verbunden mit der Anerkennung der ukrainischen Sprache als Amtssprache und der Garantie

der Rechte der nationalen Minderheiten, und zwar sowohl der Russen als auch der anderen Ethnien, – forderte. Angesichts der Tatsache, dass in den politisch bewussten Kreisen der ukrainischen Gesellschaft autonomistisch-föderalistische Konzepte bezüglich der künftigen Struktur der im Entstehen begriffenen Russländischen Republik dominierten, war die Forderung nach der Gewährung einer national-territorialen Autonomie für die Ukraine, in deren Rahmen die national-kulturellen Bedürfnisse nicht nur der Ukrainer, sondern auch der nationalen Minderheiten der Region gewährleistet werden sollten, verständlich und von der Mehrheitsbevölkerung getragen. Einige Dutzend Jahre später wird einer der Minister der russischen Provisorischen Regierung, der Georgier Iraklij Zereteli, in seinen Memoiren schreiben, dass das Schicksal der Februarrevolution in Russland von der nationalen Frage entschieden wurde [3, p. 69].

Es ist erwähnenswert, dass die Ukrainer hinsichtlich ihrer Ziele – Unterstützung für die Etablierung einer erneuerten politischen Ordnung in Russland oder aber Engagement für den Autonomiestatus des eigenen Territoriums – zwiegespalten waren. Claus Remer wies beispielsweise darauf hin, dass in der Anfangszeit der Revolution für die Mehrheit der Ukrainer, Finnen und anderen Völker die Frage der künftigen Beziehungen zu Russland von der Beendigung der Russifizierungspolitik, von der Erlangung nationaler Selbstbestimmung und eigener Entwicklungsmöglichkeiten bestimmt wurde [4, p. 217]. Bereits in den Monaten März/April 1917 gründete die Mehrheit der in Russland lebenden Völker ihre nationalen Vertretungskörperschaften, welche dann die ersten politischen Willensbekundungen verabschiedeten. Die meisten von ihnen enthielten Forderungen nach Umwandlung Russlands in einen demokratischen föderalen Staat, nach Schaffung neuer territorialer Einheiten, welche die vom Zarismus unterdrückten Völker vereinen und diesen den Aufbau einer eigenen Kommunalverwaltung ermöglichen würde. Entsprechende Forderungen wurden sowohl vom am 25. März 1917 in Minsk einberufenen belarussischen Nationalkongress als auch von der georgischen Nationaldemokratischen Partei, der Estnischen Radikaldemokratischen Partei, dem Lettischen Bauernbund und weiteren Parteien formuliert.

Von den ersten Tagen ihrer Existenz an billigte die ukrainische Bürgerschaft offen die Aktivitäten der Zentralrada. In allen größeren Städten – Katerynoslav, Odesa, Poltava, Charkiv, Černihiv – fanden Demonstrationen und Versammlungen verschiedener Organisationen statt, die ihre Unterstützung für die neue Regierung zum Ausdruck brachten, und es wurden Koordinierungszentren gebildet. Die größte Demonstration fand auf dem Sofijs'ka-Platz in Kyjiv statt, die sofort die führende Rolle in der ukrainischen Befreiungsbewegung übernahm. Hier fand das ukrainische viče statt, das zum Höhepunkt dieser nationalen Bewegung wurde. Im April 1917 fand in Kyjiv der Allukrainische Nationalkongress statt, an dem mehr als 1.000 Delegierte aus allen ukrainischen Provinzen des ehemaligen Russländischen Reiches sowie aus Galizien, aus dem Kuban'-Gebiet, aus Moskau und Petrograd teilnahmen. Kyjiver Zeitungen nannten diesen Kongress eine ukrainische patriotische Wallfahrt, weil es in der jüngeren Geschichte der ukrainischen Länder die erste politische Versammlung dieser Größenordnung war. Die Arbeit des Kongresses konzentrierte sich letztlich auf zwei Themen:

die Diskussion über den möglichen künftigen staatlichen und politischen Status der Ukraine und die Neuwahl der Mitglieder der Zentralrada. So wurden vom Kongress schließlich 118 Personen in die Zentralrada gewählt – darunter Mychajlo Hruševs'kyj als Vorsitzender sowie Volodymyr Vynnychenko und Serhij Yefremov als seine Stellvertreter.

Beziehungen zur Provisorischen Regierung.

Das Hauptthema des Allukrainischen Nationalkongresses war die Frage des Status der ukrainischen Territorien. Während der Demonstrationen und Versammlungen war die dominierende Forderung die nach einer freien Ukraine, aber unter den ukrainischen Politikern gab es Unterschiede bezüglich der Interpretation dieser Forderung. Das in Kyjiv gebildete Provisorische Ukrainische Revolutionskomitee, das hauptsächlich aus jungen Menschen bestand, war das erste, das dazu aufrief, nicht auf die Einberufung der Allrussländischen Konstituierenden Versammlung durch die Provisorische Regierung Russlands zu warten, sondern entschlossene Maßnahmen zu ergreifen, um für die Ukraine den politischen Status eines autonomen Staates zu erlangen. Diese Sichtweise war auch die Position von Mychajlo Hruševs'kyj, der in einer Reihe von Veröffentlichungen („Vil'na Ukrajina. Stati s octannich dniv", „Jakoj mi chočemo avtonomiji i federaciji", „Čto taki ukrajinci i čogo voni chočut'", „Svidki pišlo ukrajinstvo i do čogo vono jde") eine national-territoriale Autonomie für die zukünftige, sämtliche ethnisch ukrainischen Gebiete umfassende Ukraine befürwortete. Diese autonome Ukraine sollte laut Hruševs'kyj alle staatlichen Attribute haben, während Russland nicht nur eine demokratische Republik werden sollte, sondern darüber hinaus unbedingt auch ein Bundesstaat.[5] Es stellte sich heraus, dass diese Interpretation der Forderung nach einer freien Ukraine die Mehrheit der ukrainischen politischen Kräfte vereinte. Gleichzeitig bedeutete der Wunsch nach national-territorialer Autonomie keineswegs, dass dauerhaft auf die Souveränität der Ukraine verzichtet werden sollte. Der Wunsch nach national-territorialer Autonomie wurde vielmehr als erster Schritt auf dem Weg zur Souveränität der Ukraine verstanden. In dieser Hinsicht war der Eintritt ukrainischer Unabhängiger unter der Leitung von Mykola Michnovs'kyj in die ukrainische Zentralrada bezeichnend, obwohl sie dort nur eine untergeordnete Rolle spielten.

Russische Regierungskreise nahmen in der nationalen Frage eine ganz andere Position ein. Die Provisorische Regierung, gefolgt von den russischen politischen Parteien der Kadetten, Sozialrevolutionäre und Menschewiki, ignorierte die Aktivitäten ukrainischer Organisationen. Die nationale Frage wurde zu einem schwer zu überwindenden Hindernis für die Protagonisten der Russischen Revolution. Weshalb die Frage der Selbstbestimmung der Ukraine nach Überzeugung der russischen Parteien auf unbestimmte Zeit verschoben werden musste, wurde von deren Vertretern mit folgenden Argumente begründet: a) der Kriegszustand, in dem sich das Russländische Reich noch befand; b) die Unverzichtbarkeit einer Entscheidung der Allrussländischen Konstituierenden Versammlung für die Bestimmung des zukünftigen rechtlichen Status der Ukraine; c) der aktuelle Vorrang der Klassenfrage gegenüber der nationalen Frage. Diese Argumente sollten aber nur verschleiern, dass auf Seiten der

russischen Parteien keinerlei Bereitschaft bestand, die Ukraine aus der Sphäre der russischen Kontrolle zu entlassen und die Ukrainer zu Herren ihres eigenen Landes werden zu lassen. Allerdings wagte keine einzige politische Partei oder Regierungsinstitution Russlands, dies offen zuzugeben.

Die Provisorische Regierung hatte es nicht eilig, das russische Staatssystem zu reformieren, aber ihre Maßnahmen zur Wiederherstellung der finnischen Verfassung und ihr Versprechen, das Recht der Polen auf die Gründung eines eigenen Staates zu unterstützen, weckten bei den Mitgliedern der Zentralrada und anderen ukrainischen Politikern die Hoffnung auf eine mögliche Lösung. Im Mai 1917 entsandte die Generalversammlung der Zentralrada eine Delegation an die Provisorische Regierung in Petrograd, um eine gemeinsame Erklärung zur Anerkennung der nationalen und territorialen Autonomie des ukrainischen Volkes auszuarbeiten. Die Provisorische Regierung legte die gemeinsame Erklärung der Außerordentlichen Gesetzgebenden Versammlung vor, die beschloss, den ukrainischen Gebieten die Autonomie zu verweigern.

Als Reaktion darauf kündigte die Zentralrada an, die national-territoriale Autonomie des ukrainischen Volkes einseitig zu erklären und zu implementieren. Dementsprechend heißt es im 1. Universal (so hießen die Gesetzesdokumente der Zentralrada) vom 23. Juni 1917 feierlich: „Lasst die Ukraine frei sein! Lasst das ukrainische Volk das Recht haben, sein eigenes Leben auf seinem Gebiet zu führen, ohne sich ganz von Russland zu trennen, ohne mit dem russischen Staat zu brechen!“ [2, p. 102].

Der Widerstand der Provisorischen Regierung gegen die Umsetzung des autonomistischen Kurses der Zentralrada trug dazu bei, in der ukrainischen Gesellschaft den Wunsch zur Bildung eines eigenen Staates zu verstärken. Der Aufruf zur Schaffung einer autonomen Ukraine wurde auf dem II. Allukrainischen Militärkongress verkündet und von seinen Delegierten uneingeschränkt unterstützt. Nach Einschätzung heutiger Historiker stellte der 1. Universal einen Schlüsselmoment der ukrainischen Revolution dar, weil die Diskussion über den 1. Universal zu einer nationalen Angelegenheit wurde und sich in eine Art Volksabstimmung der Ukrainer verwandelte. Die ukrainische Zentralrada hatte nie zu vor eine so breite und allumfassende Unterstützung erfahren wie in diesen Tagen.

