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International Experience in Preventing Corruption as a Vector for Creating a National Anti-Corruption Strategy in Ukraine

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Abstract. Given the European choice of Ukraine, there is an urgent need to create and implement a new anti-corruption policy, considering the positive aspects of the existing international experience. The relevance of the scientific investigation is conditioned by the fact that the existing problem of countering corruption is not only national but also global. The purpose of the study is to consider the international experience of preventing corruption torts to implement them in Ukrainian legislation. The methodological basis of the study is a system of methods and techniques of scientific cognition, namely: system analysis, comparative and implementation method, statistical method, and retrospective method. The study provides a systematic review of international concepts of prevention of corruption torts. It is noted that in the context of globalisation processes taking place in modern society, the need to implement positive foreign experience in the system of the current legislation of Ukraine becomes extremely relevant. A thorough analysis of a number of measures taken by leading states that are designed to prevent corruption offences was also carried out. The positive experience of states with the lowest level of corruption is positioned and ways to achieve such a result are indicated. The study analyses the anti-corruption strategies of such countries as Singapore, the Netherlands, Belgium, Israel, the United States, the Slovak Republic, Germany, and Poland. Attention is drawn to the fact that in countries with a low level of corruption, repressive measures are combined with a comprehensive elimination of the determinants of corruption offences in models of preventing corruption. The paper states that the latest strategy for preventing corruption requires the development of active cooperation between state bodies, law enforcement agencies, and civil society in order to prevent and counteract corruption torts. At the same time, an important determinant of preventing corruption torts is the growth of civil consciousness. It is emphasised that corruption offences are an extremely dangerous phenomenon inherent in all states of the modern world. It is revealed that a number of foreign countries have managed to create a modern and effective algorithm for preventing and countering corruption offences. The paper highlights the main determinants of corruption prevention that are approved by the international community, namely: normative regulation of the activities of civil servants, the establishment of a clear system of legal responsibility for violating the requirements of anti-corruption legislation, transparency in the professional activities of officials, the introduction of social programmes and educational campaigns on corruption topics. The provisions presented in the paper can become an effective basis for building a successful anti-corruption policy in Ukraine

Keywords: strategy, anti-corruption policy, implementation, current national legislation, corruption offences

Introduction

In the context of the pro-European trajectory of development of globalisation processes and the preservation of the best national established legal traditions, it is natural to ask whether the current national legislation [1] actually has international legal standards regarding responsibility for corruption offences. Currently, there is a constant discussion among researchers, which mainly concerns international standards of criminal liability for corruption offences. When there is a dispute over standards of responsibility, it should also be about administrative responsibility for actions or omissions related to corruption. First of all, this is interpreted by the general both historical and legal development of these phenomena and a certain imperfection of the norms of administrative law.

A number of researchers were engaged in the study of corruption torts and the improvement of Ukrainian legislation. S. Abdallah, R. Sayed, I. Rahwan, B.L. Leveck, M. Cebrian, A. Rutherford, J.H. Fowler [2] note that now there is a debate

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in society about how best to prevent the negative phenomenon of corruption. The researchers examined the impact of corruption on the evolution of cooperation and penalty, and presented the original model, which reflects the evolutionary rationale for why the provision of public goods rarely thrives in countries that rely only on strong centralised institutions. The authors concluded that the participation of citizens in the processes of preventing corruption is a fundamental necessity for the protection of public goods [2].

J. Wachs, T. Yasseri, B. Lengyel, J. Kertész rightly notes that "corruption is a social plague: gains accrue to small groups, while its costs are borne by everyone" [3]. The researchers note that "significant variation in its level between and within countries suggests a relationship between social structure and the prevalence of corruption". According to the researchers, "corruption is interrelated with such social aspects of society as segregation, interpersonal trust, civic consciousness, and community involvement, since corruption is the collective result of a community formed by the interaction between people" [3].

Exploring the psychological aspects of corruption in public administration O. Dragan, G. Yermakova, A. Chvaliuk, O. Kurchin, O. Karagodin aptly note that "ambitions to get rich quick, their low self-esteem, psychological dependencies, community-accepted image, and sense of impact were the major psychological aspects pushing the people to corruption" [4]. The researchers note "found that the sense of impact could be considered to be the primary psychological impact factor stimulating corruption actions by the civil servants, specifically" [4].

M. Bader, O. Huss, A. Meleshevych, O. Nesterenko [5] suggest that the factors associated with success in anti-corruption activities are divided into three broad categories: environmental factors, advocacy strategies of civil society organisations, and their organisational characteristics. All anti-corruption initiatives come into conflict with two key challenges: inadequate potential in terms of financial and human resources, and the lack of a reliable support base. The researchers remark that the most effective organisations are those that are able to solve one of these dilemmas, and also state that the political will of local authorities is an important factor in anti-corruption activities. The researchers' position on the need to implement international experience in the part of the "transfer of knowledge and skills from anti-corruption organisations with greater potential to organisations with less potential" is appropriate [5].

S.-T. Maxim [6] remarks that in a society that is constantly being transformed, "the prospect of corruption affecting the top of politics and the civil service is not inevitable, or at least it can be countered and reduced so that it does not become a widespread phenomenon. For this, political reformation must be accompanied by moral renewal". According to the researcher, the social degree of life within the normative framework can be achieved only in the line of strengthening political participation and intensifying political organisation. The authors of the study fully agree with the researcher's opinion that the implementation of a set of educational anti-corruption measures would contribute to the development of political consciousness and responsibility among citizens [6].

A. Movchan, A. Babjak, M. Movchan [7] note that the main goal of the anti-corruption reform in Ukraine is to significantly reduce the level of corruption, losses from the state budget and business, and increase Ukraine's position in international ratings. The authors argue that now a number of issues remain relevant regarding the creation and operation of anti-corruption bodies, the algorithm for declaring the property of civil servants, preventing and resolving conflicts of interest, checking employees, etc. [7].

The scientific study by these authors would contribute to the implementation of international experience in preventing corruption torts as a vector for creating a national anti-corruption strategy in Ukraine.

Despite the fact that there is now a significant number of studies on this issue, the lack of integrative research significantly reduces the practical value of conceptual foundations in the development of an effective anti-corruption system of administrative and legal operationalisation of corruption torts in the activities of civil servants.

The process of restructuring the current anti-corruption legislation should be based on multiple organisational, functional, and legal measures, which together will have a significant impact in stabilising the rule of law and minimising corruption torts in the public administration system, and will serve the further development of Ukraine as a social and legal state.

The purpose of the study is to provide a general analysis of the existing international experience in preventing corruption torts and implementing it in the current Ukrainian legislation. The author hopes that this study will be an anti-corruption pointer and tool in the line of minimising corruption torts in Ukraine.

Analysis of the Results of the Survey of International Organisations "Eurobarometer", "Transparency International", "Corruption Perception Index", "Open Budget Survey"

Analysing the international experience of preventing corruption torts, it can be concluded that their manifestations are the determinants that pose a real threat to democracy and security in the countries of the world, and have a negative impact on all segments of public life. In the presence of large-scale corruption manifestations, according to the author of the study, attention should be focused on eliminating the causes, and not on preventing and countering specific manifestations.

A thorough analysis of the scientific achievements of administrative scientists provides the following: 1) in the legal systems of foreign countries, the term "combat" is not used in the legislation – the subjects of legislative initiative lay down in laws and regulations only the principles of tort prevention, which are inherent only in a certain field of activity; 2) among the dominant reasons for the development and implementation of an effective algorithm for preventing corruption torts, a well-established mechanism of Interstate interaction and interaction of law enforcement agencies is positioned not only at the regional level but also at the international level; 3) active participation in the prevention of corruption torts of a number of international institutions, namely: UN, Interpol, World Bank, Council of Europe, and International Monetary Fund.

At the same time, considerations regarding the corruption dilemma correlate with the indicators of the World Bank, which indicate that during the implementation of significant reforms and constitutional transformations, opportunities for

illegal activities and corruption torts significantly increase. In addition, the media is constantly positioning the facts of existing conflicts of interest that occur as a result of using public positions to obtain illegal benefits on such a scale that it causes a significant social problem. This fact is a determinant for the production of a negative perception by society of the activities of government representatives, in fact, as such, which is aimed only at obtaining personal or group benefits.

In 2021, the EU Eurobarometer conducted specialised scientific research on positioning the level of corruption torts. 67% of respondents declared that corruption is one of the components of the business culture in their countries. 47% of respondents living in the EU stated that the level of corruption has increased significantly over the past three years. Among the EU countries with a significant level of corruption, the leaders are Slovenia (74%), Cyprus (73%), Romania (67%), Portugal (68%). Thus, according to the majority of Europeans, corruption exists in all areas of the provision of public services. According to 57% of respondents, corruption actually prevails among political figures at the national level. A third of Europeans report the dominance of corruption in the healthcare system (48%), among inspectors of control units (35%), law enforcement agencies (34%), officials authorised to grant licenses and permits (32%), employees in the field of law, court, and customs (41%) [8].

Ukraine received 32 points out of 100 possible points in the Corruption Perception Index in 2021. The indicator of Ukraine has decreased by 1 point, and now it ranks 122nd among 180 CPI countries [9].

According to the statistics of the international organisation "Transparency International" [10], the countries that are in the top ten in terms of ratings of effective measures to prevent corruption have obviously developed and put into practice an effective mechanism for preventing corruption. These countries (in order of ranking growth) include: Denmark, Finland, Sweden, New Zealand, Canada, the Netherlands, Norway, Australia, Singapore, Luxembourg, Switzerland, Ireland, Germany, Great Britain, Israel, the USA, and Austria.

According to the Open Budget Survey 2021 Ukraine, the indicator of public participation has significantly increased (from 33 points in 2019 to 39 points in 2021), which is now 2.78 times higher than the world indicator (14 points) and is the best among the countries of the region that are included in this rating [11].

The opinion of researchers regarding the implementation of positive international experience in preventing corruption is correct, since Ukraine, unfortunately, currently lacks an effective mechanism for preventing and countering this negative phenomenon.

The Role and Significance of International Experience In Preventing Corruption Torts

According to the author of the study, it is appropriate to start systematising international experience in preventing corruption with an effective anti-corruption model introduced in Singapore. The progress of this state in terms of dynamic development is tracked in all aspects (social, political, economic development) and has acquired the qualities of a stable geometric progression over a short period of time – approximately 35-40 years. A reasonable question arises: what actually was the quintessence of such forced progress. Singapore's prime minister Lee Kuan Yew stated: "... The country's first government in the fight against corruption faced several challenges. The law, which was designed to regulate the anti-corruption process, was completely ineffective due to the ineffectiveness of anti-corruption measures. A significant number of corruption offences were not covered by the subject of its legal regulation, and law enforcement officers were not given sufficient powers to carry out effective activities. In addition, the complexity of combating corruption was also conditioned by the fact that a significant number of senior officials were already de facto involved in corruption activities." [12, p. 267].

The dominant factor in the success of Singapore's anti-corruption programme was the implementation of comprehensive administrative reform, in the context of which the salary of civil servants was increased tenfold. Lee Kuan Yew believed that civil servants should be paid the maximum salary, since they are the personification of fair and just power. An inadequate level of funding for their professional activities can lead to the generation in their minds of a tendency to be involved in corruption schemes [12].

Thus, to prevent corruption torts, the following procedural and institutional measures have been introduced and are being implemented in the Netherlands:

1) openness and timely reporting on penalties for corruption torts committed by civil servants;

2) development of modern systems for monitoring potential sources of corruption torts in public authorities and a number of measures to control the behaviour of persons who have relationships with them;

3) full formalisation of the legal status of state officials by securing their legal personality for non-compliance with the rules of professional ethics;

4) the specialised form of punishment of civil servants consists in prohibiting further activities in state bodies, losing all social guarantees, fines, suspension from the implementation of professional functions, loss of pension maintenance;

5) the results of bringing to justice for corruption torts become known to the public;

6) a specialised anti-corruption service has been established, which is an integral part of the entire state security system [13].