Kompromiss oder Legitimierung der Autonomie?

Im Sommer 1917 musste die Provisorische Regierung zur Kenntnis nehmen, dass es in der Ukraine keine politische Kraft gab, die eine ernsthafte Machtalternative zur Zentralrada hätte darstellen können. Auf einer Sitzung der Provisorischen Regierung im Juni 1917 wurde die Lage in der Ukraine besprochen. Anschließend machte sich eine Delegation auf den Weg von Petrograd nach Kyjiv, um mit ukrainischen Politikern einen Kompromiss auszuhandeln. Der Delegation gehörten Aleksandr Kerenskij und Iraklij Zereteli an, die zuvor in Erklärungen die Möglichkeit in Aussicht gestellt hatten, den Völkern des ehemaligen Russländischen Reiches nationale Autonomie zu gewähren. Das Ergebnis der Verhandlungen war die Annahme des 2. Universals: Die Provisorische Regierung erkannte die ukrainische Zentralrada tatsächlich als regionales Organ der Staatsmacht an, aber die Entscheidung der mit der praktischen Ausgestaltung

der national-territorialen Autonomie des ukrainischen Volkes verbundenen Fragen wurde der erst noch zu wählenden Allrussländischen Konstituierenden Versammlung zugeschoben, und die Zentralrada wurde mit Vertretern nationaler Minderheiten aufgefüllt.

Sowohl die ukrainische als auch die russische Gesellschaft begegneten diesem 2. Universal überaus zwiespältig. Zu dieser Zeit begann in Russland die Regierungskrise. Ende Juni 1917 befahl der damalige Kriegsminister Aleksandr Kerenskij in der Absicht, die Unterstützung für den Krieg durch einen militärischen Erfolg stärken, eine Offensive gegen die Armeen der Mittelmächte. Die Offensive dauerte etwas mehr als zwei Wochen, und die russischen Soldaten konnten zunächst Erfolge gegen die österreichisch-ungarischen Truppen erzielen, dann aber begannen die deutschen Truppen eine Gegenoffensive, welche der russischen Armee letztlich einen schweren Schlag versetzte. Die Nachricht vom völligen Scheitern der Offensive wurde in Petrograd mit großer Unzufriedenheit aufgenommen, hatte sie doch das Gegenteil dessen bewirkt, was die Regierung beabsichtigt hatte: Anstatt Unterstützung für die Provisorische Regierung zu generieren, gingen die Rebellionen an der Front weiter, und die Unzufriedenheit mit der Regierung und ihrer Politik wuchs. Auch hinsichtlich der Zusammensetzung der Regierung selbst gab es keine Einigkeit: Unmittelbar nach den Vereinbarungen mit der Zentralrada verließen mehrere Minister die Regierung als Zeichen des Protests gegen deren Zugeständnisse an die „ukrainischen Separatisten". In der Folge wurde durch die Provisorische Regierung unter der Führung von Aleksandr Kerenskij das Selbstbestimmungsrecht der Nationen im Russländischen Reich ausdrücklich bestätigt. Im Einklang damit wurden sowohl die Entscheidung der polnischen Regierung über die Wiederherstellung der Unabhängigkeit Polens als auch die Entscheidung der finnischen Regierung über die Autonomie Finnlands anerkannt. Eiine entsprechende Entscheidung in Bezug auf die Ukraine wurde jedoch nicht getroffen. Laut Kerenskij sollte die Ukraine auf föderaler Basis ein Teil Russlands werden.

In Bezug auf die Zielsetzung der Ukrainer gibt es in der Historiographie nennenswerte Meinungsverschiedenheiten. Lange Zeit war die Einschätzung vorherrschend, der 2. Universal sei eine Art Kompromiss zwischen der Zentralrada und der Provisorischen Regierung gewesen, da beide eine Verständigung suchten und nicht kämpfen wollten. Die jüngsten historischen Studien gehen hingegen davon aus, dass der 2. Universal eher ein Sieg der Zentralrada war, weil dieser zur Grundlage und zum Ausgangspunkt aller folgenden staatsbildenden Bestrebungen und Maßnahmen der ukrainischen Behörden wurde und weil die Provisorische Regierung die Zurückhaltung, die sie bis dahin gegenüber einer Lösung der ukrainischen Frage gezeigt hatte, nun faktisch aufgegeben hatte [6, p. 33].

So verwandelte sich im Sommer 1917 der revolutionäre Kampf der Ukrainer in politisches Handeln, das sich hauptsächlich auf die Klärung der Frage nach dem zukünftigen Status der ukrainischen Länder konzentrierte. Die Mehrheit der ukrainischen Politiker unterstützte die Idee der Föderalisierung Russlands und lehnte die Unabhängigkeit ab, da sie die Ukraine als Teil einer solchen Föderation betrachteten. Infolgedessen verschärfte sich die Konfrontation zwischen den

Autonomisten-Föderalisten und den Befürwortern der Unabhängigkeit in der ukrainischen Elite. Im Juli 1917 brach in Kyjiv rund um den nach Pavel Polubotka benannten Klub ein Militäraufstand aus, zu dessen Anführern der Ideologe der Unabhängigkeitsbewegung Mykola Mikhnovskyj gehörte. Großes Blutvergießen wurde dank Vereinbarungen vermieden, aber lokale Konflikte gingen weiter.

Auch die Konfrontation zwischen den russischen und ukrainischen Behörden hörte nicht auf. Als Reaktion auf den 2. Universal sandte die Provisorische Regierung eine „vorläufige Anweisung" an die Ukraine, in der das Generalsekretariat, das am Tag zuvor von der ukrainischen Zentralrada eingerichtet worden war, als höchstes Organ der lokalen Selbstverwaltung anerkannt wurde. Die Befugnisse des Generalsekretariats erstreckten sich nur auf fünf Provinzen: Kyjiv, Volyn, Podil, Poltava und Černihiv. Das heißt, die südlichen und östlichen ukrainischen Länder wurden von der Provisorischen Regierung als ihr direkt unterstehend angesehen.

Der erste Krieg des bolschewistischen Russlands gegen die Ukraine.

Auch nachdem die Bolschewiki durch den Oktoberputsch in Russland an die Macht gekommen waren, bestand die Zentralrada weiterhin auf der Bildung einer föderalen Regierung in Russland aus Vertretern aller selbstbestimmten Territorien. Gleich nach dem Oktoberputsch begannen sich völlig entgegengesetzte politische Tendenzen in der Entwicklung der Ukrainischen Volksrepublik auf der einen und des bolschewistischen Russlands auf der anderen Seite abzuzeichnen. Die Ukraine machte sich auf den Weg zur Entwicklung einer demokratischen Gesellschaft, das bolschewistische Russland auf den Weg zur Diktatur, indem es die demokratischen Normen, welche die Provisorische Regierung akzeptiert hatte, ignorierte.

Den Versuch, seine Herrschaft auf das Territorium der Ukraine auszudehnen, leitete das Sowjetische Volkskomitee mit einer Propaganda- und Agitationsoffensive ein, die eindeutig einen gegen eine ukrainische Staatlichkeit gerichteten Charakter trug. Am 23. November 1917 veröffentlichte die Zentralrada den 3. Universal, in dem sie die Ukrainische Volksrepublik proklamierte, die in einer föderalen Beziehung zu einem nicht-bolschewistischen Russland stehen sollte. Als Reaktion darauf versuchten die Bolschewiki, einen bewaffneten Putsch in Kyjiv zu organisieren, was aber mit einem völligen Misserfolg endete. Daraufhin änderte die bolschewistische Regierung ihre Taktik und strebte nun danach, die politische Macht in Kyjiv zu übernehmen. So wurde mit dem Ziel, die Sowjetregierung zu unterstützen, im Dezember in Kyjiv der Allukrainische Sowjetkongress einberufen, an dem unter anderem auch viele Delegierte ukrainischer Bauernverbände und ukrainisierter Militäreinheiten teilnahmen. Die Delegierten des Sowjetkongresses bekundeten unmissverständlich ihre Unterstützung für die Zentralrada. Nachdem sie in Kyjiv gescheitert waren, beschlossen die Bolschewiki, sich mit den Delegierten des regionalen Kongresses der Räte vom Donbas und von Kryvyj Rih zu vereinen und ihre politischen Aktivitäten in Charkiv fortzusetzen. Hier wurde die Ukraine als Republik der Sowjets der Arbeiter-, Soldaten- und Bauerndeputierten (Sowjetische UNR) ausgerufen. Der Kongress beendete seine Arbeit mit der Wahl des Zentralen Exekutivkomitees, das seinerseits die erste Sowjetregierung der Ukraine – das

Volkssekretariat – bestätigte. Petrograd erkannte die Legitimität des Kongresses von Charkiv an und erklärte sich bereit, ihn im Kampf gegen die „bürgerliche" Zentralrada zu unterstützen.

Der renommierte Historiker Andreas Kappeler wies darauf hin, dass die Regierung von Charkiv, die sich der Unterstützung der Arbeiter erfreute, in den ersten Monaten des Jahres 1918 ihren Anspruch auf die gesamte Ukraine erklärte und militärische Operationen gegen die Zentralrada begann, die als Vertretung der bürgerlichen Nationalisten galt [7]. Die bolschewistische Regierung in der Ukraine wurde vollständig von den russischen Bolschewiki kontrolliert. Dementsprechend war auch ihr Anführer, Volodymyr Zatonskyj, ein Mitglied des russischen Volkskomitees. Es ist bezeichnend, dass Zatonskyjs erste Handlung die Aufhebung des Exportverbots für Brot nach Russland war. Diese Entscheidung lag voll und ganz im Interesse der russischen Bolschewiki, deren Anführer, Vladimir Uljanov (Lenin), nach Charkiv telegrafiert hatte: „Um Gottes willen, ergreifen Sie die energischsten revolutionären Maßnahmen, um Brot, Brot und noch mal Brot zu schicken!!! Sonst kann Peter sterben!" [8].