The experience of preventing corruption torts in Belgium is positive. Thus, to prevent corruption offences, civil servants are subject not only to measures to bring them to legal responsibility, in accordance with articles 246, 247, 504bis, 504ter of the Criminal Code [14] and articles 223, 225, 246, 247 of the Belgian Tax Code [15], but also to measures to prevent this negative phenomenon.

The Slovak Republic has developed an effective mechanism for preventive measures themselves:

1) a special line has been introduced where every citizen can provide information to the Anti-Corruption Committee regarding illegal actions of employees of state bodies;

2) a web page has been created on the Internet, where citizens can submit their own proposals for improving the mechanism for preventing corruption torts in public authorities [16].

Israel is a leading state in terms of the effectiveness of preventing corruption in public and political life. Prevention of corruption torts is provided by duplication of monitoring of potential corruption offences by a number of government and public organisations, specialised police departments, and the public comptroller's office, which are independent of government departments and ministries. Information obtained by routing must be notified to the public [17].

Poland's experience in implementing an anti-corruption policy is relevant. Thus, the Anti-Corruption Strategy introduced in Poland [18; 19; 20] provides for the implementation of the following goals: 1) continuous improvement of anti-corruption legislation; 2) implementation of a modern algorithm for preventing corruption in all areas; 3) effective detection of corruption torts; 4) increasing the level of legal consciousness of citizens; 5) strengthening and expanding cooperation between law enforcement agencies. Currently, Poland has a decentralised model for creating anti-corruption institutions, which provides for the distribution of power between law enforcement agencies and state bodies in terms of preventing corruption torts. According to this model "...a number of powers in this area are divided between the highest state authorities (president, parliament, government) and one (several) state bodies that perform law enforcement functions. In particular, under the president of Poland, there is a Department of Public Administration, which, together with the Ministry of Internal affairs, ensures the prevention and counteraction of corruption" [21, p. 34]. The Central Anti-Corruption Bureau is actively functioning in Poland to prevent cases of abuse of power and activities against the economic interests of the state. At the same time, structural units of financial intelligence are actively functioning in Poland, which, receiving information from law enforcement agencies, have the opportunity to implement a number of effective measures to prevent and counteract corruption offences among government representatives. In Poland, a monitoring committee is effectively functioning, which includes representatives of non-governmental organisations that exercise public control over the implementation of anti-corruption policies. The range of functions of the Monitoring Committee is extremely wide: from exposing and documenting the facts of corruption torts among government officials, developing proposals for anti-corruption legislation, and conducting a number of informational and educational activities aimed at preventing corruption [22].

The experience of combating corruption torts in Germany is effective and meaningful. The anti-corruption policy of Germany is preventive and focused on the implementation of legislative, personnel, administrative, organisational, and other measures aimed at minimising the abuse of civil servants' official status. The main duty of a German civil servant is to exercise their official powers impartially and fairly only for the benefit of the entire society. The current German legislation provides for personal responsibility for the legality of their actions in the process of performing professional duties, providing information about the facts of illegal acts known to them, in particular, corruption torts. The main vectors of anti-corruption activities in Germany are: 1) extremely strict restrictions on receiving gifts and further employment after dismissal from the civil service; 2) the creation of a register of corrupt private enterprises or organisations in order to prevent contacts with public authorities; 3) the creation of a register of positions that most encourage corruption torts; 4) constant rotation of civil servants' personnel in these positions [23].

The United States has developed and put into practice a system of effective anti-corruption measures of administrative influence not only in the country, but also abroad. The Federal Law "The Racketeer Influenced and Corrupt Organizations Act", or the RICO law, played a historical role in preventing corruption. After the adoption of the Law "On Corruption Abroad" [24], the United States of America became a leader in establishing cooperation to prevent corruption at the international level.

Thus, now the US Department of justice is the coordinator and developer of the anti-corruption policy strategy in the country. The main measures designed to prevent corruption include the following: 1) implementation of constant control over the strict submission of declarations by civil servants; 2) bringing to criminal responsibility for corruption offences not only individuals but also legal entities; 3) annual polygraph examination of officials; 4) complete lack of immunity in terms of bringing civil servants to legal responsibility regardless of their position; 5) functioning of the institute for informing about the facts of corruption abuses in public authorities; 6) clear distribution of functions among bodies engaged in anti-corruption activities; 7) attraction of public services to the public; 8) provision by political parties of a report on the financing of their election campaign.

A thorough analysis of foreign models and strategies for preventing corruption allows for the conclusion that focusing only on the repressive approach in the implementation of anti-corruption activities, by strengthening measures of criminal or administrative influence, is an extremely unjustified and one-sided approach, and the implementation of preventive administrative and organisational measures is more optimal and effective.

International experience in preventing corruption provides grounds for the author to summarise the most characteristic vectors and mechanisms, the implementation of which would be appropriate to introduce in Ukraine, namely:

1) create a single centralised body for the prevention of corruption in Ukraine, among the main tasks of which would be to investigate the facts of corruption torts complicated by a foreign element (experience of the USA, Poland);

2) continuous implementation of a systematic analysis of corruption risks and anti-corruption expertise of public administration acts and their projects (Belgian experience);

3) reformation of public authorities by optimising (reducing) public power institutions (Singapore experience);

4) development of specialised departmental laws regulating the algorithm of public service, the mechanism and principles of official rotation of employees of public authorities (experience of Germany, the Netherlands);

5) optimisation of a number of measures that would make it impossible for persons who are prone to corruption or illegal actions to enter the public service (experience of the USA, Germany, and the Netherlands);

6) reform of the existing system of legal, socio-economic support for persons performing public functions (Singapore experience);

7) ensure the effective operation of the social opinion monitoring system in relation to the activities of public institutions and the ability to report on known facts of violation of the requirements of the current legislation in the field of public service (the experience of all states under study).

Conclusions

The analysis of international experience gives us the opportunity to generalise the most characteristic mechanisms for preventing corruption, the implementation of which can be applicable in Ukraine, namely: 1) introduction of progressive international experience into the current national legislation, including proposals of international organisations

on anti-corruption policy; 2) implementation of a number of anti-corruption educational measures aimed at strengthening the degree of civic consciousness and popularising the rejection of the negative phenomenon of corruption by society through the active implementation of various anti-corruption programmes and strategies; 3) activation of the role of public organisations as autonomous subjects of anti-corruption activities; 4) giving more importance to the actual preventive and incentive measures; 5) the number of internet platforms should be expanded and interactive websites should be improved to respond more quickly to citizens' appeals about corruption offences.

It is clear that further anti-corruption activities in Ukraine require significant adjustments. In addition to the real manifestation of political will to prevent corruption, there is a need for: implementation of anti-corruption activities only on a legal basis with bringing the provisions of the current anti-corruption legislation in full compliance with the norms of the Constitution of Ukraine; implementation of an effective algorithm of anti-corruption expertise and control in the field of rule-making; identification of the most corrupt areas; implementation of proper coordination of anti-corruption activities in the state.

A priori, corruption is constantly adapting to existing changes in the macro- and micro-environment, so the strategy of anti-corruption activities should be implemented considering the existing national customs and mentality and cultural development of citizens, the civilisational evolution of Ukrainian society. International experience in preventing corruption shows that there are no universal algorithms for preventing corruption in general and in public authorities in particular. The application and implementation of a number of anti-corruption measures in Ukraine, which positively positioned a high level of efficiency, is impossible to implement by simply calculating certain components of state or municipal administration.

It is necessary to choose a unique path, which the government should establish independently based on Ukrainian legislation, traditions, mentality, etc. Further study of international experience in preventing corruption can be conducted by establishing: the reasons for the ineffectiveness of the implementation of anti-corruption policy in Ukraine; the priority of means of preventing corruption torts and refusing to further strengthen the repressive component of preventing corruption; expanding the range of countries whose experience can be useful for Ukraine.

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Міжнародний досвід запобігання корупції як вектор створення національної антикорупційної стратегії в Україні

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Анотація. З огляду на європейський вибір нашої держави існує нагальна потреба в створенні та реалізації нової антикорупційної політики з урахуванням позитивних аспектів наявного міжнародного досвіду. Актуальність наукової розвідки полягає в тому, що наявна проблема протистояння корупції є не лише національною, а й всесвітньою. Мета статті – дослідити міжнародний досвід превенції корупційним деліктам з метою імплементації його в українське законодавство. Методологічне підґрунтя наукової роботи – система методів і прийомів наукового пізнання, а саме: системний аналіз, компаративно-імплементаційний метод, статистичний метод, ретроспективний метод. У статті здійснено системний розгляд міжнародних концепцій запобігання корупційним деліктам. Зазначено, що в умовах глобалізаційних процесів, котрі відбуваються в сучасному соціумі, украй важливого значення набуває потреба в імплементуванні позитивного зарубіжного досвіду в систему чинного законодавства України. Також здійснено ґрунтовний аналіз низки заходів провідних держав, котрі покликані превентувати корупційні правопорушення. Позиціоновано позитивний досвід держав з найнижчим рівнем корупції та зазначено шляхи досягнення такого результату. У статті проаналізовано антикорупційні стратегії таких країн, як Сінгапур, Нідерланди, Бельгія, Ізраїль, США, Словацька Республіка, Німеччина, Польща. Звернено увагу на те, що в державах з низьким рівнем корупції в моделях запобігання корупції репресивні заходи поєднуються з комплексним усуненням детермінант корупційних правопорушень. У статті зазначено, що новітня стратегія запобігання корупції вимагає розбудови активного співробітництва державних органів, правоохоронних органів та громадянського суспільства з метою превенції та протидії корупційним деліктам. Водночас важливою детермінантою запобігання корупційним деліктам є зростання громадянської свідомості. Акцентовано на тому, що корупційні правопорушення – украй небезпечний феномен, притаманний усім державам сучасного світу. Виявлено, що низка зарубіжних держав домоглася створити сучасний дієвий алгоритм запобігання та протидії корупційним правопорушенням. У статті виокремлено основні детермінанти запобігання корупції, котрі є схваленими міжнародним співтовариством, а саме: нормативне урегулювання діяльності державних службовців, встановлення чіткої системи юридичної відповідальності за порушення вимог антикорупційного законодавства, прозорості в професійній діяльності посадових осіб, запровадження соціальних програм та освітніх просвітницьких кампаній на корупційну тематику. Наведені в статті положення можуть стати дієвим підґрунтям для побудови в Україні успішної антикорупційної політики

Ключові слова: стратегія, антикорупційна політика. імплементація, чинне національне законодавство, корупційні правопорушення

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Administrative and Legal Implementation of the Rights of Business Entities

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Abstract. The study considers theoretical and practical aspects of the administrative and legal implementation of the rights of business entities based on the current legislation and regulatory requirements of the European Union from the perspective of the modern theory of state and law and administrative law. The relevance of the subject matter is conditioned by the need to improve legislation for the purpose of a comprehensive theoretical substantiation for improving the efficiency of the implementation of rights by business entities in the context of the transformation of the Ukrainian economy. The purpose of the study is to investigate the implementation of the rights of business entities. The study applied the methodology of a systematic comprehensive analysis of legal phenomena using factor and evolutionary research methods. It is indicated that the activities of public administration bodies have public legal goals (law enforcement, regulatory, fiscal, and accounting). One of the activities of public administration bodies is to ensure the implementation of the rights of business entities. The specific features of administrative and legal implementation of business rights by public administration bodies are considered. It is indicated that this activity is implemented by issuing individual administrative legal acts or performing certain administrative actions. Implementation methods (registration, licensing procedures, certification, and accreditation) are considered. The content of technical regulation is disclosed, including the development and adoption of technical regulations, rules, standardisation, conformity assessment, quotas. The role and significance of state supervision and control in the sphere of entrepreneurial activity as a way of administrative and legal support for the implementation of the rights of business entities is substantiated. The role of administrative procedure law and administrative procedure for the administrative and legal implementation of the rights of business entities is indicated. The study is aimed at improving the norms of administrative law regarding the implementation of the rights of business entities

Keywords: entrepreneurship, administrative law, public administration bodies, methods and forms of legal regulation

Introduction

The state, as a special participant in economic relations, acts as a subject of power, carrying out legal regulation of entrepreneurial activity, supervision and control over the implementation and compliance of business entities with regulatory requirements, protection of the rights of business entities.

An important component of sustainable socio-economic development of the state is the national economy, where the state has created conditions for a highly competitive institutional environment that stimulates the entrepreneurial activity of the population, a favourable investment climate, and contributes to attracting foreign capital to the country's economy.

A number of factors can contribute to achieving these results, among which a well-developed system of legal regulation and effective mechanisms of law enforcement in the field of implementation and protection of the rights of business entities, elimination of administrative barriers and ensuring the effectiveness of the public administration system in the field of business activities are important.

This is reflected in strategic goal 1 "Ensuring transparent and effective regulation of enterprises' activities" of the strategic policy course for the development of a comfortable regulatory environment of the National Economic Strategy for the period up to 2030 [1].

The rights of business entities are defined in a number of laws and regulations: the laws of Ukraine "On Entrepreneurship" [2] and "On the Development and State Support of Small and Medium Enterprises in Ukraine" [3] and others. The state, granting individuals and legal entities certain rights in the form of consolidating in the norms of legislation, simultaneously assumes the obligation to provide all the necessary organisational, material, and legal conditions for the implementation processes.

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The acquisition and implementation of rights in the sphere of entrepreneurial activity provides for the adoption by public administration bodies of relevant individual law enforcement administrative acts or the commission of administrative actions. In these cases, the executive and administrative activities of public administration bodies are of a security nature in relation to the processes of acquisition and implementation of rights, which refers to the administrative and legal implementation of rights in the field of entrepreneurship.

The exercise of the right to engage in entrepreneurial activity is associated with the need for state registration of a legal entity or individual entrepreneur. The exercise of the right to engage in certain types of activity or perform certain actions in the field of entrepreneurship provides for the entrepreneur to pass the procedures for obtaining special permits or licenses. The implementation of certain types of business activities is associated with the acquisition of a special legal status by an entrepreneur. The property basis of entrepreneurship is the right of ownership, which requires state registration.

Considering the above, it is necessary to comprehensively investigate the administrative and legal implementation of rights in the field of entrepreneurship, which form the content of administrative procedures in order to solve organisational and legal problems that arise within the framework of such activity. These circumstances determined the choice of research topic and determined its relevance. Scientific originality consists in the classification of administrative and legal ways of exercising rights in the sphere of entrepreneurial activity.

The purpose of the study is to provide a comprehensive theoretical substantiation of the provisions on the administrative and legal implementation of the rights of business entities to improve the norms of administrative and administrative-procedural law in this area. Achieving this goal depends on the investigations of the main features of administrative and legal implementation of rights in the field of entrepreneurial activity.

The subject matter is multifaceted. Its various aspects became the subject of scientific research. O.V. Harahonych [4], K.I. Anapasenko [5], O.E. Dyakunovskyi [6] considered certain institutions of administrative and legal implementation of rights in the field of entrepreneurial activity (licensing system, registration) and put forward a number of proposals that deserve attention. D. Matricano [7], J. Doran, N. McCarthy, M. O'Connor, and Ch. Nsiah [8], M. Almodóvar-González, A. Fernández-Portillo, and J.C. Díaz-Casero [9] in the context of national law and European Union law, investigated the implementation of rights in the field of entrepreneurship from the standpoint of administrative and civil law, proposing changes to national legislation. In the context of adapting legislation to EU requirements, the views of these authors are of scientific value.

Some aspects of administrative law on the issues under study are covered by O.S. Dniprov on the subject of administrative law [10], Ya.V. Zhuravel on public-service relations [11], A.M. Shkolyk on administrative procedure [12]. The general principles of law enforcement and administrative law were considered from the standpoint of view of the author's groups of educational literature edited by S.D. Gusarev [13] and O.I. Ostapenko [14].

Materials and Methods

To achieve the purpose of the study, general scientific and private scientific methods were used together. In particular, the methods of analysis and synthesis were used to describe the content of the studied concept of the administrative and legal implementation of business rights, its individual aspects, connections, and to identify law enforcement problems that arise within the framework of implementation. The use of deduction and induction methods allowed formulating definitions of the administrative and legal implementation of rights in the sphere of entrepreneurial activity based on the concepts of law implementation developed by the theory of law and the science of administrative law. The use of factor and evolutionary methods revealed the administrative and legal foundations of administrative and legal regulation of the implementation of rights. The use of the formal legal method allowed considering state supervision and control in the field of entrepreneurial activity from the standpoint of one of the administrative and legal means of ensuring the protection of business rights. Using the system-structural method, the legal relations that develop within the framework of the implementation of rights and the relationship between their individual elements were investigated. The generalisation provided not only intermediate conclusions, but also summarised the research. All these methods were used comprehensively.

Results and Discussion

The Constitution of Ukraine and the current legislation guarantee the right to engage in entrepreneurial activity, including: the right to acquire special legal status in business relations; the right to carry out certain types of entrepreneurial activity and perform certain actions in this area; the right to own real estate and intellectual property used in business activities; to use or manage certain objects (water bodies, non-stationary commercial objects, outdoor advertising objects, etc.), territories (water areas), subsurface areas for the purpose of conducting business activities; the right to use budget subsidies in cases established by law for the purpose of carrying out business activities [15]. These rights form the basis of the country's economic well-being and provide for a regulatory procedure for implementation.

O.V. Harahonych notes that entrepreneurship is carried out in various organisational forms [4, p. 30].

Business rights require the implementation of legal reality and the legally established governmental intervention of public administration bodies in the form of the use of certain administrative and legal methods.

The activity of competent bodies and officials of public authorities to assist in the implementation of the right is of a power nature, is carried out in accordance with the procedure established by law and is accompanied by the commission of power law enforcement actions or the adoption of individual legal acts, without which the relevant legal relations provided for by law cannot arise.

By carrying out the power enforcement actions provided for by law and issuing individual legal acts, the competent authorities and their officials ensure that the subjects of the relevant rights arise or consolidate the possibility of using rights, fulfilling legal obligations by entrepreneurs or observing legal prohibitions.

In the theory of law, there are two types of law enforcement activities: operational and executive (regulatory) and law enforcement [13, p. 18].

The first is the positive regulation of public relations on the basis of individual law enforcement acts that ensure the emergence or change of subjective law and legal obligation. The second one is aimed at ensuring the protection of the right from illegal encroachments, eliminating obstacles to the implementation of subjective rights.

The law enforcement activities of public administration bodies, based on the norms of administrative legislation, occupy a special place in the implementation of subjective rights of individuals and legal entities, in particular, in the field of entrepreneurship.

As noted by O.I. Ostapenko, the uniqueness of legal regulation in the form of administrative law in that it affects many public relations and relations, transforms the content of legal regulation already formed considering other branches of law, creates means to ensure and guarantee the uninterrupted implementation of rights, and the existence of public institutions [14, p. 36].

Relations that develop in relation to entrepreneurial activity are mediated by the norms of administrative law, which include administrative and legal means and methods of influence, the application and use of which ensures the implementation of entrepreneurial rights.

Regulation through administrative law is designed to regulate the executive and administrative activities of public administration bodies, the essence of which is the development and legalisation of business activities, ensuring the safety of processes and products related to their activity.

The content of administrative and legal regulation of entrepreneurial activity is formed by the measures applied by the state of legal, economic, organisational and control nature, including state support and protection of business entities.

According to the author of this study, the areas of administrative and legal regulation of the activities of business entities include:

– activities related to the creation of a business entity;

– measures that ensure the organisation of access of business entities to the market of goods, works, and services;

– state support for business entities;

– measures of supervision and control in the sphere of entrepreneurial activity.

The tasks of administrative and legal influence on relations in the field of entrepreneurship include the creation of a regulatory framework for the activities of business entities, which ensures the smooth functioning and development of the economy, freedom of entrepreneurial activity without compromising the rights and legitimate interests of the population.

D. Matricano writes that two main areas of research can be identified. One refers to what underlies entrepreneurship, that is, the role of innovations that affect the emergence and initial development of entrepreneurship. The other relates to the study of the impact of entrepreneurship on the economic and social aspects of state development [7, p. 29].

The administrative and legal procedure for the implementation of rights in the sphere of entrepreneurial activity contributes to the solution of these tasks. The purpose of this procedure is to regulate relations arising from the satisfaction of the needs for making a profit laid down in the norms of law.

The administrative and legal implementation of the rights of a business entity depends on an appeal to the competent public administration body, as a result of which special legal relations arise.

Describing such relationships, O.S. Dniprov suggests that they cannot be attributed only to managerial relations, since the implementation of rights can take place outside the management process. It is legally significant that a subject with authority participates in such relations. In practice, these legal relations are not subject to management itself, but to the implementation of the rights granted to subjects into legal reality [10, p. 178].

The subject of the administrative and legal implementation of rights in the sphere of executive power is a set of public relations that develop between individuals and legal entities and public administration bodies in the implementation of power activities. Implementation covers the impact on public relations arising from the use of rights and freedoms mediated by the activities of public administration bodies. A public administration body is an obligated entity in relation to a business entity.

The obligation depends on the need to make an individual legal decision on the issue raised by the entrepreneur or make a legally significant impact.

Legal relations that arise and exist regarding the granting of certain subjective rights or special legal status by public administration bodies to individuals and legal entities in the form of making appropriate administrative decisions are considered as public service relations.

According to Ya.V. Zhuravel, these are relations that arise in the sphere of public law regarding the provision of management services [11, p. 72].

The state, represented by the relevant public administration bodies, promotes the acquisition of private rights or private legal status by interested parties. In relation to the analysed problems, it is advisable to understand the implementation of rights in the sphere of entrepreneurial activity as acquisition and the possibility of further use with the assistance of competent public administration bodies through the use of appropriate administrative and legal means.

The implementation of rights includes the norms of administrative, administrative and procedural law, which form the basis and procedural mechanism of action, and legal facts that are the basis for the emergence of relevant legal relations in which the implementation is carried out.

An administrative procedure is defined as a logically separate sequence of administrative actions performed under state supervision and control or during the provision of public services [12, p. 27-28].

Administrative and legal implementation of rights in the sphere of entrepreneurial activity should be understood as a system of administrative and procedural law provided for by the norms, applied within certain administrative procedures, administrative and legal methods of influencing public relations that develop between the authorities and businesses regarding administrative support for the acquisition, confirmation, and use of granted rights to meet the needs for making a profit from entrepreneurial activity.

According to the author of the study, the acquisition and exercise of rights in the sphere of entrepreneurial activity require legally established governmental intervention by public administration bodies by administrative and legal means:

– administrative – in the form of direct publication based on the relevant appeals of individual administrative acts – granting special legal statuses regarding the norms that determine the procedure for actions of public administration bodies;

– state registration of: business entities; rights to immovable property; intellectual property objects; certain facts of legal significance in the field of entrepreneurship;

– permissive – by issuing licenses on the basis of relevant requests – granting special rights to carry out certain types of business activities; performing certain types of actions; creating and using certain objects in the field of entrepreneurship.

Each of these methods is based on a characteristic method of administrative and legal influence, with the help of which the public administration body resolves an administrative case within the framework of proceedings. These methods of influence should include:

– an order that is reduced to direct power influence of a regulatory nature in the form of issuing individual administrative and legal acts;

– registration of subjects;

– issuing licenses and other special permits to individuals and legal entities.

Within the framework of the function of supervision and control, the following are distinguished: activities for issuing permits (licenses) by public authorities regarding the type of activity; activities for registering rights and issuing individual acts [16].