Die zweite Schlüsselfrage für die bolschewistische Regierung in der Ukraine war die Übernahme der Macht. Da die russischen bolschewistischen Anführer das Selbstbestimmungsrecht der nichtrussischen Völker formell anerkannten, konnten sie sich eine direkte militärische Intervention in der neu ausgerufenen Ukrainischen Volksrepublik nicht leisten. So wurde die Idee geboren, den „brüderlichen" Menschen zu „helfen". Der Rat der russischen Volkskommissare richtete an die Zentralrada ein Ultimatum, dessen Inhalt den Unterschied zwischen den Erklärungen und den tatsächlichen Aktionen der Bolschewiki deutlich machte. In diesem Ultimatum wurde von der Zentralrada eine Art Entmilitarisierung gefordert, das heißt, sie hatte die Absicht, eine eigene Armee aufzubauen, aufzugeben. Darüber hinaus wurde der Zentralrada mitgeteilt, dass sie nicht als Vertretung der Werktätigen der Ukrainischen Republik anerkannt werde. Unmittelbar nach dieser Erklärung verkündete Russland, ohne eine Antwort seitens der Zentralrada abzuwarten, sich mit dieser im Kriegszustand zu befinden. Formal sah alles nach Militärhilfe für die sowjetische Regierung der Ukraine aus.

Ende Dezember 1917 begann der russisch-sowjetische Volkskommissar für das Militär mit der Verlegung seiner Truppen nach Charkiv. Die ukrainische Panzerdivision wurde entwaffnet und die Stadt in einen Außenposten der russisch-sowjetischen Truppen verwandelt, so dass nun die nächsten Schritte für den weiteren bewaffneten Kampf eingeleitet werden konnten. Einheiten der Roten Garde entwaffneten die ukrainisierten Einheiten, und einige Tage später befahl der Oberbefehlshaber der russisch-sowjetischen Streitkräfte der Ukrainischen Front, Vladimir Antonov-Ovseenko, einen Generalangriff auf die Ukrainische Volksrepublik. Zu diesem Zweck kamen ungefähr 20.000 Soldaten aus dem bolschewistischen Russland auf das Territorium der Ukraine. Die allgemeine Taktik der Bolschewiki lief auf die Eroberung großer ukrainischer Städte hinaus, in denen die Anhänger der Bolschewiki Unruhen anzettelten und dadurch Chaos und Verwirrung unter der Bevölkerung stifteten. Indem sie den Widerstand einzelner ukrainischer Freiwilligenbataillonen überwanden,

brachten die Bolschewiki im Laufe des Januars nach und nach die meisten Städte der linksufrigen Ukraine unter ihre Kontrolle.

Unter den Bedingungen des Krieges begann nun eine neue Etappe in der Entwicklung der Ukrainischen Volksrepublik. Da die Ukrainische Volksrepublik nicht über genügend militärische Macht verfügte, um der bolschewistischen Aggression zu widerstehen, versuchte sie, die Situation durch politische Maßnahmen zu verbessern. Im Januar 1918 verabschiedete die Zentralrada den 4. Universal, in dem die staatliche Unabhängigkeit der Ukrainischen Volksrepublik proklamiert wurde. Ein großes Problem war das Fehlen einer eigenen kampfbereiten Armee, da die maßgeblichen ukrainischen Politiker geglaubt hatten, dass es zu keiner militärischen Konfrontation kommen würde und es somit keine Notwendigkeit für eine reguläre Armee gebe. Zwar waren im Mai/Juni 1917 in Kyjiv zwei Militärkongresse abgehalten und das Allukrainische Militärkomitee unter der Leitung von Symon Petljura gebildet worden, aber die Vertreter der Parteien der ukrainischen Sozialdemokraten und der Sozialrevolutionäre, die in der Zentralrada den Ton angaben, hatten sich gegen die Schaffung einer regulären nationalen Armee ausgesprochen. Sie waren, als es nach der russischen Februarrevolution um den Aufbau eigener Streitkräfte ging, mit der Ukrainisierung von Teilen der gesamtrussländischen Armee vollkommen zufrieden gewesen [9, p. 165–171]. Praktisch sämtliche kampfbereiten Einheiten, die die Ukrainische Volksrepublik gegen den russisch-sowjetischen Angriff Ende 1917/Anfang 1918 verteidigen konnten, waren nicht auf Initiative der Anführer der ukrainischen Revolution, sondern sogar im Widerspruch zu deren Prinzipien und Idealen geschaffen worden. So musste der Aufbau der ukrainischen Armee nun unter den extrem schwierigen Bedingungen der bewaffneten Aggression Sowjetrusslands durchgeführt werden.

Auf der Suche nach Unterstützung.

Die Unabhängigkeitserklärung der Ukrainischen Volksrepublik wurde durch mindestens zwei Faktoren angestoßen. Erstens – die politisch Verantwortlichen der Ukrainischen Volksrepublik versuchten, den völkerrechtlichen Status des ukrainischen Staates, dessen Unabhängigkeit bereits von einzelnen europäischen Ländern anerkannt worden war, zu konsolidieren. Ein solcher Schritt war notwendig, um militärische Hilfe von außen zu erhalten. Der zweite Faktor war nach unserem Dafürhalten die begründete Absicht, die von Russland entfesselte offene bewaffnete Aggression als einen Krieg des bolschewistischen Russlands gegen die Ukrainische Volksrepublik als eigenständigen Staat zu definieren statt als einen internen Konflikt oder Bürgerkrieg, wie es die russisch-sowjetische Propaganda tat. Der internationale Faktor spielte in dieser Phase eine wichtige Rolle, denn die ukrainischen Länder waren Schauplatz des immer noch tobenden Ersten Weltkriegs. Der russisch-sowjetische Rat der Volkskommissare erklärte der Ukraine den Krieg zu einer Zeit, als die Feindseligkeiten zwischen Russland und Österreich-Ungarn nachließen und die Bolschewiki Maßnahmen ergriffen, um mit den Mittelmächten Frieden zu schließen. Die schwierige außenpolitische Lage veranlasste die Zentralrada, in Ermangelung einer eigenen kampfbereiten Armee Unterstützung im Kampf gegen die russisch-sowjetische Aggression auf internationaler Ebene zu suchen. Trotz gewisser Sympathien für die Entente-

Staaten nahmen Diplomaten der Ukrainischen Volksrepublik in Brest-Litovsk Verhandlungen mit den Staaten der Vierfachunion über den Abschluss eines Separatfriedens auf, die am 9. Februar 1918 erfolgreich mit der Unterzeichnung eines Friedensabkommens endeten [10, p. 144]. Der Vertrag definierte die Bedingungen einerseits des Friedens zwischen den Vertragsparteien und andererseits des gegen das bolschewistische Russland zu führenden Krieges, was die Gelegenheit bot, die Lösung einer Vielzahl problematischer Fragen bezüglich der innerstaatlichen Ordnung des Landes anzugehen. Aber das Wichtigste in diesem Zusammenhang war, dass dieser Vertrag den rechtlichen Status der Zentralrada stärkte, der Ukraine als Subjekt völkerrechtlicher Beziehungen eine neue Qualität verlieh und damit den tatsächlichen Stand der Außenbeziehungen auf eine adäquate rechtliche Grundlage stellte [11].

Dank dieses Friedensabkommens wurde die Ukrainische Volksrepublik zu einem Akteur auf der internationalen Ebene und erhielt militärische Hilfe von Deutschland und Österreich-Ungarn. Am 18. Februar 1918 begann eine Großoffensive von 20 deutschen und österreichisch-ungarischen Divisionen in der Ukraine. Ihre Rechtsgrundlage war eine offizielle Aufforderung des Zentralkomitees der gegen das bolschewistische Russland verbündeten Staaten, „Recht und Ordnung" wiederherzustellen. Um diese Aufgabe zu erfüllen, mussten die Einheiten der Roten Armee besiegt, die Vertreter der Sowjetmacht vom Territorium der Ukraine vertrieben und die bolschewistischen Organisationen liquidiert werden. Deutsche, österreichisch-ungarische und ukrainische Truppen rückten schnell vor. Zwischen Anfang März und Ende April 1918 erlangten die vereinten Streitkräfte der mit Kyjiv Verbündeten unter Beteiligung ukrainischer Truppen die Kontrolle über das gesamte Territorium der Ukrainischen Volksrepublik. Die bolschewistischen Einheiten zogen sich ziemlich chaotisch zurück und leisteten bis auf wenige Ausnahmen praktisch keinen Widerstand. Schon am 1. März 1918 waren die Bolschewiki aus Kyjiv geflohen. Hier wie auch andernorts plünderten und zerstörten sie, so viel sie konnten, bevor sie die Flucht antraten. Ende April 1918 war die Ukraine vollständig von den „roten" Truppen befreit [12].

So endete die erste bolschewistische Besetzung der Ukraine – die erste, weil noch mehrere Jahre des bewaffneten Kampfes folgten, die schließlich mit der zweiten bolschewistischen Besetzung der Ukraine endeten. 1918 kam es vor allem dank der militärischen Unterstützung Deutschlands und Österreich-Ungarns nicht zur Annexion der ukrainischen Länder durch das bolschewistische Russland. Wiederholt appellierten die Zentralrada und die Regierung der Ukrainischen Volksrepublik an die ukrainische Bevölkerung, die Feinde von gestern als neue Freunde wahrzunehmen, die in Zeiten der Not zu Hilfe kommen. Diesem Zweck sollte auch die von Mychajlo Hruševs'kyj veröffentlichte Broschüre „Warum sind die Deutschen in die Ukraine gekommen?" dienen. Es kam zwar nie zu einer konstruktiven Zusammenarbeit zwischen dem deutschen Oberkommando und der ukrainischen Zentralrada [13], doch das Hauptziel der Ukrainischen Volksrepublik, die Vertreibung der Bolschewiki aus den ukrainischen Ländern, wurde zumindest erreicht. Im Mai begannen Verhandlungen zwischen den Delegationen des ukrainischen Staates

und Sowjetrusslands, und am 12. Juni 1918 wurde in Kyjiv ein vorläufiger Friedensvertrag geschlossen, dessen Bedingungen bis zum Abschluss der Verhandlungen gelten sollten. Laut diesem in zwei Sprachen (Ukrainisch und Russisch) verfassten und unterzeichneten Dokument wurden – um nur die wichtigsten Vereinbarungen zu nennen – „für die gesamte Dauer der Friedensverhandlungen" alle Militäroperationen ausgesetzt, diplomatische Beziehungen zwischen den Ländern aufgenommen, Eisenbahnverbindungen wiederhergestellt und die Bedingungen für die Rückführung von Bürgern beider Staaten festgelegt [14]. Anfang Oktober 1918 setzte die russische Delegation die Verhandlungen zunächst aus, um dann nach der Revolution in Deutschland eine Wiederaufnahme der Verhandlungen kategorisch abzulehnen.