The listed administrative and legal methods, which ensure the implementation of the rights consolidated in the norms of legislation, are designed either to establish certain legal facts, or to consolidate the legal status or status of subjects or objects in the field of entrepreneurship. Such means can take place in situations of establishing general conditions of entrepreneurial activity (state registration), or special conditions of activity (licensing, certification, accreditation), influencing the principles of functioning of the legal regime of Diya City [17].

An external official and documentary expression of the exercise of rights is an individual administrative and legal act or administrative action, from which rights (legal status) are granted, and the necessary conditions for use are created.

Administrative granting of rights, special legal statuses in the sphere of business activity and individual objects of civil law, funds of the budget system of various levels for the purpose of using in business activities, benefits, and preferences has its own characteristics.

These features in the context of entrepreneurship development in developed and developing countries are described in detail by J. Doran, N. McCarthy, M. O'Connor, and Ch. Nsiah [8].

When using the above-mentioned method of exercising rights, the activities of public administration bodies are reduced to direct power granting to individuals and legal entities on the basis of appeals, certain subjective rights without state registration or issuing a special permit. The essence of the analysed relations is that the public administration body, in the form of issuing a non-normative administrative act, grants the applicant the corresponding subjective rights or legal status.

A characteristic feature of administrative granting of subjective rights is that public administration bodies are obliged to provide organisational and financial conditions for the implementation of the granted subjective rights. This is not typical for registration or licensing methods for granting rights. For example, the provision of a subsidy to a business entity does not end with the adoption of an individual legal act on granting a subsidy, but is implemented by the actual payment of the subsidy and verification of the intended nature of use.

The administrative method of granting rights under consideration is applied in cases where the resources intended for use are limited. Several business entities apply for obtaining it, either when the commodity market functions more efficiently in the absence of competition (the sphere of natural monopolies), or when there is another need to comply with special conditions of activity due to the purpose of security. This can be seen when providing land plots and budget funds to business entities for use.

The acquisition of certain rights determines the mandatory application by business entities in the sale of goods, works and services of regulated prices, the activity of establishing which is covered by the concept of "tariff regulation". In the absence of the tariff approved by the authorised body of the public administration, an entrepreneur in legal relations with a counterparty does not have the right to independently determine the price of products sold, otherwise, actions form part of an antimonopoly offense.

State support for business activities in the form of financing consists in the administrative method. The allocation of budget funds to business entities is not continuous, has a targeted nature, and is carried out by selecting business entities that meet the established criteria.

In the Law "On the Development and State Support of Small and Medium Enterprises in Ukraine", support for small and medium-sized businesses is defined as the activities of government bodies at all levels (state, regional and local), carried out for the purpose of developing entrepreneurship on the basis of programmes [3].

The purpose of developing state-targeted programmes is to promote the implementation of state policy in priority areas of state development [18].

Budget funds for financial support of small and medium-sized businesses are provided indirectly by the entrepreneur.

M. Almodóvar-González, A. Fernández-Portillo, and J.C. Díaz-Casero note that financial support for business is the leading tool for the influence of public administration on the development of the economy [9, p. 11].

The state provides subsidies to state funds to support scientific and innovative activities, and to local budgets responsible for bringing funds to the final recipients – small and medium-sized businesses.

Another, different from the administrative, activity of public administration bodies in the field of entrepreneurship, is the permissive granting of rights to carry out certain types of business activities and perform certain types of legally significant actions, the creation and use of certain objects in the field of entrepreneurship.

In administrative law, to denote this type of activity, the categories "permitting activity", "licensing-permitting activity", and "permitting system" are used, the content of which, in fact, is the issuance of permits for the conduct of activities by public administration bodies at the request of interested persons [5; 19].

Permission and license are related as generic and specific concepts. In the current legislation, a permit (license) is associated with the emergence of a special right to carry out certain types of activities and use individual objects.

The licensing procedure is introduced in those spheres of life where there is a possible threat to the security of citizens, society, and the state. A subject who has expressed a desire to use a separate object on the basis of a permit is evaluated by public administration bodies for compliance with the requirements, its readiness (competence) to perform such actions, the result of which is the adoption of an individual administrative and legal act in the form of a permit or refusal to accept it.

A characteristic feature of permits is that, despite the imperativeness of legal relations, the process of obtaining is based on dispositive principles, which is conditioned by the free expression of the will of the authorised subject in the exercise of a subjective right, which, by applying for a permit, independently forms a special legal personality.

Currently, licensing, certification, accreditation, technical regulation, and quotas can be attributed to permissive methods of exercising rights in the field of entrepreneurial activity.

Certification is a procedure used by the state to assess and confirm the status of the subject (object) of rights, its compliance with established quality indicators and criteria.

The analysis of the current legislation on accreditation issues allows recognising the absence of a single legal interpretation of the specified term, and the existence of approaches to defining accreditation as a certifying procedure, official recognition of the subject's competence, and confirmation of the subject's compliance with the accreditation criteria. The existence of different approaches is conditioned by the variety of areas of application of accreditation.

Accreditation is a certain procedure established by laws and regulations to confirm the competence of a business entity, its ability to carry out a certain type of activity or perform certain legally significant actions. Official recognition is confirmed by the issuance of an accreditation document to the accredited person.

Carrying out business activities requires a business entity that the quality of goods, works, and services meets the requirements directly related to such a form of licensing activity as technical regulation. The legal basis of relations in this area is defined by the Laws "On Accreditation of Conformity Assessment Bodies" [20] and "On Technical Regulations and Conformity Assessment" 21].

Technical regulation covers the development of technical standards for objects, the establishment of rules for assessing the compliance of objects with technical standards, checking the compliance of objects with the specified standards, and taking measures regarding the results of the inspection. Forms of technical regulation are the development and adoption of technical regulations, rules, standardisation, and conformity assessment [22]. Permits in the field of technical regulation are the result of procedures for assessing the compliance of products and related production and circulation processes with the mandatory requirements established in technical standards.

Legal relations that develop during conformity assessment procedures indicate that the mandatory subject of such relations is a public administration body or a legal entity to which the state has delegated powers in this area. The result of such relations is the issuance of a document confirming the compliance of products with mandatory requirements.

An important component of administrative and legal action on public relations in the field of entrepreneurship is quotas related to the establishment of quantitative requirements (restrictions). The establishment of quotas can take place in foreign economic activity and in domestic economic activity. Regarding domestic economic activity in Ukraine, quotas for the participation of foreign capital in certain sectors of economic life and the establishment of various quotas in the environmental sphere should be noted. The legal significance of quotas is to ensure a balance between socially significant interests and those of business entities.

A significant list of administrative and legal ways to implement rights in the sphere of entrepreneurial activity causes the need to improve the system of protection of rights,

O.E. Dyakunovskyi, from the standpoint of Polish legislation, suggests strengthening institutional support for improving the legal status of the business ombudsman in Ukraine and expanding their powers to consider complaints [6, p. 227].

According to the author of this study, the intersectoral nature of the right to engage in entrepreneurial activity with a significant presence in legal relations of the administrative and legal component, when implementing this right, determines the need to apply out-of-court administrative and legal means of protecting the right.

Conclusions

Many rights related to entrepreneurship require the assistance of public administration bodies through the adoption of individual non-normative legal acts and the implementation of certain administrative actions. The norms of administrative and procedural law mediate the rights of entrepreneurs, ensuring their implementation in legal reality.

The system of norms of administrative and procedural law applied within certain administrative procedures regarding public relations that are established between public administration and business, regarding administrative support for the acquisition and implementation of granted rights in the field of entrepreneurial activity to meet the needs for systematic profit-making forms the administrative and legal implementation of rights in the field of entrepreneurial activity.

Administrative and legal methods of exercising rights designed to establish certain legal facts, legal status or status of subjects or objects in the field of entrepreneurship. Administrative and legal methods of exercising rights by business entities cover administrative activities, state registration, and licensing activities. Further study should cover the latest administrative and legal ways of exercising rights by business entities in the context of the digital economy of Ukraine.

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Адміністративно-правова реалізація прав суб'єктів підприємницької діяльності

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Анотація. У статті з позиції сучасної теорії держави і права та адміністративного права розглянуто, на основі чинного законодавства та нормативних вимог Європейського Союзу, теоретичні та практичні аспекти адміністративно-правової реалізації прав суб'єктів підприємницької діяльності. Актуальність теми зумовлена необхідністю удосконалення законодавства з метою комплексного теоретичного обґрунтування підвищення ефективності реалізації прав суб'єктами підприємницької діяльності в умовах трансформації економіки України. Мета статті – дослідження реалізації прав суб'єктів підприємницької діяльності. У ході дослідження застосовано методологію системного комплексного аналізу правових явищ із застосуванням факторного та еволюційного методів дослідження. Зазначено, що діяльність органів публічної адміністрації має публічно-правові цілі (правоохоронні, контролюючі, фіскальні, облікові). Одним із напрямів діяльності органів публічної адміністрації є забезпечення реалізації прав суб'єктів підприємництва. Розглянуто особливості адміністративно-правової реалізації підприємницьких прав органами публічної адміністрації. Вказано, що зазначена діяльність реалізується за рахунок видання індивідуальних адміністративно-правових актів або вчинення певних адміністративних дій. Досліджено способи реалізації (реєстрація, ліцензування, дозвільні процедури, атестація, акредитація). Розкрито зміст технічного регулювання, що включає розробку та прийняття технічних регламентів, правил, стандартизацію, оцінку відповідності, квотування. Обґрунтовано роль і значення державного нагляду та контролю у сфері підприємницької діяльності як способу адміністративно-правового забезпечення реалізації прав суб'єктів підприємницької діяльності. Вказано на роль адміністративно-процесуального права та адміністративної процедури щодо адміністративно-правової реалізації прав суб'єктів підприємництва. Дослідження спрямоване на вдосконалення норм адміністративного права щодо реалізації прав суб'єктів підприємницької діяльності

Ключові слова: підприємництво, адміністративне право, органи публічної адміністрації, способи та форми правового регулювання

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State Guarantees for the Establishment of a Monthly Long-Service Allowance of Academic Staff to a Police Officer Seconded to a Higher Education Institution with Specific Training Conditions to Ensure the Educational Process

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Abstract. The selective establishment of an allowance for pedagogical workers, depending on the subordination and type of educational institution in Ukraine, is a discriminatory attitude towards a certain category of persons who, having the appropriate scientific or teaching experience, provide the educational process without receiving state-guaranteed allowances for this. The study reveals the problem of violation of the right of pedagogical workers among police officers serving in institutions of higher education with specific training conditions to receive allowances for the length of service of an academic worker. It is established that such a supplement is not charged at all to police officers who carry out pedagogical and academic activities in higher education institutions of the Ministry of Internal Affairs of Ukraine. The purpose of the study is to substantiate the legality of establishing and mandatory payment of scientific surcharges to police officers sent to educational institutions to ensure the educational process. The key methods of research are systematic and structural analysis, which allowed generalising and analysing bylaws, legislative and departmental regulations on the establishment of a long-service allowance for an academic worker to persons involved in ensuring the educational process in educational institutions with double subordination. It is proved that the state guarantee regarding the obligation to establish a long-service allowance for an academic worker, which is provided for by the laws of Ukraine, applies to police officers who are sent to higher educational institutions for service in the positions of educational workers. It is proved that in relation to such police officers, it is the legislative provisions that are special, and not the provisions of bylaws, and therefore, bylaws cannot be applied in case of competition of legal norms. The implementation of legislative and departmental regulations on the state guarantee of the rights of academic workers in terms of calculating the long-service allowance of an academic worker to a police officer sent to a higher education institution for further service as a educational worker and enrolment in the teaching experience of a police officer of periods of work in the positions of pedagogical and academic workers would lead to the expected economic effect, namely, an increase in its monetary support by approximately 10-30% of the official salary established by the educational institution

Keywords: higher education institution with specific training conditions, scope of management, special provisions, competition of legal norms, rule of law

Introduction

Nowadays, the legal status of a police officer sent for further service to a higher education institution with specific training conditions (hereinafter – HEI), which belongs to the sphere of management of the Ministry of Internal Affairs of Ukraine, for the position of an academic worker, is not defined. Because of this, problematic issues arise regarding the components of the salary (monetary support) of such employees, in particular in terms of calculating (paying) a state-guaranteed long-service allowance for an academic worker. There is also a discussion about the possibility of considering the teaching experience in the periods of work of such an employee in pedagogical positions inherent only in higher education institutions with specific training conditions, which directly affects the determination of such a supplement.