Fazit.

Somit hat die heutige ukrainisch-russische Konfrontation tiefe historische Wurzeln. In der Zeit des Russländischen Reiches konzentrierte sie sich hauptsächlich auf die Beziehungen zwischen den herrschenden russländischen Eliten und dem von diesen Eliten abhängigen ukrainischen Volk. Der Beginn der Februarrevolution in Russland weckte bei den ukrainischen Anführern die Hoffnung, im postimperialen Raum Kompromisse für ein gleichberechtigtes Zusammenleben aller slawischen Völker erzielen zu können. Die Mehrheit der ukrainischen Politiker hoffte wirklich, eine gemeinsame Sprache mit den politischen Verantwortungsträgern in Petrograd zu finden – zuerst mit den Vertretern der Provisorischen Regierung, dann mit den bolschewistischen Anführern. Aber weder das Ministerkabinett von Aleksandr Kerenskij noch Lenins Rat der Volkskommissare unterstützten die entsprechenden ukrainischen Initiativen. Darüber hinaus entfesselten die russischen Bolschewiki einen Bruderkrieg gegen die Ukraine und zeigten damit ihre wahre negative Haltung gegenüber einer ukrainischen Eigenstaatlichkeit. Die These von der Ukraine als einer Binnenwirtschaftskolonie war für die Russen zu attraktiv. Dank der Unterstützung Deutschlands gewann der junge ukrainische Staat im Frühjahr 1918 den ersten Unabhängigkeitskrieg. Aber einige Monate später nahm das bolschewistische Russland die militärische Aggression wieder auf, wodurch die ukrainischen Länder letztlich für mehr als 70 Jahre unter seine Kontrolle gerieten. Während der kriegerischen Auseinandersetzungen machte die russisch-sowjetische Regierung keinen Hehl daraus, wie sie ihre Herrschaft über die Ukraine und ihre Bevölkerung verstand: Die Politik des militärischen „roten Terrors" wurde von Raub und Zerstörung, von massenhafter Ausplünderung der Bevölkerung, von Deportationen in Lager und von anderen systematischen Terrormethoden in den besetzten Gebieten begleitet.

Heute kämpft Russland erneut gegen die Ukraine, und die Ukrainer beweisen erneut mit der Waffe in der Hand ihr Recht auf Freiheit und Unabhängigkeit. Die Ukrainer haben erfahren und gelernt, was Verrat bedeutet und wozu das Streben nach Neutralität und riskante Kompromisse mit einem unversöhnlichen ideologischen Feind führt. Es ist an der Zeit, sich an den berühmten Ausspruch von Cicero zu erinnern: „Historia est magistra vitae."

References:

1. Vulpius, Ricarda (2022). Konkurrenz, Konflikt, Repression. Russland und die ukrainische Nationsbildung. *Osteuropa*, 6-8, S. 105–116 [in German].
2. Verstiuk, V. (1996). *Ukrainska Tsentralna Rada: Dokumenty i materialy u dvokh tomakh* [Ukrainian Central Rada: Documents and materials in two volumes.]. Kyiv: Naukova dumka. [in Ukrainian].
3. Tseretely, Yraklyi (1963). *Vospomynanyia o Fevralskoi revoliutsyy* [Memories of the February Revolution]. Kn.2. Paryzh, [in Russian].
4. Remer, Claus (1997). *Die Ukraine im Blickfelddeutsher Interessen. Endedes 19.Jahrhunderst bis 1917-1918*. Frankfurt am Main, [in German].
5. Verstiuk, Vladyslav (2012). Ukrainska revoliutsiia: poshuky mizhnatsionalnoi harmonii [Ukrainian revolution: the search for interethnic harmony]. *Natsionalne pytannia v Ukraini XX – pochatku XXI st.: istorychni narysy* [The national question in Ukraine in the XX – early XXI century: historical essays]. Kyiv: Nika-tsentr, 110-126 [in Ukrainian].
6. Yakubova, Larysa (red). (2021). *Ukraina y ukraintsi v postimpersku dobu (1917–1939)* [Ukraine and Ukrainians in the post-imperial epoch (1917-1939)]. Kyiv: Akademperiodyka [in Ukrainian].
7. Kappeler, Andreas (2017). *Ungleiche Brüder: Russen und Ukrainer: Vom Mittelalter bis zur Gegenwart.* München: Verlag C.H.Beck oHG [in German].
8. Lenin Vladymyr. *Polnoe sobranye sochynenyi* [The Complete Works].<http://leninvi.com/t50/p030> [in Russian] (2023, January, 12).
9. Luschnat-Ziegler, Marian (2021). *Die ukrainische Revolution und die Deutschen 1917-1918.* Marburg: Verlag Herder-Institut, [in German].
10. Dornik, Wolfram (ta inshi) (2015). *Ukraina mizh samovyznachenniam ta okupatsiieiu: 1917–1922 roky* [Ukraine between self-determination and occupation: 1917–1922]. Kyiv: Nika-Tsentr [in Ukrainian].
11. Hausmann, Guido (2019). Brest-Litowsk 1918. Zwei Friedensschlüsse und zwei Historiographien. *Geschichte in Wissenschaft und Unterricht*, 5–6, 270–283 [in German].
12. [Ukraine in the middle of the revolution of 1917–1921], in: Ukraina y ukraintsi v postimpersku dobu (1917–1939) [Ukraine and Ukrainians in the post-imperial epoch (1917–1939)]. Kyiv: Akademperiodyka [in Ukrainian].
13. Pyrih, Ruslan (2018). *Vidnosyny Ukrainy i Tsentralnykh derzhav: netypova okupatsiia 1918 roku* [Relations between Ukraine and the Central States: the atypical occupation of 1918]. Kyiv: Instytut istorii Ukrainy [in Ukrainian].
14. Yefymenko, Hennadii (2019). *Poperednii myrnyi dohovir Ukrainy z radianskoiu Rosiieiu* [Preliminary peace treaty between Ukraine and Soviet Russia]. Sait Tsei den v istorii [Site This day in history]<https://www.jnsm.com.ua/h/0612T/ [in Ukrainian].

ANALYSIS OF SOME PRACTICAL PROBLEMS IN THE SPHERE OF SOCIAL AND LEGAL PROTECTION OF MAJOR DISABLED PERSONS AND PERSONS WITH LIMITED CAPACITY IN UKRAINE

Sotska Alla[1]

Annotation. The article analyzes the issue of practical problems in the field of social and legal protection of adult incapacitated persons and persons whose legal capacity is limited in Ukraine.

First of all, the key legislative acts regulating the studied legal relations are singled out, among which, among others, the Civil Code of Ukraine, the Civil Procedural Code of Ukraine, the Rules of guardianship and guardianship, etc. are named.

It was concluded that the incorrect interpretation of legislative norms and provisions, as well as the fragmented administration of the defined sphere, becomes a prerequisite for the analyzed problems.

Among the practical questions, the answers to which are formulated in the article, the following are highlighted.

First, there are rare cases of appointment of special institutions, administrations, and heads of special institutions as guardians and custodians of adult incapacitated persons and persons whose legal capacity is limited. It is noted that the relevant court proceedings are contrary to the legislation, except for situations where a person, not as the head of an institution, but as a natural person, is appointed guardian or custodian of an adult who has been established as an incompetent or limited person.

Secondly, the appointment of guardians and custodians to adults by guardianship authorities contrary to the legal requirement for judicial review of relevant issues. It is noted that, taking into account the content of the Ukrainian legislation on the guardianship and care of adults, the relevant decisions of the guardianship and guardianship bodies should be annulled.

Thirdly, the officials of boarding houses open accounts in banking institutions in their own names for crediting the pension funds of disabled persons who live in such boarding houses and for whom no guardians have been appointed. based

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on the results of the analysis of the legislation on this issue, it was concluded that there are no legal restrictions on opening bank accounts in the name of an incapacitated person.

Fourth, protection of property rights of an adult incapacitated person who has been appointed a guardian. It was concluded that the issue of establishing guardianship over the property of an adult incapacitated person should be resolved at the initiative of the guardian or another subject with the consent of the guardian.

Key words: legal capacity, adult, incapacitated person, person whose legal capacity is limited, guardianship, care.

Formulation of the problem. It is indisputable that an ambiguous or incorrect interpretation of the norms and provisions of the legislation leads to the emergence of problematic issues. The sphere of social and legal protection of adult incapacitated persons and persons whose legal capacity is limited is no exception. For a long time, until the Ministry of Social Policy of Ukraine determined the relevant powers in 2012, this direction was not administered by any central executive authority. This situation became the reason for the emergence of many practical problems related to the realization of the rights of the specified categories of persons, which will be discussed in this article below.

The state of development of this problem. Some aspects of incapacity and limited legal capacity of adults and their guardianship and care were touched upon in their scientific works by N.A. Ablyatipova, O.V. Kiriak, M.V. Matiyko, D.S. Prutyan, O.S. Yunin and others. However, the level of scientific research on the relevant topic remains extremely low and mainly, if not exclusively, within the framework of civil and civil procedural law.

The purpose of the article. Taking into account the above, this article attempts to analyze some practical problems in the field of social and legal protection of adult incapacitated persons and persons whose legal capacity is limited in Ukraine.