The purpose of the study is to eliminate the discriminatory situation in the remuneration of police officers sent to the HEI to ensure the educational process.

The purpose of the study is to identify a single approach to understanding the state guarantee regarding the mandatory long-service allowance for an academic worker to a police officer sent to the HEI for service as an educational worker.

The author failed to find foreign and Ukrainan studies that directly relate to the subject matter, namely, concerning the solution of problematic issues of monetary support for police officers in Ukraine seconded to educational institutions

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to ensure educational activities. This is mainly conditioned by the fact that the subject of the study is mostly of an applied nature, and the problem itself arose due to non-compliance with the rule of law during the reform of the central executive authorities in the field of management of HEIs.

There are only general theoretical studies that are directly or indirectly related to the investigation of the problems of material support for educational workers and police officers. Among such studies, the following should be noted. K.K. Dovbysh conducted a scientific investigation of the principles of legal regulation of remuneration [1]. T.A. Masalova analysed the views of researchers and current legislation on the essence of monetary support for police officers [2]. D.O. Marusevych considered the theoretical foundations of administrative and legal regulation of monetary support for police officers [3]. D.V. Shvets investigated the theoretical and legal aspects of the current state of legal consolidation of guarantees of professional activity of police officers [4]. S.M. Bortnyk highlighted the problems of legal regulation of labour rights of police officers [5]. I.I. Senchuk considered socio-economic guarantees of professional activity of police officers [6]. M.I. Inshyn studied social security of police officers as a guarantee of their professional activity [7]. At the international level, the papers by Malcolm K. Sparrow are devoted to certain means of ensuring the activities of police officers, in particular, regarding the identification of factors that significantly affect the proper performance of police duties by police officers [8]; Kęstutis Vitkauskas studied elements that affect the effectiveness of a police officer in the conditions of the European Union [9].

The scientific originality of the study is conditioned by the fact that for the first time it is justified that it is mandatory to establish a long-service allowance for an academic worker to a police officer sent to an educational institution for a pedagogical position.

The author's personal contribution is that as a result of systematisation and analysis of the current laws and regulations on the salary of academic workers, it is proved that state guarantees for the establishment of scientific allowances and surcharges for academic workers in civilian educational institutions also apply to police officers seconded to educational institutions to ensure educational activities.

Materials and Methods

Considering the research topic, goals, and objectives, the following methods are used. The method of systematic and structural analysis allowed investigating: a) the current legislation in the field of education, which must be strictly implemented by higher education institutions, regardless of departmental subordination; b) the regulatory essence of the long-service allowance for an academic worker. This method was used in the processing and generalisation of laws and regulations regarding the legal regulation of the activities of higher education institutions with specific training conditions. Comparative, logical and legal, logical and normative, and comparative and legal methods were used in the process of analysing legislative and equivalent acts regulating the legal basis for calculating the long-service allowance for an academic worker to a police officer, and during the formulation of conclusions on the mandatory termination of an ongoing offence regarding the non-fulfilment of state guarantees of the rights of an academic worker to a police officer sent to serve in the educational institution. The dogmatic method was used to disclose the content of the payment of a long-service allowance for an academic worker, regardless of whether or not such a person has the status of a police officer. The structural and functional method (analysis) was used to investigate the legal basis for paying a long-service allowance for an academic worker to a police officer. The sociological method was used to obtain primary information about existing offences in the field of calculating and paying monetary support to police officers as teaching staff. The formal and logical method contributed to the formulation of the conclusions of the study.

The materials of this study contain a normative legal basis, which consists of the current legislative and equivalent laws and regulations that define state guarantees of the rights of academic workers in terms of calculating and paying a allowances for teaching experience to a police officer working in a pedagogical position in the HEI.

Results and Discussion

Police officers, who serve as pedagogical workers in HEIs, having experience in teaching, are in a discriminatory situation, which consists in the inaction of the HEI to calculate and pay an objective amount of wages (monetary support). Contrary to the Law of Ukraine "On Education" No. 2145-VIII, such persons from the beginning of 2016 [10] to the present are not charged at all, and therefore are not paid a long-service allowance for an academic worker. The specified allowance, as a state-guaranteed component of the salary (monetary support) of an academic employee, should be paid to a police officer with simultaneous compensation when paying personal income tax amounts, in accordance with the provisions of the Resolution of the Cabinet of Ministers of Ukraine No. 44 of 01/15/2004 [11].

The amount of monetary support for police officers is determined depending on a number of criteria, namely: special rank, term of service in the police, position, conditions of service and intensity, qualifications, availability of an academic degree (academic title). According to Article 94 of the Law of Ukraine "On the National Police" [12], police officers sent to state institutions receive monetary support, considering the official salary for their position in such an institution.

In the HEI, teachers and academic staff are provided with monthly long-service allowances in the amount of 10% to 30% of the official salary, depending on the scientific or teaching experience (Part 4 of Article 61 of the Law of Ukraine "On Education" No. 2145-VIII) [10].

HEI with specific training conditions is a state-owned institution that trains cadets (trainees, students), adjuncts at certain levels of higher education for further service in the positions of officers (non-commissioned officers, senior officers) or commanding officers to meet the needs of the Ministry of Internal Affairs of Ukraine (in accordance with paragraph 6 of Part 1 of Article 1 of the Law of Ukraine "On Higher Education" No. 1556-VII) [13].

The Ministry of Internal Affairs of Ukraine has the right to establish by its acts special requirements for the management and activities of the relevant HEI. Acts on the implementation of the rights and obligations of academic and pedagogical workers are approved in coordination with the central executive authority in the field of education and science, in particular the Ministry of Internal Affairs of Ukraine (paragraph 4 of Article 23 of the Law of Ukraine "On Higher Education") [13].

The departmental regulation, which is the Order of the Ministry of Internal Affairs of Ukraine "On Approval of the Regulations on Higher Educational Institutions of the Ministry of Internal Affairs" dated 14.02.2008 No. 62, established that higher educational institutions of the Ministry of Internal Affairs of Ukraine are state educational institutions that are subordinate to the Ministry of Internal Affairs, established and operate in accordance with the legislation of Ukraine (paragraph 1.1); universities of the Ministry of Internal Affairs of Ukraine in their activities are guided by the Constitution of Ukraine, laws of Ukraine "On Higher Education", "On Education", "On Militia" (*no longer valid*), other laws and regulations of Ukraine, resolutions of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, laws and regulations of the Ministry of Education and Science of Ukraine, the Ministry of Internal Affairs, and its Provisions (paragraph 1.2) [14].

The study emphasises that the mentioned regulation was adopted by the Ministry of Internal Affairs of Ukraine, and therefore, the implementation of its prescriptions by HEIs with specific training conditions is mandatory.

From a comprehensive analysis of these legal norms, it can be seen that the current legislation regulates the creation of HEIs with specific training conditions and one of the features of their legal status is that the Ministry of Internal Affairs of Ukraine cannot fail to fulfil state guarantees for the establishment of legally defined allowances (surcharges) for police officers sent to pedagogical positions in HEIs. At the same time, the main legal act regulating the activities of such institutions and which provides for guarantees of the rights of academic workers, including material and financial support, are the laws of Ukraine "On Higher Education" No. 1556-VII [13], "On Education" No. 2145-VIII [10].

Such HEIs are subject to the provisions of the mentioned laws, and therefore, accordingly, pedagogical workers (police officers) are guaranteed the establishment of monthly surcharges for the length of service of a academic worker in legally defined amounts. These legislative provisions define the minimum amount of long-service allowance for an academic worker of any HEI.

The fact that an academic worker is simultaneously considered a police officer sent to state institutions and is subject to legal guarantees provided for by the Law of Ukraine "On the National Police" [12] does not negate their right to receive a long-service allowance in the amount established by Article 61 of the Law of Ukraine "On Education" [10].

Separately, the study focuses on the mandatory enrolment in the length of service (seniority) of an academic worker of periods of work in positions that are inherent only in higher education institutions with specific training conditions, on the example of the position of deputy head of the department.

The list of positions of academic workers was approved by Resolution of the Cabinet of Ministers of Ukraine "List of Positions of Pedagogical and Scientific-Pedagogical Workers" dated June 14, 2000 No. 963 (hereinafter – the List) [15]. According to the List, such positions include, among other things, positions head of the department – professor, associate professor, etc. Among these positions in the List, there is no position of deputy head of the department.

However, the position of deputy head of the department is provided for by the Order of the Ministry of Internal Affairs of Ukraine No. 62 dated 02/14/2008, according to which "to the positions of scientific and pedagogical workers of higher education institutions of the third and fourth accreditation levels, except for the main positions defined in Article 48 of the Law of Ukraine 'On Higher Education' No. 2984-III (*the Law became invalid on the basis of Law No. 1556-VII of 07/01/2014, VVR, 2014, No. 37-38, Article 2004*), belong to the positions of the head of the institute (faculty, department) and their deputies" (paragraph 5.2) [14].

Article 13 of the Law of Ukraine "On Higher Education" (1556-VII) [13] defines the powers of the Ministry of Internal Affairs of Ukraine as the central executive authority in the field of education and science, the sphere of management of which includes universities with specific training conditions. Such institutions do not fall within the scope of the National Police department. Therefore, these HEIs are subject to laws and regulations adopted by the Ministry of Internal Affairs of Ukraine, and not by the National Police. In addition, HEIs in their activities are required to consider the provisions of the Order of the Ministry of Internal Affairs of Ukraine dated 02/14/2008 No. 62 [14], in particular, in terms of assigning the position of deputy head of the department to a pedagogical position.

In addition, the position of deputy head of the department is provided for by other regulatory documents, in particular, the procedure for awarding academic titles to scientific and scientific-pedagogical workers (Section II, Part 1, Paragraph 3; Part 3, Paragraph 3) [16].

As evidenced by legal practice, the HEI does not see any grounds for recalculating the monetary support for police officers with the accrual of a long-service allowance for an academic worker, referring to the norms of the resolution of the Cabinet of Ministers of Ukraine dated 11/04/2015 No. 910 "On Monetary Support for Police Officers Sent to State Bodies, Institutions and Organisations" (with amendments and additions) [17], that a seconded police officer is paid monetary support and other types of it, defined by the provisions of the resolution of the Cabinet of Ministers of Ukraine from 11/11/2015 No. 988 "On Monetary Support of National Police Officers" [18] and Order of the Ministry of Internal Affairs of Ukraine dated 04/06/2016 No. 260 "On Approval of the Procedure and Conditions of Financial Support for Police Officers of the National Police and Applicants for Higher Education with Specific Training Conditions for Police Training" [19].

Notably, any refusal of the higher educational institution to charge a long-service allowance of an academic worker to a police officer with a reference to the above-mentioned bylaws is groundless and illegal.

Resolution of the Cabinet of Ministers of Ukraine No. 910 of 11/04/2015 (as amended) establishes, "... that police officers sent to state bodies, institutions and organisations are paid monetary support based on official salaries for the positions that these persons hold in state bodies, institutions, and organisations to which they are seconded, and other types of monetary support for police officers defined by law" [17].