Presenting main material. As practice shows, today there are a number of problems regarding the implementation of the norms and provisions of national legislation on the guardianship and care of adults, among other things, regarding the establishment of guardianship and care over such persons, the appointment of guardians and custodians, ensuring personal non-property and property rights and interests adults who need guardianship and care.

In view of the above and taking into account the gaps, inconsistencies and contradictions in the national legislation on guardianship and care of adults and the urgent need to prevent and eliminate the negative consequences caused by the above-mentioned problems and restore the violated rights and freedoms of subjects of legal relations in the field of guardianship and care over adults, these problems need to be studied and answered.

Today, matters of guardianship and care of adults are regulated by the Civil Code of Ukraine [8], the Civil Procedure Code of Ukraine [9], the Rules of Guardianship and Care, approved by the order of the State Committee of Ukraine

for Family and Youth Affairs, the Ministry of Education of Ukraine, the Ministry of Health of Ukraine, Ministry of Labor and Social Policy of Ukraine dated 26.05.1999 No. 34/166/131/88 (registered in the Ministry of Justice of Ukraine on 17.06.1999 under No. 387/3680) [5] (only in the part of the provisions that do not contradict the Civil of the Code of Ukraine), as well as other normative legal acts on relevant issues.

It is the norms and provisions of these and some other legislative acts that become the basis for finding answers to the problematic issues analyzed below.

Yes, there are rare cases of appointment of special institutions, administrations and heads of special institutions as guardians and custodians of adult incapacitated persons and persons whose legal capacity is limited.

According to part two of Article 63 of the Civil Code of Ukraine, only a natural person with full civil legal capacity can be a guardian or custodian [8].

At the same time, as can be seen from the content of Article 66 of the Civil Code of Ukraine [8], a special institution provides guardianship or guardianship over an individual who is in this institution and who has not been assigned a guardian or custodian.

As for practice, for example, prior to the appointment of guardians and custodians for incapacitated wards of psycho-neurological boarding schools and wards whose civil capacity is limited, the respective boarding house shall take care of them, in particular by taking measures to restore or limit the civil capacity of the wards [6].

Taking into account the above, the court's consideration of cases on the appointment of special institutions, administrations and heads of special institutions as guardians and custodians of adult incapacitated persons and persons whose legal capacity is limited, contradicts the current legislation.

In the case of appointment of a specific natural person - the head of a special institution - as a guardian or custodian of an adult incapacitated person or a person whose legal capacity is limited, he performs the functions of a guardian or custodian in relation to such an adult person on a general basis, and not as a representative of a special institution. Accordingly, he must fulfill the duties established for a guardian or custodian and, in established cases, bear responsibility for his ward. The peculiarity of the responsibility of an official (employee) is that in their activities they act not on their own behalf as an individual, but on behalf of the institution as a legal entity to which they are appointed (to whose staff they are enrolled), and their specific actions may have legal consequences for this institution. Officials are responsible for improper performance of their duty.

At the same time, the exercise by the head of a special institution of the rights and performance of the duties of a guardian or custodian over a ward is subject to the control and accountability of the relevant body of guardianship and guardianship.

Another problematic issue is the appointment of guardians and custodians to adults by guardianship authorities, contrary to the legal requirement for judicial review of relevant issues.

In accordance with Article 60 of the Civil Code of Ukraine [8], the appointment of a guardian or custodian is carried out by the court at the request of the body of guardianship and guardianship.

However, there are cases when, in violation of the norms of the Civil Code of Ukraine, decisions are made by guardianship authorities to appoint foreigners as guardians and custodians of citizens of Ukraine (both over adults with legal capacity, and over adult incapacitated persons and persons whose legal capacity is limited).

At the same time, clause two of the third part of Article 4 and clause 9 of the seventh part of Article 9 of the Law of Ukraine «On Immigration» [7] provide legal grounds for obtaining a permit for immigration by persons who are guardians or custodians of citizens of Ukraine, or are under the care or custody of citizens of Ukraine, including, on the basis of copies of documents on their appointment as guardians or custodians of citizens of Ukraine or on the establishment of guardianship or guardianship of a citizen of Ukraine over them.

As practice shows, such decisions of guardianship and guardianship bodies are not unique.

In view of the above, the relevant decisions of guardianship and guardianship authorities should be annulled.

A separate layer is the problem of the officials of boarding houses opening accounts in banking institutions in their own names for crediting the pension funds of disabled persons who live in such boarding houses and for whom no guardians have been appointed.

The reason for its emergence was the official position of some pension authorities regarding the fact that when the head of the institution is changed, the head appointed to the position must, as a state guardian, submit new applications on his own behalf regarding the payment of a pension and registration of pension cases in his own name. The head of the institution loses the right to receive pension payments for wards who have not been appointed guardians upon dismissal from the position held. Legislation does not provide for the delegation of powers to another person. Pension cases, personal accounts are issued to the head of the institution (institution).

Here it is worth noting that in accordance with the third part of Article 41 of the Civil Code of Ukraine [8], transactions on behalf of an incapacitated natural person and in his interests are performed by his guardian.

According to Article 66 of the Civil Code of Ukraine [8], if guardianship or guardianship is not established over an individual who is in an educational institution, health care institution, or social protection institution, or a guardian or custodian is not appointed, guardianship or guardianship over him or her this institution.

According to subsection 3.6 of paragraph 3 of the Guardianship and Guardianship Rules [5], if guardians (guardians) are not appointed for persons who need guardianship (guardianship) and are placed in relevant medical institutions or institutions of social protection of the population, then the fulfillment of the duties of guardians and custodians on behalf of the state are carried out by these institutions in the person of the heads of these institutions.

Currently, in accordance with the cited articles 41 and 66 of the Civil Code of Ukraine and sub-clause 3.6 of clause 3 of the Rules of guardianship and guardianship, it is practiced to register in the name of the head of the boarding house pension cases and personal accounts of disabled persons who are fully dependent on the state and for whom no guardian has been appointed , which makes it impossible for guardianship authorities to take full measures to protect the property rights of incapacitated wards of such boarding houses and may be the cause of violation of the corresponding rights.

Such managers, acting as legal representatives, choose the method of receiving a pension: through a post office or a bank.

At the same time, we draw attention to the fact that the heads of special institutions are officials of such institutions and in their activities act not on their own behalf as an individual, but on behalf of the institution as a legal entity to which they are appointed. They are responsible subjects for ensuring the guardianship of incapacitated wards, not guardians (according to Article 63 of the Civil Code of Ukraine [8], only a natural person with full civil legal capacity can be a guardian).

Article 242 of the Civil Code of Ukraine [8] regulates the issue of legal representation. In particular, the guardian is the legal representative of an individual recognized as incapable. Another person may be a legal representative in cases established by law.

We note that today the pension laws do not define the head of the boarding house as the legal representative of the wards of the respective institution.

According to Article 1 of the Law of Ukraine «On Mandatory State Pension Insurance» [3], a pension is a monthly pension payment received by an insured person in the event of reaching the retirement age stipulated by this Law or being recognized as a person with a disability.

Payment of pensions through banks is carried out in accordance with the Procedure for payment of pensions and cash benefits with the consent of pensioners and recipients of benefits through their current bank accounts, approved by Resolution of the Cabinet of Ministers of Ukraine dated 30.08.1999 No. 1596 [4].

According to Article 2 of the Law of Ukraine «On Banks and Banking Activity» [2] bank accounts are accounts on which the bank's own funds, claims, and obligations to its customers and counterparties are recorded and which provide an opportunity to transfer funds using bank payment instruments .

Therefore, a bank account is opened for the client to account for funds, the owner of which is such an individual who uses the services of the respective bank.

At the same time, no restrictions on opening bank accounts in the name of an incapacitated person, as well as on the number of accounts that can be opened by a natural person, are established by law.

According to Article 25 of the Civil Code of Ukraine [8], all natural persons have the ability to have civil rights and obligations (civil legal capacity).

Based on the content of part two of Article 27 of the Civil Code of Ukraine [8], the ability of a natural person to have civil rights and obligations not prohibited by law can be limited only by the Constitution of Ukraine [1].

According to Article 318 of the Civil Code of Ukraine [8], natural persons are subjects of property rights, which Article 321 of the Civil Code of Ukraine [8] recognizes as inviolable. No one can be unlawfully deprived of this right or limited in its exercise. A person may be deprived of the right to property or limited in its exercise only in the cases and in the manner established by law.

In view of the above, natural persons to whom pensions are assigned are the subjects of the right of ownership of these payments. There are no legislative restrictions on the awarding of pensions to disabled persons of legal age.

Another, but no less important, issue is the protection of the property rights of an adult incapacitated person who has been appointed a guardian.

In particular, in the case of appointing a guardian to an adult incapacitated person, the latter, in accordance with the second part of Article 242 of the Civil Code of Ukraine [8], is the legal representative of his ward.

Carrying out guardianship over an adult incapacitated person, the guardian, among other things, is obliged to: take measures to protect the civil rights and interests of the ward (part four of Article 67 of the Civil Code of Ukraine [8]) and take care of the preservation and use of the property of the ward in his interests (part one of Article 72 of the Civil Code of Ukraine, subsection 4.2 Clause 4 of the Guardianship and Care Rules [5]).

At the same time, according to Article 74 of the Civil Code of Ukraine [8], if the person over whom guardianship or guardianship is established has property located in another area, guardianship over this property is established by the body of guardianship and guardianship at the location of the property.

At the same time, the legislation does not regulate the content of guardianship over the property of an adult incapacitated person and the mechanism of its establishment and implementation, including the scope of powers of the guardian over the property. The nature of this guardianship is also not defined, namely: mandatory or advisory, in relation to the property of an adult incapacitated person, whose guardianship is exercised either by a body of guardianship and guardianship, or a special institution, or a guardian.

In the context of the above, the difference between the content of the powers of the guardian of an adult incapacitated person regarding taking measures to protect the civil rights and interests (in terms of property rights) of such a ward, care for the preservation and use of the ward's property in his interests, and the content of guardianship over property remains unclear.

Taking into account the above, we believe that the issue of establishing guardianship over the property of an adult incapacitated person, to whom a guardian has been appointed, must be decided at the initiative of the guardian or at the initiative of another subject with the consent of the guardian of this incapacitated person.

Conclusions. Summarizing, the improper and fragmented administration of the direction of the state policy declared in this article caused a number of problems related to the practical implementation of the rights of such persons by subjects of guardianship and care over adults. However, many of the existing problems can be solved through a deep analysis of the legislation and the experience of its application in practice.

It is also important to remember that guardianship and guardianship are the mechanisms that should ensure the rights of adults who lack legal capacity or are limited in it. However, the condition of such persons is often used by unscrupulous subjects of guardianship and care to abuse and violate the rights, primarily property rights, of their wards. Therefore, high-quality legislative regulation and proper control in the field of guardianship and care of adults is one of the key issues in state policy.

References:

1. Constitution of Ukraine https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
2. On banks and banking activities: Law of Ukraine dated December 7 2000 URL: No. 2121-III. https://zakon.rada.gov.ua/laws/show/2121-14#Text.
3. On mandatory state pension insurance: Law of Ukraine dated July 9 2003 No. 1058-IV. URL: https://zakon.rada.gov.ua/laws/show/1058-15#Text.
4. On approval of the Procedure for payment of pensions and monetary assistance through current accounts in banks: resolution of the Cabinet of Ministers of Ukraine dated August 30. 1999 No. 1596. URL: https://zakon.rada.gov.ua/laws/show/1596-99-%D0%BF#Text.
5. On the approval of the Rules of guardianship and care: the order of the State Committee of Ukraine for Family and Youth Affairs, the Ministry of Education of Ukraine, the Ministry of Health of Ukraine, the Ministry of Labor and Social Policy of Ukraine dated May 26. 1999 No. 34/166/131/88. URL: https://zakon.rada.gov.ua/laws/show/z0387-99#Text.
6. On the approval of the Standard Regulation on a psychoneurological boarding school: Resolution of the Cabinet of Ministers of Ukraine dated December 14. 2016 No. 957. URL: https://zakon.rada.gov.ua/laws/show/957-2016-%D0%BF#Text.
7. On immigration: Law of Ukraine dated June 7 2001 No. 2491-III. URL: https://zakon.rada.gov.ua/laws/show/2491-14#Text.
8. Civil Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/435-15#Text.
9. Civil Procedure Code of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/1618-15#Text.

THE PLACE OF THE TERRITORIAL COMMUNITY IN THE SYSTEM OF LOCAL SELF-GOVERNMENT OF UKRAINE

Tytykalo Roman[1]

Annotation. This article investigates the place of the territorial community in the system of local self-government of Ukraine.

The features of territorial community formation, in our opinion, are: freedom of choice of participation; territoriality, administrative-territorial affiliation to a certain territory, by which a territorial community is defined; closeness to one's resident (voter); individuality in expressing one's right; collectivity in decision-making; participation in the process of public administration through the implementation of delegated powers.

Therefore, a territorial community is a conscious and independent expression of the activities of residents of a certain administrative-territorial unit with the aim of satisfying the public-authority interest in solving issues of local importance. Signs of a territorial community:

1. Population - community of individuals (historical, cultural, neighborhood, etc.). This is the most important characteristic of the territorial community. When describing the local community, it is important to take into account both the demographic characteristics of the population and the characteristics of its lifestyle with national, cultural, historical features and traditions;

2. The territory defined by administrative and territorial boundaries. Their territory is defined by defined administrative and territorial boundaries within one or more settlements;

3. Social interaction (neighborly relations, common rules and norms of behavior, joint governance, public services, organizations, mutual relations in the production sphere, etc.). People are united in a local community not only by the fact of living in common conditions in a certain territory, but primarily as subjects of a way of life, management and political activity. Local self-government will be effective if there is close interaction within the local population;

4. Presence of socially conditioned interests. The interest (needs) of residents is the driving force of self-government and is an extremely important component in matters of local self-government organization. All members of the territorial community are carriers of territorial interests;

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5. Members of the territorial community are natural persons who permanently live in the corresponding settlement;

6. Economic legal personality;

7. Presence of joint public interests;

8. It is necessary to perform a number of functions: political, economic, social, cultural, ecological, technological (informational, planning, programming of the development of the territory, normative, territorial, budget-financial, material-technical), etc. The territorial community implements its functions both directly and indirectly;

9. Can implement its interests in three ways: through specially created representative bodies and their executive committees; by direct expression of will (meetings, meetings); with the help of institutions of self-organization.

Key words: local self-government, executive committee of the local self-government body, territorial community, united territorial community, legal responsibility, offense, illegal act, subject of offense.

Formulation of the problem. State formation is a systemic and dynamic process. After the collapse of the Soviet Union, attempts were made to reform the system of local self-government in Ukraine. The system of local self-government, which is legally defined today, expands the list of subjects included in it. The legally defined possibility of functioning of individual forms of direct democracy at the local level is especially important. This is important for understanding the system of local self-government, trends and dynamics of its development in the future, since granting Ukraine the status of a candidate for joining the European Union, as well as the global processes of post-war reconstruction in Ukraine will contribute to the activation of the role and increased participation of local self-government in the processes of full-scale reconstruction of Ukraine. That is why the prospects for the development of individual elements of the local self-government system in the context of the administrative-territorial system and local self-government in Ukraine, as well as the possibility of their improvement, require further scientific research.

The state of development of this problem. Place of the territorial community in the system of local self-government of Ukraine experts administrative law: V.B. Averyanova, V.I. Andreytseva, G.I. Balyuk, V.I. Boreyko, A.P. Hetman, V.A. Zueva, R.A. Kalyuzhny, T.S. Kichilyuk, V.K. Kolpakova, V.V. Kostytsky, N.R. Kobetskaya, M.V. Krasnova, V.I. Kurila, K.A. Ryabets, O.O. Pogrebny, Yu.S. Shemshuchenko.

The purpose of the article is the place of the territorial community in the system of local self-government of Ukraine.

Presenting main material. Investigating the activities of local self-government bodies in the context of administrative reform, O.M. Babich notes that there is no and cannot be absolute division, complete separation of state structures from self-governing ones. He argues his point of view by the fact that: local self-government bodies are one of the foundations of any democratic system; it is at the local level that the right of citizens to participate in the management of public affairs can be exercised most directly; it is local self-government bodies that have real management powers that ensure such administrative activity

that is both effective and close to citizens; protection and strengthening of local self-government make a significant contribution to building a European community based on the principles of democracy and decentralization of power; self-governing bodies are created democratically, have the authority to make the necessary decisions, enjoy wide autonomy within the limits of their competence, procedure and means of its implementation; the general principle of local self-government should be recognized in the legislation and, if possible, in the constitution of each country; the right of local self-government should be exercised by councils or other representative bodies, whose members should be elected by free, secret, equal, direct and universal voting, and which should have executive institutions responsible to them [1, p. 111].

The author emphasizes that local self-government bodies are an element of a democratic state and exercise a wide range of powers, both their own and delegated. These powers are exercised through executive bodies. At the same time, as we emphasized, local self-government is an element of public power, and the right of citizens to local self-government is a natural right of a citizen.

Thus, it is appropriate to transfer to local self-government bodies a greater range of powers to manage territories and resolve issues of local importance, while local state administrations should only exercise control and supervisory powers regarding the legality of decisions of local self-government bodies, and this will be fully consistent, in particular, with by the provisions of the second part of Article 8 of the European Charter of Local Self-Government: any administrative supervision of the activities of local authorities, as a rule, is aimed only at ensuring compliance with the law and constitutional principles. Taking into account the above, it can be argued that the search for the optimal model of public administration in local areas as a whole is organically connected with the process of decentralization and deconcentration of the powers of central executive bodies in order to distinguish, balance and avoid their duplication between local state administrations and local self-government bodies [1, p. 112].

In the Cambridge dictionary, a commune (community) is defined as a community of people who live in one specific territory, or people who are considered a single whole because of common interests, social group or nationality [2].

In dictionary literature, community (commune) means:

1) a community of people with common interests living in a certain territory;

2) a group of people with common characteristics or interests who live together in a larger society;

3) a set of persons or nations that have a common history or common social, economic and political interests;

4) a group connected by a common policy [3].

Territorial communities of neighboring villages can unite into one territorial community, create single bodies of local self-government and elect a single village head. At the same time, such unification and exit from the composition of the village community had to take place according to the decision of local referenda of the respective territorial communities of the villages. That is, it was about the

possibility of uniting within one territorial community only neighboring villages and on the basis of a referendum [4, p. 59].

E.I. Borodin and T.M. Tarasenko, researching the issue of local self-government, note that there has been a change in the approach to determining the boundaries of a territorial community, which is considered more broadly than just a settlement – a village, a village, a city. Accordingly, conditions are being created for revising the existing territorial basis for local government organization and updating the «basic level» of the administrative-territorial system, which is administrative-territorial units - communities. The consideration of the territorial community as the primary subject of local self-government, the main bearer of its functions and powers, which is the territorial community of a village, town, or city, remains unchanged. Further specification of the status of the territorial community involves determining its legal status [4, p. 59].

A territorial community is the main subject of local self-government, which consists of residents of a village (several villages), a settlement, a city [5, p. 26].

Investigating the administrative and legal status of the territorial community M.O. Baymuratov expresses the point of view that «with such a simplified attitude to the territorial community, the socio-legal essence of this phenomenon is lost, which includes the concept of the population as a community of residents (local community), united by common activities, interests and goals to meet needs, related to daily life, living environment, recreation, education, communication» [6, p. 97; 7, p. 8]. So, for example, the well-known scientist-constitutionalist I.P. In this context, Butko believed that the territorial collective is «people united by common interests» [8, p. 49], while he drew attention to the priority of the territorial collective as the primary, main, defining subject of the local self-government system , which, in accordance with the current legislation, has a very specific legal personality [9, p. 93].