The author of the study does not deny the operation of the norms of this act, but only insists on the need to comply with the requirements of the laws of Ukraine "On Higher Education" No. 1556-VII [13], "On Education" No. 2145-VIII [10] in terms of compliance with state guarantees to academic workers, since a seconded police officer carries out pedagogical activities as a academic worker of the HEI, which is managed by the Ministry of Internal Affairs

of Ukraine, and not by the National Police. And the fact that a pedagogical worker is simultaneously a police officer sent to a higher education institution (HEI) with remaining in the police service indicates that the officer is subject to legal guarantees provided for by the Law of Ukraine "On the National Police" [12], and in no way negates their right to receive a long-service allowance of an academic worker in the amount established by Article 61 of the Law of Ukraine "On Education" No. 2145-VIII [10] (admittedly, if there is an appropriate teaching experience).

The regulation provided for in paragraph 4 of Resolution No. 988 of the Cabinet of Ministers of Ukraine of 11/11/2015 authorises the heads of bodies and institutions (*exclusively*) of the National Police, within the limits of the appropriations approved for them for monetary support, decide on the establishment of monetary support for police officers [18]. At the same time, the higher education institutions under study belong to the sphere of management of the Ministry of Internal Affairs of Ukraine, and not the National Police, and therefore, in their activities they are obliged to comply with the provisions of the current legislation on education (on higher education), including in terms of compliance with state guarantees of the rights of educational workers.

And, in conclusion, the Order of the Ministry of Internal Affairs of Ukraine of 04/06/2016 No. 260 [19] was adopted in compliance with the provisions of the Resolution of the Cabinet of Ministers of Ukraine of 11/04/2015 No. 910 [17], resolution of the Cabinet of Ministers of Ukraine of 11/11/2015 No. 988 [18]. According to part 18, Section I of the specified order, police officers who carry out scientific and educational, scientific, or creative activities are paid in accordance with the procedure established by the current legislation [19]. This means that the concept of "current legislation" includes, first of all, the Constitution of Ukraine, laws, and bylaws. The highest legal force of the law lies precisely in the fact that other laws and regulations are adopted based on laws, which are bylaws in their content, and therefore cannot contradict the law. As a result, bylaws cannot narrow the effect of legislative provisions (laws), in particular, in terms of calculating the minimum amount of allowance guaranteed by the state for the length of service of an academic worker to police officers.

The author of the study supports the statement of I.I. Senchuk that "the monetary support of a police officer should create conditions for staying in the service and stimulating the highest quality personnel" [6, p. 91]. Decent monetary support ensures the creation and support of the motivation of a police officer to continue their service, including in the HEI. If the HEI has less monetary support for a police officer compared to a practical unit of the National Police, this will primarily lead to the refusal of qualified personnel to continue serving in the scientific and educational spheres.

Conclusions

Nowadays, police officers sent to the HEIs to ensure the scientific and/or educational process are in a discriminatory position against educational workers who do not have the status of a police officer, and therefore, receive scientific allowances and surcharges in legally defined amounts. Failure of the HEI to fulfil its obligations to ensure the rights of educational workers to police officers who provide educational services consists in the actions (inaction) of the HEI, as a result of which the police are in a state of continuous continuation of inaction in relation to them and, accordingly, the law is violated in relation to them. Such police officers are paid incomplete monetary support at the expense of unjustified non-payment of mandatory surcharges (as the main components of the salary of an academic worker) in the amount established by current legislation.

The current bylaws do not provide for the payment of a long-service allowance of an academic worker to police officers who serve in the HEIs in the positions of teaching staff. The establishment of such a supplement for research and teaching staff is provided for by the Law of Ukraine "On Education". In relation to educational workers (police officers) who serve in HEIs, it is the mentioned law that is special, and not the specified bylaws, and therefore, the provisions (norms) of this law should be applied in case of competition of legal norms in resolving controversial issues.

From the moment of appointment to a pedagogical position in the status of a police officer sent to a HEI with remaining in the police service, regardless of whether it is a police officer or a civilian, monthly long-service allowances should be accrued and paid in legally defined amounts with simultaneous compensation for the payment of personal income tax amounts.

Violation of guarantees of the rights of educational workers (police officers) in HEIs of the Ministry of Internal Affairs of Ukraine may be stopped by the latter's voluntary compliance with the provisions of the current legislation on education, and the regulations on higher educational institutions of the Ministry of Internal Affairs.

State coercion to comply with the provisions of the current legislation may be applied to HEIs with specific training conditions. In case of non-compliance with the legislation on remuneration of labour by a higher education institution, an educational worker (police officer) has the right to apply to the administrative court with a claim for recovery of the salary. The plaintiff (police officer) is exempt from paying the court fee. The current legislation also does not provide for any limitation periods.

The expected economic effect of compliance with the rule of law is significant – an increase in the monetary support of a police officer as an academic worker by 10-30% of the official salary.

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Державні гарантії встановлення щомісячної надбавки за вислугу років науково-педагогічного працівника поліцейському, відрядженому до закладу вищої освіти зі специфічними умовами навчання для забезпечення освітнього процесу

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Анотація. Вибіркове встановлення науково-педагогічним працівникам в залежності від підпорядкування та виду навчального закладу в Україні надбавки за вислугу років є не що інше як дискримінаційне ставлення до окремої категорії осіб, які, маючи відповідний науковий або педагогічний стаж, забезпечують науковий та освітній процес, не отримуючи за це гарантовані державою доплати. У статті розкрито проблему порушення права науково-педагогічних працівників з-поміж поліцейських, які проходять службу в закладах вищої освіти зі специфічними умовами навчання, отримувати до грошового забезпечення надбавки за вислугу років науково-педагогічного працівника. Встановлено, що така надбавка взагалі не нараховується поліцейським, які здійснюють педагогічну та науково-педагогічну діяльність в закладах вищої освіти Міністерства внутрішніх справ України. Метою дослідження є обґрунтування законності встановлення та обов'язковості виплати наукових доплат поліцейським, відрядженим в заклади освіти для забезпечення освітнього процесу. Ключовими методами дослідження є метод системного та структурного аналізу, який дав змогу узагальнити та проаналізувати законодавчі, підзаконні та відомчі нормативні акти, що урегульовують встановлення надбавки за вислугу років науково-педагогічного працівника особам, які задіяні в забезпеченні освітнього процесу в закладах освіти з подвійним підпорядкуванням. Доведено, що державна гарантія щодо обов'язку встановлення надбавки за вислугу років науково-педагогічного працівника, яка передбачена законами України, розповсюджується на поліцейських, яких відряджено до закладів вищої освіти для проходження служби на посадах науково-педагогічних працівників. Обґрунтовано, що стосовно таких поліцейських саме законодавчі положення є спеціальними, а не положення підзаконних актів, а отже, підзаконні акти не можуть застосовуватися в разі конкуренції правових норм. Виконання законодавчих та відомчих приписів щодо державного гарантування прав науково-педагогічних працівників у частині нарахування надбавки за вислугу років науково-педагогічного працівника поліцейському, відрядженому до закладу вищої освіти для подальшого проходження служби на посаді науково-педагогічного працівника, а також зарахування до педагогічного стажу поліцейського періодів роботи на посадах педагогічних та науково-педагогічних працівників призведе до очікуваного економічного ефекту, а саме збільшення його грошового забезпечення орієнтовно на 10-30 % від посадового окладу, встановленого закладом освіти

Ключові поняття: заклад вищої освіти зі специфічними умовами навчання, сфера управління, спеціальні положення, конкуренція правових норм, верховенство права

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Problematic Issues of Liability for Crimes Against Justice in the Criminal Law Doctrine

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Abstract. The study of problematic issues of responsibility for crimes and misdemeanours against justice becomes particularly relevant, considering the reform of judicial proceedings, and the discussion in the scientific community of the draft Criminal Code of Ukraine. The study applied a dialectical approach and the corresponding method, a systematic approach, methods of system analysis, technical and legal analysis, formal and logical, and sociological approaches. The purpose of this study is to formulate proposals on the structure of the division on responsibility for crimes, misdemeanours that encroach on the established procedure of legal proceedings, execution of court decisions, initial provisions on the regulation of the material basis of criminal liability for certain groups of encroachments on the established procedure of legal proceedings, execution of court decisions, approaches to criminal law protection of professional advocacy in the draft Criminal Code of Ukraine. As a result of the study, it was concluded that the criterion for systematisation of norms within the structural division of the draft Criminal Code of Ukraine on responsibility for encroachment on the established procedure for legal proceedings and enforcement of court decisions should be taken as a specific object of relevant crimes and misdemeanours. It is proposed to provide in the draft Criminal Code of Ukraine responsibility for interference in the activities of special victims – participants in relations on the implementation of legal proceedings and the execution of court decisions with differentiation of forms of such influence on the relevant victims depending on its intensity, which, accordingly, have different degrees of public danger. The expediency of placing in the structural unit of the draft Criminal Code of Ukraine on liability for crimes and misdemeanours against justice, the rules protecting social relations that ensure the activities of the defender, the representative of the person has been substantiated. At the same time, it is proposed to provide for a separate provision in the structural subdivision of the special part of the Criminal Code of Ukraine, where the object is social relations to ensure the socio-economic rights of a person, which would establish liability for intentional obstruction of a lawyer in the exercise of their lawful professional activity, in the absence of signs of criminal offences providing for liability for unlawful influence on a defender or representative. The provisions and proposals formulated by this study may be useful when developing the draft Criminal Code of Ukraine

Keywords: crime, misdemeanour, justice, legal proceedings, enforcement of court decisions, lawyer, defender, representative of a person, differentiation of criminal liability

Introduction

At a time when russia's armed aggression against Ukraine continues, when real prospects for joining the European Union are finally opening up for the Ukrainian state, the issue of responsibility for crimes against Justice is becoming particularly relevant again. Ultimately, the priority reform among those that Ukraine should carry out as a condition for joining the EU is judicial reform, the main goal of which is to ensure the independence of the court. An independent court is a basis and foundation for the development of the state in all key areas: the economy, the activities of law enforcement agencies, democracy, and many other spheres of life of the state and society. In this context, the study of liability for criminal offences against justice deserves the attention of criminal scientists. In this difficult time for Ukraine, researchers must work on their own front. In this context, it should be noted as a positive point that the working group on the development of criminal law of the commission on legal reform under the president of Ukraine has resumed

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work on the draft Criminal Code of Ukraine [1]. Therefore, it is advisable to consider the key issues of liability for criminal offences that encroach on legal proceedings, relations on the enforcement of court decisions, which are traditionally designated in legal science as crimes against justice.

Issues related to criminal liability for crimes against justice have been investigated by many Ukrainian researchers – N.Yu. Alieksieieva [2], V.V. Vlasiuk [3], N.V. Verbytska [4], R.V. Karhut [5], T.S. Losych [6], A.O. Moroz [7], M.V. Shepitko [8], and others. At the same time, the subject of the study was the problems of regulating the characteristics of individual crimes against justice, the problems of qualification of criminal offences against justice, and their punishability. These studies were conducted based on the current version of the Criminal Code of Ukraine [9].

Thus, N.Yu. Alieksieieva formulated a number of proposals on criminal liability for encroachments committed by witnesses, experts, translators, or in relation to them, in particular, on improving the sanctions of the relevant criminal law norms, regulating liability for bribery of these participants in legal proceedings, on excluding from the disposition of articles 384-386 of the Criminal Code of Ukraine the indication of the legal protection of the activities of the temporary investigative or special temporary investigative commission of the Verkhovna Rada of Ukraine [2].

N.V. Verbytska, V.V. Vlasiuk, R.V. Karhut, T.S. Losych, A.O. Moroz investigated the problems of illegal influence on special victims – participants in legal proceedings, in particular, signs of relevant elements of criminal offences and issues of qualification of relevant offences. T.S. Losych investigated signs of the composition of a criminal offence "Threat or violence against a judge, people's assessor, or juror", formulated a position on the interpretation of the signs of the objective side of the elements of criminal offences under Article 377 of the Criminal Code of Ukraine, in particular, regarding the interpretation of the term "physical violence" [6].

A number of conceptual provisions on liability for encroachment on special victims-participants in legal proceedings were formulated by R.V. Karhut, V.V. Vlasiuk. In particular, R.V. Karhut, considering the experience of the Republic of Poland, substantiated the expediency of establishing responsibility for criminal acts that encroach on the established procedure for the performance of a judge's powers [5].

V.V. Vlasiuk formulated a number of proposals for criminal legal protection of the activities of a defender or representative of a person, one of which was a conceptual proposal to provide for criminal legal protection of the activities of a defender or representative of a person in the section on encroachment on the authority of government bodies, local self-government bodies, citizens' associations, and criminal offences against journalists, in the studies that provide for liability for encroachment on law enforcement officers, along with these special victims, unify signs of liability for criminal offences against persons who protect or represent a person by providing them with legal assistance [3].

A number of conceptual provisions concerning the establishment of criminal liability for crimes (criminal offences) against justice were formulated by M.V. Shepitko, in particular, regarding the object of these criminal offences, their system, development of approaches to establishing responsibility for certain groups of crimes against justice both in the current Criminal Code of Ukraine and in the draft Criminal Code of Ukraine [8; 10, p. 473-476].

Among foreign researchers, issues related to criminal liability for encroachment on legal proceedings were investigated by S.M. Calderon [11], K. Ryan, E. Girgenti, & L. Morehouse [12, p. 1645-1672], M. Harrington, & O. Jertian [13, p. 1427-1454], M. Dooner, K. Irwin, & A. Rickeman [14, p. 1293-1320], S. Mah, T. Hamsher, J. Hughes, & A. Moody [15, p. 1115-1142], D. Singh, E. de Santis, K. Gulite, & S. Rho [16, p. 1605-1643], D. St. John, H. Ahmed, A. Basner et al [17. p. 1073-1113], E. Hasen, M. Alagia, C. Jenets, & L. Miliotes [18, p. 1251-1292], S. Isra, Yuliandri, F.Amsari, & H. Tegnan [19, p. 72-83]. These researchers considered the problems of responsibility for encroachment on justice, firstly, according to the legislation of the relevant foreign states, and secondly, often these studies focused on criminological aspects. At the same time, it is important to consider the above-mentioned and other problematic issues related to the establishment of responsibility for crimes and criminal offences against justice, and express the author's vision for their solution in the context of the above-mentioned draft Criminal Code of Ukraine.

In particular, considering the problems of establishing responsibility for crimes and misdemeanours against justice in the draft Criminal Code of Ukraine, it is important to express a position on some conceptual issues. In this context, first of all, questions about the structure and content of the relevant structural division of the draft Criminal Code on responsibility for crimes and misdemeanours against justice deserve attention. Considering the content of the specified structural division (the version of the draft Criminal Code of Ukraine as of June 23, 2022 – the 8th book "Crimes and misdemeanours against justice"), separate consideration should be given to the question of approaches to establishing responsibility for certain groups of crimes against justice. In this context, attention should be paid to the issues of differentiation of liability for criminal offences related to illegal influence on participants in legal proceedings, public relations regarding the execution of court decisions (interference in activities, violence, etc.); issues of ensuring the completeness of legal protection in the criminal law of advocacy, including in the status of a defender, a representative of a person; the place of norms on liability for offences that encroach on the activities of a defender, a representative of a person, in the system of the special part of the Criminal Code of Ukraine. The formulation of proposals on these key issues would be important and useful for consideration in the development of the draft Criminal Code of Ukraine.

Materials and Methods

To achieve the above goals and objectives, first of all, it is necessary to analyse the provisions of the draft Criminal Code of Ukraine, in particular, the structural division, which establishes responsibility for crimes and misdemeanours against justice, and develop proposals for the most appropriate structure of this division. At the same time, it is necessary to apply the method of system analysis, which provides for a comprehensive disclosure of the essence of the object as a system. Systematisation of norms on responsibility for crimes and misdemeanours against justice within the relevant structural division of the draft Criminal Code of Ukraine should be carried out on the basis of classification according to essential features that reveal the essence of the relevant concept.

It also seems appropriate to propose approaches to establishing responsibility for certain groups of crimes

against justice. In particular, this refers to a group of criminal offences related to illegal influence on participants in legal proceedings, public relations regarding the execution of court decisions. In this context, this study considers the issue of differentiation of liability for criminal offences related to illegal influence on such persons (interference in activities, violence, etc.). Special attention should also be paid to the investigation of the issue of criminal law protection of advocacy, namely, whether the relevant activity is sufficiently protected by means of criminal law, and the issue of criminal law protection of the activities of a defender, a representative of a person, in particular, the place of norms on liability for encroachment on the activities of these persons, in a special part of the Criminal Code of Ukraine. In general, investigating these and other issues related to the establishment of criminal liability for certain types of acts, first of all, the dialectical approach and the corresponding method should be applied, which provides for the clarification or establishment of such a type of legal responsibility for the relevant acts, reflects the objective needs of society and subjective ideas about the desired criminal law regulation. Guided in this case by the dialectical method, and applying the sociological method, in March-April 2020, an anonymous written survey was conducted by the investigative bodies of the national police, prosecutors in the Lviv Oblast, forensic experts of the Lviv Research Institute of Forensic Examinations, lawyers, state executors of departments of the State Executive Service of Lviv on issues related to the establishment of criminal liability for encroachment on their professional activities. Among other things, the questionnaire for each of the above-mentioned groups of respondents, considering the specifics of their professional activities, contained questions about whether they encountered interference or other illegal influence in their activities; in connection with what aspects of their professional activities and in what form such influence was carried out, if any.

Regarding the forms in which encroachments on witnesses who have suffered in court proceedings are most often committed, a summary of the materials of judicial practice for 2019-2021 has been made.

In addition, a functional approach should be applied when considering the problems of establishing responsibility for the above-mentioned groups of crimes against justice. M.I. Panov noted that the essence of the functional approach in scientific research is to isolate the object that is being studied as a whole, divide this object into elements (components), and establish a functional relationship between these components, and between the components and the whole. At the same time, the researcher calls the main structural elements of the functional approach in criminal law study – the tasks and functions of criminal law [20, p. 15-16]. Therefore, the phenomenon under study should be considered from the standpoint of fulfilling the tasks and functions of criminal law.

In addition, when studying the problems of differentiation of responsibility for criminal offences related to illegal influence on participants in legal proceedings, public relations on the execution of court decisions, in particular, when analysing the relevant criminal law norms, the method of technical and legal analysis is subject to application, the main techniques and means of which are criminal terminology, legal construction – the composition of a criminal offence. In particular, this method is subject to application in the study of forms of illegal influence on the above-mentioned persons, which are provided for in the norms of the current Criminal Code of Ukraine, the draft Criminal Code of Ukraine.

When studying the problems of criminal law protection in the professional activity of lawyers, it is necessary to apply a systematic approach that provides for logical and structural coordination of the provisions of the criminal law, ensuring the completeness of criminal law regulation, and coordination of the provisions of the criminal law with the provisions of international legal acts. In addition, the methodological tools that should be used in the study of the problems of the criminal legal protection of legal activity include the formal and logical method of technical and legal analysis.

Results and Discussion

It was mentioned above that the draft Criminal Code of Ukraine provides for a separate book – the 8th book "Crimes and misdemeanours against justice", which highlights the following sections: "Crimes against the foundations of justice" (8.1), "Crimes and misdemeanours against the promotion of justice and the activities of law enforcement agencies" (8.2), "Crimes and misdemeanours against the enforcement of a court decision" (8.3).

Emphasising the correctness of combining in one book the norms on liability for encroachment both on the established procedure of legal proceedings and the execution of court decisions, since these groups of relations are inextricably linked, although they have a different legal nature, it should be noted that in this context the name of the corresponding book needs to be changed. In view of the range of protected public relations, it was more accurate to designate it as "Crimes and misdemeanours against the order of legal proceedings and enforcement of court decisions", since the concept of "justice" does not fully cover the entire range of public relations belonging to the generic object of the relevant group of offences. In particular, this refers to relations regarding the execution of court decisions, and the performance of other functions of the court (except for justice) in the framework of legal proceedings [21, p. 190-193, 209-210].

M.V. Shepitko noted that one of the trends that will affect the development of crimes against justice is the establishment of their system (division into groups). The researcher suggests identifying chapters in the structure of the relevant section of the criminal law that provide for liability for crimes against justice, based on the system proposed by him. Accordingly, M.V. Shepitko suggests identifying the following groups of crimes against justice: 1) in the administration of justice; 2) ensuring the administration of justice; 3) aimed at ensuring the results of the administration of justice [22, p. 131].

At the same time, traditionally, the construction of a special part of the Criminal Code of Ukraine – its division into structural parts – is based on such a criterion as the object of a criminal offence. In this context, the study proposes a classification that would allow building a more or less coherent system of criminal offences that encroach on the established procedure for judicial proceedings and enforcement of court decisions, which are designated in the criminal law as crimes against justice. According to the criterion (feature) of the specific object of the composition of a criminal offence, these criminal offences can be classified into the following groups: 1) that encroach on the procedural guarantees of the rights and legitimate interests of a person in legal proceedings (the subject of criminal offences of this

group is a special official who is a participant in relations on the implementation of legal proceedings); 2) that encroach on the guarantees of independence and inviolability, other guarantees of the activities of officials who are participants in relations on the implementation of legal proceedings, the execution of court decisions, and defenders, representatives of the person (the subject of criminal offences of this group, as a rule, is general, because according to the mechanism of encroachment on the object of a criminal offence, encroachments are committed from outside public relations protected by criminal law); 3) encroach on relations to ensure the receipt of reliable evidentiary and other information that has legal significance in court proceedings and during the execution of court decisions (the subject of these criminal offences are persons who are legally assigned certain duties to facilitate legal proceedings, the execution of court decisions); 4) encroach on relations regarding the timely disclosure and termination of criminal offences; 5) encroach on the procedure for the execution of court decisions established by law [21, p. 292-296].

Based on this, it seems appropriate to allocate the following sections within the framework of the book of the 8th draft of the Criminal Code of Ukraine:

– "Crimes and misdemeanours against procedural guarantees of the rights and legitimate interests of a person in legal proceedings", which provide for liability for relevant crimes and misdemeanours, the subject of which is officials participating in relations on the implementation of legal proceedings;

– "Crimes and misdemeanours against guarantees of independence and inviolability of officials, defenders, representatives of a person in legal proceedings, during the execution of court decisions", which include norms on liability for interference with the activities and encroachment on the personal goods of the special victims concerned in connection with their lawful activities in the proceedings and in respect of the enforcement of court decisions;

– "Crimes and misdemeanours against timely detection and suppression of crimes and misdemeanours";

– "Crimes and misdemeanours against the established procedure for obtaining reliable evidentiary and other information that has legal significance in legal proceedings and enforcement proceedings";

– "Crimes and misdemeanours against the order of execution of court decisions".

Considerations should also be made regarding *the establishment of liability for criminal offences committed by illegally influencing participants in relations on the implementation of legal proceedings and relations on the execution of court decisions*. In the current Criminal Code of Ukraine, this group of criminal offences should include the following articles: 376-379, 386, 397-400 of the Criminal Code of Ukraine.

The draft Criminal Code of Ukraine proposes to provide for liability for interference in the activities of a judge, an investigating judge (Article 8.1.5), a prosecutor, an investigator, a detective, an inquirer, a defence lawyer, a representative of a person, a forensic expert, an employee of the state executive service, a private executor (Article 8.2.3) "including through violence against their close person or threats to them." Based on the principle of differentiation of criminal liability, it seems that the following three types of acts have different degrees of public danger: a) interference without threat; b) interference with threat; c) interference with the use of violence. In addition, the threat of infringement of the rights and legitimate interests of a person, on the one hand, and the threat of murder, on the other hand, have different degrees of public danger. When it comes to violence, acts that have caused different harm to a person's health have different degrees of public danger. It seems that the rule under consideration needs to be improved in this context. Responsibility for interfering in the activities of these special victims by means of violence should be provided for in separate norms, and differentiated depending on the intensity of violence used against the victim.