V.I. Kravchenko sees a territorial community as «a collection of citizens of Ukraine who live together in an urban or rural settlement, have collective interests and a legal status defined by law.» At the same time, this author considers it in three aspects. First, it is a basic administrative-territorial unit; secondly, the form of local government organization; thirdly, the subject of civil legal relations, the economic subject [10, p. 77, 82].

Whereas a territorial collective is a social community that is formed within the boundaries of the common residence of citizens, has as its basis a socially necessary, socially determined activity, which is carried out by a group of people united by common interests in the political, socio-economic and cultural and everyday spheres of life [11, p. 86]; a community that performs its functions in various spheres of life, which is united by common interests and is formed within the framework of the common residence of citizens [12, p. 203].

Constitutionalists suggest distinguishing approaches to defining the concept of «territorial community» according to separate criteria:

1) the essence is such a group of people in which interpersonal relations are determined by the socially valuable and personally significant content of joint activity – the resolution of issues of local importance;

2) content is the primary subject of local self-government, the main carrier of its functions and powers;

3) by form - this is a type of territorial community, formed from among the residents of the relevant administrative-territorial units, who permanently or mainly live within their boundaries, own certain real estate in them, pay communal taxes, etc. [13, p. 44-45].

O. Moroz, defining the essence of a territorial community, names its features: - common territory of existence; - social interests in solving life issues; - social interaction in the process of realizing these interests; - psychological self-identification of each member with the community; joint communal property; payment of utility taxes [14].

At the legislative level, the concept of a territorial community is defined as residents united by permanent residence within the boundaries of a village, town, city, which are independent administrative and territorial units, or a voluntary association of residents of several villages, towns, cities that have a single administrative center [15]. As we can see, the principle of territoriality, voluntariness, and centralization of collective interests is the basis.

Signs of a territorial community:

1. Population - community of individuals (historical, cultural, neighborhood, etc.). This is the most important characteristic of the territorial community. When describing the local community, it is important to take into account both the demographic characteristics of the population and the characteristics of its lifestyle with national, cultural, historical features and traditions [13, p. 45–47];

2. The territory defined by administrative and territorial boundaries. Their territory is defined by defined administrative and territorial boundaries within one or more settlements;

3. Social interaction (neighborly relations, common rules and norms of behavior, joint governance, public services, organizations, mutual relations in the production sphere, etc.). People are united in a local community not only by the fact of living in common conditions in a certain territory, but primarily as subjects of a way of life, management and political activity. Local self-government will be effective if there is close interaction within the local population [13, p. 45–47];

4. Presence of socially conditioned interests. The interest (needs) of residents is the driving force of self-government and is an extremely important component in matters of local self-government organization. All members of the territorial community are carriers of territorial interests [13, p. 45–47];

5. Members of the territorial community are natural persons who permanently live in the corresponding settlement [16, p. 76];

6. Economic legal personality;

7. Presence of joint public interests;

8. It is necessary to perform a number of functions: political, economic, social, cultural, ecological, technological (informational, planning, programming of the development of the territory, normative, territorial, budget-financial, material-technical), etc. The territorial community implements its functions both directly and indirectly [16, p. 77];

9. Can implement its interests in three ways: through specially created representative bodies and their executive committees; by direct expression of will (meetings, meetings); with the help of institutions of self-organization.

Conclusions. Thus, the features of territorial community formation, in our opinion, are: freedom of choice of participation; territoriality, i.e. administrative-territorial affiliation to a certain territory, by which a territorial community is defined; closeness to one's resident (voter); individuality in expressing one's right; collectivity in decision-making; participation in the process of public administration through the implementation of delegated powers.

Therefore, a territorial community is a conscious and independent expression of the activities of residents of a certain administrative-territorial unit with the aim of satisfying the public-authority interest in solving issues of local importance.

References:

1. Babich O.M. Reforming the system of local bodies of executive power and bodies of local self-government: present and prospects. Journal of the Kyiv University of Law, 2009. No. 2. P. 111–116. URL: http://surl.li/eofwp.
2. Community. URL: http://surl.li/elwkv.
3. Dictionary. URL: https://www.merriam-webster.com/dictionary/community.
4. Borodin E.I., Tarasenko T.M. Development of the system of local self-government in Ukraine. Aspects of public administration. 2015. No. 4 (18). P. 55–61. URL: http://surl.li/emgjv.
5. Bilenchuk P.D., Kravchenko V.V., Pidmohylnyi M.V. Local self-government in Ukraine (municipal law). K., 2000. 250 p.
6. Baimuratov M.O. The local system of human rights protection in Ukraine: essence and development. Legal education and the rule of law (for the 150th anniversary of the Law Institute of OSU): Collection. of science works / Answer ed. S.V. Kivalov. Odesa, 1997. 182 p.
7. Baimuratov M. A. European standards of local democracy and local. self-government in Ukraine. Kh.: Odyssey, 2000. 356 p.
8. Butko I. Some problems of formation and development of local and regional self-government in Ukraine. Actual problems of territory management in Ukraine: Mater. science and practice conf. (Kyiv, November 26–27, 1992). K., 1993. 201 p.
9. Butko I. Territorial organization of state executive power and self-government. Legal Gazette. 1996. No. 1. P. 20–25.
10. Kravchenko V.I. Local finances of Ukraine. 1999. K.: Znannia, 1999. 487 p.
11. Vydrin I.V. Territorial collective as a subject of local self-government (state legal aspects). Jurisprudence 1992. No. 4. P. 11–16.
12. Ruda N.I. Formation of the social status of the territorial collective in the period of transition to market relations. Legal system of Ukraine: theory and practice: Mater. science and practice conf. (Kyiv, October 7-8, 1993). K., 1993. 140 p.

13. Batanov O.V. Constitutional and legal status of the territorial community in Ukraine. Bulletin of Zaporizhzhya State University. Legal Sciences, 2004. No. 2. P. 42–49. URL: https://web.znu.edu.ua/herald/issues/2004/2004-law-2.pdf#page=42.
14. Moroz O. Territorial community: essence, formation and modern Ukrainian realities. Academic papers collection. 2008. Is. 2 «Democratic governance». URL: https://science.lpnu.ua/sites/default/files/journal-paper/2022/jan/26506/moroz.pdf.
15. About local self-government: Information of the Verkhovna Rada of Ukraine), 1997. No. 24. Article 170. URL: https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text.
16. Mishina N.V. Territorial communities and united territorial communities in Ukraine. Scientific works of the National Academy of Sciences of Ukraine. P. 75–80. URL: http://npnuola.onua.edu.ua/index.php/1234/article/view/637/680 DOI: https://doi.org/10.32837/npnuola.v24i0.637.

INTERNATIONAL ORGANISATIONS IN THE SYSTEM OF SUPRANATIONAL LEVEL OF THE FINANCIAL MONITORING ENTITIES

Utkina Maryna[1]

Annotation. The fight against money laundering and terrorist financing is a global issue that requires cooperation and coordination between countries and international organisations. In Ukraine, the efforts to combat financial crimes have been shaped by the country's political and economic context and its alignment with international standards and best practices. This article focuses on the role of international organisations in the system of supranational financial monitoring entities in Ukraine and the impact of their work on the country's AML/CFT measures. The author provides an overview of the major organisations in this field and their functions and roles in promoting global cooperation and coordination in the fight against financial crimes. Additionally, the author explores the challenges that Ukraine faces in implementing effective AML/CFT measures and how international organisations can continue to support the country's efforts to combat financial crimes. By examining Ukraine's experiences in the context of supranational financial monitoring entities, the author hopes to contribute to the ongoing dialogue on the global fight against money laundering and terrorist financing.

Key words: entities, international organisations, supranational level, financial monitoring.

In recent years, Ukraine has significantly strengthened its anti-money laundering and counter-terrorist financing (AML/CFT) measures in line with international standards set by supranational financial monitoring entities. Ukraine's efforts have been driven by its desire to combat the financing of terrorist activities and to prevent and combat financial crimes such as corruption and fraud.

The global fight against money laundering and terrorist financing has led to the establishment of several supranational financial monitoring entities. These entities work to set international standards and best practices, share information and intelligence, and provide technical assistance to member countries to combat financial crimes.

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This article provides an overview of some of the major international organisations operating in this field, including the

(1) Financial Action Task Force;

(2) Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL);

(3) Egmont Group;

(4) International Monetary Fund;

(5) World Bank Group;

(6) United Nations Office on Drugs and Crime;

(7) the Basel Committee on Banking Supervision;

(8) the Wolfsberg Group and

(9) INTERPOL.

It highlights the roles and functions of these organisations and how they work together to promote global cooperation and coordination in the fight against financial crimes.

Despite these efforts, Ukraine continues to face significant challenges in AML/CFT. In particular, the country has struggled to effectively investigate and prosecute high-level corruption and money laundering cases even during martial law. The political influence on law enforcement agencies has also been a challenge, as it has hindered the independence and effectiveness of these agencies in combatting financial crimes. While Ukraine has made significant progress in strengthening its AML/CFT measures in line with supranational financial monitoring entities, there is still work to be done. Continued cooperation with international organisations and a commitment to addressing the challenges it faces will be essential to Ukraine's success in the fight against financial crimes.

The historical background of international organisations in supranational financial monitoring entities can be traced back to the early 20th century. In the aftermath of World War I, the League of Nations was established to promote international cooperation and prevent future conflicts. One of the League's early initiatives was the creation of the Opium Advisory Committee in 1920 [1], which aimed to combat the illicit trafficking of opium and other narcotics. After the League of Nations dissolved in 1946, the United Nations was established to promote international peace and cooperation. In the 1970s, the United Nations began to focus on the issue of money laundering and its links to organised crime and drug trafficking.

The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [2], adopted in 1988, established a framework for international cooperation in the fight against drug trafficking and money laundering. In the 1980s and 1990s, several other international organisations were established to address the issue of money laundering and terrorist financing. In 1989, the Financial Action Task Force (FATF) was established by the G7 countries to combat money laundering and terrorist financing globally [3]. The Egmont Group, a global network of financial intelligence units (FIUs), was established in 1995 to promote international cooperation in collecting and analysing financial intelligence.

Since then, other organisations such as the International Monetary Fund (IMF), the World Bank Group, and the United Nations Office on Drugs and Crime

(UNODC) have also become involved in the fight against financial crimes. These organisations work together to set international standards and best practices, share information and intelligence, and provide technical assistance to member countries to combat money laundering and terrorist financing.

Ukraine's efforts to combat financial crimes have been shaped by its political and economic context and alignment with international standards and best practices. The country has worked closely with organisations such as the FATF, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) to develop and implement AML/CFT policies and procedures. In 2014, the Ukrainian government adopted a law called "On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" [4] that established a system for financial monitoring and the creation of a financial intelligence unit (FIU) in Ukraine. It has been amended several times since then and finally has lost its force. In 2020 a new law, "On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" [5], became valid. Since then, Ukraine has made significant progress in developing its financial monitoring capabilities, particularly with the support of international organisations such as the FATF.

(1) The FATF is a key international organisation operating within the supranational financial monitoring entity system in Ukraine. The organisation has played a significant role in establishing global standards for financial monitoring and has provided technical assistance to Ukraine in developing its financial monitoring capabilities. In addition to the FATF, the Council of Europe and the United Nations have also supported Ukraine's efforts to combat financial crime. The FATF is an intergovernmental organisation established in 1989 to combat money laundering and terrorist financing. It sets international standards for anti-money laundering and counter-terrorist financing policies and conducts mutual evaluations of member countries' compliance with these standards [6]. The organisation comprises 39 member countries and several observer countries and organisations.

One of the main contributions of the FATF to the system of supranational financial monitoring entities in Ukraine has been the development of a comprehensive legal framework for AML/CTF. The organisation's recommendations have been incorporated into Ukrainian law, which established a system for financial monitoring and the creation of a financial intelligence unit (FIU). The FATF has also worked with the Ukrainian government to develop the country's AML/CTF strategy and action plan. This has included providing technical assistance and training to law enforcement agencies, financial institutions, and other stakeholders involved in the fight against financial crime. The organisation has also supported Ukraine in developing its risk-based approach to AML/CTF, which considers the specific risks and vulnerabilities of the country's financial sector.

(2) Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) is another

essential international organisation at the supranational level of financial monitoring entities in Ukraine. MONEYVAL was established in 1997 to monitor and assess compliance with international standards on anti-money laundering and countering the financing of terrorism (AML/CFT) [7]. One of the main tasks of the MONEYVAL Committee is to carry out mutual assessments of its members in the field of prevention and countermeasures against the legalisation (laundering) of income obtained through the financing of terrorism and the financing of the proliferation of weapons of mass destruction for compliance and effective implementation of the FATF Recommendations. Ukraine has been a member of MONEYVAL since 1997.

On August 28, 2020, the Committee of Experts of the Council of Europe on the Evaluation of Measures to Combat Money Laundering and Terrorist Financing (MONEYVAL) published the approved second report on the progress of Ukraine within the framework of the fifth round of evaluations in the field of prevention and combating the legalisation (laundering) of criminal proceeds through, and financing of terrorism (PEC/FT). The report demonstrates Ukraine's positive dynamics in bringing national legislation in AML/CFT closer to international standards. The Committee notes Ukraine's progress in two key areas: improving criminal law related to the crime of terrorist financing and strengthening sanctions against financial institutions and other entities for non-compliance with anti-money laundering and anti-terrorist financing legislation. At the same time, it remains the focus of further attention on the measures that will be taken to improve ratings in five more areas:

– the latest technologies (Recommendation 15);

– financial sanctions related to terrorism (Recommendation 6);

– financial sanctions related to financing the proliferation of weapons of mass destruction (Recommendation 7);

– regulation and supervision of representatives of non-financial professions and occupations (Recommendation 28);

– maintaining national statistics on combating money laundering and terrorist financing (Recommendation 33).

(3) Egmont Group. It facilitates and prompts the exchange of information, knowledge, and cooperation amongst member FIUs [8]. The Egmont Group plays a crucial role as an important international organisation in the system of supranational level of the financial monitoring entities in Ukraine. The Egmont Group is a network of financial intelligence units (FIUs) from around the world, created to facilitate international cooperation in the fight against money laundering and terrorist financing. One of the critical contributions of the Egmont Group to the system of supranational level of the financial monitoring entities in Ukraine has been its role in facilitating international cooperation in the exchange of financial intelligence.

The Egmont Group has developed a secure communication network for FIUs, known as the Egmont Secure Web (ESW), which enables the secure exchange of information between FIUs worldwide. The ESW allows FIUs to share information quickly and securely, which can be critical in identifying and disrupting money laundering and terrorist financing operations. The Egmont Group also provides

training and technical assistance to its members to enhance their capacity to analyse and use financial intelligence effectively. As to Ukraine, the State Financial Monitoring Service of Ukraine, as a division of the financial intelligence unit of Ukraine (FIU), is an active member of the world intelligence society - the Egmont Group of the FIU. According to statistical data, in previous years, the State Financial Monitoring Service of Ukraine became one of the most active FIUs among the members of the Egmont Group. It took second place in the region in terms of activity and contributions to the activities of the Egmont Group.

(4) International Monetary Fund. In 2019, representatives of the National Bank of Ukraine emphasized that with the technical assistance of the International Monetary Fund, a project of the so-called road map was prepared to strengthen supervision in the field of combating money laundering and terrorist financing. Implementing this project will make it possible to focus on the adequacy of the mechanisms of combating money laundering and terrorist financing in financial institutions and to stop the investigative functions. It should also be emphasized that the International Monetary Fund cooperates with MONEYVAL in its activities in this context. A single, comprehensive, joint methodology provides the possibility of mutual recognition of assessments, a result which – avoids duplication of assessments in the same countries and overloading of national bodies with these tasks; by other institutions in which MONEYVAL has observer status (for example, the Eurasian Group, created in 2004) [9].

(5) World Bank Group is a group of 5 international organisations (International Bank for Reconstruction and Development (IBRD); International Development Association (IDA); International Finance Corporation (IFC); Multilateral Investment Guarantee Agency, MIGA); International Centre for Settlement of Investment Disputes (ICSID)), which provides loans, usually to developing countries. It is a global organisation that provides financial and technical assistance to countries worldwide, aiming to reduce poverty and promote sustainable development. Ukraine is a member of all the above structures of the World Bank Group. The World Bank Group conducts assessments of countries' AML/CFT regimes, intending to identify areas where the regimes can be strengthened. These assessments are conducted through the World Bank Group's Financial Sector Assessment Program (FSAP), designed to help countries identify vulnerabilities in their financial systems and develop measures to address them.

(6) United Nations Office on Drugs and Crime is another important international organisation in the system of supranational level of the financial monitoring entities in Ukraine. It is a global organisation that promotes international cooperation in the fight against transnational organised crime, drug trafficking, and other illicit activities. The priorities of UNODC are the fight against corruption. In particular, the implementation of the provisions of the UN Convention against Corruption; prevention of corruption; fight against money laundering, asset recovery; disclosure of financial crimes. Representatives of the State Financial Monitoring Service of Ukraine participated in a seminar on international money laundering networks as part of the Ukrainian delegation. They participated in the training of evaluators on implementing the UN Convention against Corruption (as part of UNODC activities). Thus, it provides technical assistance and training

to Ukraine on AML/CFT issues, with the aim of helping our country develop and implement effective AML/CFT regimes.

(7) INTERPOL – International Criminal Police Organisation is a global organisation that facilitates international police cooperation and supports law enforcement agencies in their efforts to combat transnational crime, including money laundering and the financing of terrorism. It provides a range of services to law enforcement agencies, including access to criminal databases, support for cross-border investigations, and training and capacity-building programs. INTERPOL also works closely with other international organisations in the system of supranational level of the financial monitoring entities in Ukraine, such as the Financial Action Task Force (FATF), to develop and promote international standards and best practices for AML/CFT.

In Ukraine, INTERPOL works closely with national law enforcement agencies (such as the National Police of Ukraine and the Security Service of Ukraine) to support their efforts to combat financial crime. It provides training and technical assistance on financial investigation techniques and facilitates information sharing and cooperation between Ukrainian law enforcement agencies and their counterparts in other countries.

In general, the system of entities at the supranational level is quite extensive and includes, in addition to those directly involved in financial monitoring, also indirect participants. To increase efficiency and bring the financial monitoring procedure in line with international standards, comprehensive interaction and information exchange with competent bodies of foreign countries and international organisations aimed at AML/CFT is implemented and ensured.

Overall, international organisations have played a crucial role in establishing a global framework for financial monitoring. The supranational financial monitoring entities system has become vital to this framework. In Ukraine, the role of international organisations such as the FATF, the Council of Europe, and the United Nations has been significant in supporting the development of the country's financial monitoring capabilities. However, several challenges and limitations still need to be addressed to improve the effectiveness of financial monitoring in Ukraine.

References:

1. Renborg, Bertil A. (1964). The Grand Old Men of the League of Nations: What They Achieved. Who They Were. *UN Bulletin on Narcotics*. URL: https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1964-01-01_4_page002.html.
2. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). *United Nations.* URL: https://www.unodc.org/pdf/convention_1988_en.pdf.
3. Chapter 2: The Fora for International Cooperation (2009). *Money Laundering and the Financing of Terrorism – European Union Committee Contents.* URL: https://publications.parliament.uk/pa/ld200809/ldselect/ldeucom/132/13205.htm#n13.

4. On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction, Law No. 1702-VII (2014) (Ukraine). https://zakon.rada.gov.ua/laws/show/1702-18#Text.
5. On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceeds, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction, Law No. 361-IX (2020) (Ukraine). https://zakon.rada.gov.ua/laws/show/en/361-20#Text.
6. FATF official website. URL: https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html.
7. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism official website. URL: https://www.coe.int/en/web/moneyval.
8. Egmont group official website. URL: https://egmontgroup.org/.
9. Financial monitoring. National Securities and Stock Market Commission official website. URL: https://www.nssmc.gov.ua/en/activity/nahliad-za-rynkom/finansovyi-monitorynh/.

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