Article 8.2.4 of the draft Criminal Code of Ukraine establishes liability for obstructing the activities of the prosecutor's office or law enforcement agencies, in particular, for the following acts: deliberately false notification of the prosecutor or law enforcement agency about the commission of a crime; if a person, being a suspect or accused, has slandered another person in committing a crime; bribery of a participant in criminal proceedings who is not an official; falsification, destruction or damage of evidence in criminal proceedings [1]. These acts have different degrees of public danger, or some of them, under certain conditions, may not acquire such a property as public danger at all (for example, bribery of a participant in criminal proceedings who is not an official). In addition, it should be noted regarding the encroachment on a witness, victim, specialist, translator – if it is committed by a common subject – the draft Criminal Code of Ukraine establishes liability only for illegal influence on these persons in order to prevent the performance of their duties in the form of bribery (bribery of a participant in criminal proceedings who is not an official (part 3 of Article 8.2.4)), at the same time there are no norms that would establish responsibility for more socially dangerous forms of influence on these persons (obstruction of access to the relevant authorities to fulfil their duty, coercion by threats or violence). Although Article 4.4.7 of the draft Criminal Code of Ukraine (section 4.4 "Crimes against personal freedom and dignity of a person") establishes liability for forcing by threat or violence against the injured person or his close person to commit or not to commit a certain action, at the same time in the case under consideration (when the victims are participants in the proceedings) refers acts that pose the highest public danger, since they simultaneously encroach on several objects that, in addition to the freedom and dignity of a person and (or) their mental integrity, health, there is also an established procedure for legal proceedings and (or) execution of court decisions. In this case, the latter act as the main direct object.

Notably, the legislator in Article 4.4.7 "Coercion" listed articles that contain special norms in relation to Article 4.4.7, among which Article 8.2.8 "Violation of the right to defence" is indicated, although, probably, in this case, Article 8.2.9 "Coercion during investigative actions" should have been indicated. Moreover, coercion by threat and coercion by violence have different degrees of public danger, as noted above, and the fact that threats, depending on the harm caused to what goods of the person the perpetrator threatens, can have different degrees of public danger. Responsibility for these acts requires differentiation.

It should be noted that the generalisation of judicial practice shows that encroachments on witnesses, victims, and other participants in proceedings in connection with their participation in legal proceedings are not isolated in practice. Similar facts of illegal influence occur within the

framework of public relations regarding the implementation of enforcement proceedings. Thus, in particular, in March-April 2020, a survey of state performers was conducted. One of the questions in the questionnaire was whether respondents in their practical activities encountered facts of illegal influence on an expert, appraiser, specialist, or translator involved in enforcement proceedings, in order to persuade them to refuse to give an opinion, a report on the assessment of property, or to give a deliberately false conclusion, a report on the assessment of property. Among the state executors who noted that they had encountered such facts in their activities, another question in the questionnaire was about the form in which such influence was taken, – 12.5% said it was in the form of bribery; the remaining 87.5% said it was other forms of influence. Also during the same period, a survey of forensic experts was conducted, where one of the questions of the questionnaire was the question of, whether there have been cases of interference in the professional activities of respondents, obstruction of such activities related to the performance of their functions as an expert in legal proceedings. Among the experts who noted that there were cases of such interference, 33.3% of respondents noted that such acts were in the offer or promise of illegal benefits, while 66.7% of respondents noted that this was in other forms of illegal influence [21, p. 373-374].

Thus, the data of the conducted survey and the data of the conducted generalisation of judicial practice, indicate that most often illegal influence on witnesses and experts in criminal proceedings are carried out by bribery, preventing the appearance of pre-trial investigation bodies or in court, and by threats (threat of violence, destruction or damage to property, disclosure of information that can harm the rights and interests of the victim or their close relatives). In addition, sometimes such influence is also carried out through the use of violence against these categories of victims, illegal influence due to acquaintance with the accused, friendship, and family ties (5.6% of respondents). The latter of the above acts (illegal influence due to acquaintance with the accused, friendship, family ties), considering the fact that they themselves do not pose an increased public danger, which would lead to the establishment of criminal liability for them in a separate special norm, should be qualified, if there are appropriate grounds, as incitement to commit other criminal offences, including against justice. Thus, it seems appropriate to provide in the draft Criminal Code of Ukraine, in the book on crimes and misdemeanours against legal proceedings and the execution of court decisions, a separate norm on liability for various forms of influence (depending on its intensity) on the subjects of relations on the implementation of legal proceedings, enforcement proceedings, differentiating criminal liability depending on the intensity of such impact. Such an approach would allow differentiating criminal liability for the relevant acts by providing for appropriate norms of punishment for acts in the sanctions, considering their public danger.

Among the important issues related to liability for criminal offences of the group under consideration is the question of *criminal law protection of the activity of a defender, representative of a person, or lawyer's activity*.

In the current Criminal Code of Ukraine, these norms are provided for in articles 397-400 of the Criminal Code of Ukraine. From the content of the dispositions of the relevant norms, it should be concluded that the object of the relevant criminal offences goes beyond the object of crimes against justice, because, according to the literal interpretation of the mentioned norms, they should also be applied when interference in the activities of a defender, a representative of a person, intentional destruction or damage to their property, encroachment on life, threat or violence was committed in connection with the provision of legal assistance and outside the legal proceedings and relations for the enforcement of court decisions. In this aspect, the draft Criminal Code of Ukraine (Article 8.2.3) formulates these norms in a similar way, in particular, it provides for liability for interference in the activities of a defender, a representative of a person [1].

Researchers in the field of criminal law suggested ways to solve the above-mentioned issue. In particular, V.V. Kudryavtcev proposed to determine in the dispositions of the norms provided for in articles 398-400 of the Criminal Code of Ukraine, the motives and purpose of encroachment on the legitimate activity of providing legal assistance in the course of legal proceedings [23, p. 164-166]. O.F. Bantyshev proposed articles that ensure the interests of both the activities of a defender, a representative of a person, and their personal interests, the safety of their life and health, – allocate in a separate section – "Crimes against the normal activity of a defender or representative of a person" [24, p. 174]. V.V. Vlasiuk proposed to unify the signs of liability for criminal offences against persons who protect or represent a person by providing them with legal assistance, and to provide for it in the section on encroachment on the authority of state authorities, local self-government bodies, citizens' associations and criminal offences against journalists, in articles that provide for liability for encroachment on law enforcement officers, along with these special victims. At the same time, the researcher proposed to consider the criteria (grounds) for allocating responsibility for encroachment on the above-mentioned persons in these articles – special signs of injured persons (defender and representative of the person), and their activities [3, p. 4]. This position cannot be agreed with, given that the activities of a defender, a representative of a person in most cases are carried out within the framework of legal proceedings, and therefore, are covered by the generic object of crimes against justice. At the same time, it should be noted separately about the legal protection of professional activities of lawyers. Article 397-400 of the Criminal Code of Ukraine, and Article 8.2.3 of the draft Criminal Code of Ukraine, provide for norms that are designed to ensure legal protection of legal activity only in cases where a lawyer provides legal assistance, while being in the status of a defender or representative of a person. These rules do not protect professional advocacy in cases where the lawyer does not carry out it in the status of a defender or representative of a person. The analysed draft of the Criminal Code of Ukraine also does not contain any other special norms aimed at legal protection of the professional activity of a lawyer.

In international legal acts that define international standards on guarantees of professional advocacy, it is noted that it is necessary to ensure in the national legislation of states guarantees of professional activity of a lawyer, which relate to all areas of their activity (not just legal proceedings). In particular, international legal acts provide for the following provisions concerning guarantees of the lawyer's activity:

– ensuring that lawyers can perform their professional duties without intimidation, obstacles, or inappropriate

interference (paragraph 2 of the main provisions on the role of lawyers adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990) [25]; paragraph a) of the Charter of core principles of the European legal profession (2006) [26];

– ensuring the prerequisites for the absolute independence of a lawyer in the performance of their professional tasks and the absence of any influence on them, primarily related to their personal interest or external pressure (paragraph 2.1.1 of the Code of Conduct of European Lawyers, adopted at the plenary session of the Council of Bar Associations and legal societies of Europe (1988) [27];

– ensuring the lawyer's criminal and civil immunity from prosecution for statements concerning the case, in good faith performance of their duty, performance of their duties in a court, tribunal, other legal or administrative body (paragraph 20 of the Main Provisions on the Role of Lawyers Adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of offenders (1990); ensuring the exclusion of the possibility for a lawyer to be punished or threatened with its use, the possibility of prosecution, sanctions for actions committed in the performance of their professional duties in accordance with standards and ethical norms (paragraph 16 of the Main Provisions on the Role of Lawyers adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990), section a) of the Charter of core principles of the European profession of lawyers (2006);

– the duty of the authorities to take measures to adequately protect lawyers in cases where the security of lawyers in connection with the performance of their professional duties is under threat (paragraph 17 of the Basic provisions on the role of lawyers, adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990).

Therefore, based on the provisions of these international legal acts, the activities of lawyers should be provided with special guarantees. At the same time, the guarantees of professional activity of lawyers should concern both non-interference in their professional activities in various aspects (the lawyer's duty to preserve the confidentiality of the client's cases, independence, freedom of the lawyer to conduct the case, etc.), and ensuring his personal safety in connection with their activities. Therefore, it seems that the restriction of the criminal legal protection of professional advocacy only in those cases when a lawyer has the status of a defender, a representative of a person, as provided for, based on the provisions of articles 397-400 of the Criminal Code of Ukraine, does not comply with the provisions of international legal acts, does not fully protect the professional activity of a lawyer.

Generalisations of empirical data obtained as a result of a survey of lawyers confirm the need to supplement criminal law in order to create prerequisites for more complete criminal legal protection of advocacy. In particular, according to a survey of lawyers conducted in March-April 2020, the overwhelming majority of lawyers answered in the affirmative to the question of whether there were cases of interference in the legal activity, obstruction of such activities related to the performance of the function of a defender, a representative of a person: such cases were present against them; 30.3% of lawyers said that no such acts were committed against them. When asked whether there were cases of interference in their advocacy activities that are not related to the performance of their functions as a defender, representative of a person, but are related to other types of professional advocacy (for example, providing explanations on legal issues, consultations, drafting applications, complaints, procedural and other legal documents; legal support for the activities of individuals and legal entities, the state), 36.4% of lawyers said that there were such cases; the majority (63.6%) gave a negative answer to this question [21, p. 266]. Thus, for the most part, such encroachments are committed in connection with the performance by a lawyer of the functions of a defender, a representative of a person, but cases of interference in activities during the implementation of other types of legal activity are also relatively common. Therefore, these issues need to be resolved in the Criminal Code of Ukraine.

Considering the above, it is advisable to introduce into the structural draft of the Criminal Code of Ukraine norms that would protect the activities of a defender, a representative of a person in connection with the performance of their relevant functions in court proceedings, during the execution of court decisions, at the same time, it was noted above – with the differentiation of forms of such illegal influence carried out by the legislator. At the same time, in the structural subdivision of the special part of the Criminal Code of Ukraine, where the object is public relations to ensure the socio-economic rights of a person (in the current Criminal Code of Ukraine – this is section 5, in the draft Criminal Code of Ukraine under consideration – section 4.8), it seems appropriate to provide for a separate article, which establishes responsibility for intentionally obstructing the implementation of legal professional activities by a lawyer, violation of the guarantees of their activities defined by law and professional secrecy in the absence of signs of criminal offences that constitute illegal influence on the defender or representative of a person (in the current Criminal Code of Ukraine – articles 397-400).

CONCLUSIONS

The above gives grounds to formulate the following statements.

1. Based on the proposed classification according to the specific object of criminal offences that encroach on the established procedure for legal proceedings and execution of court decisions, it seems appropriate within the framework of the structural division of the draft Criminal Code of Ukraine, which would establish responsibility for these crimes and misdemeanours, to distinguish the following sections: "Crimes and misdemeanours against the procedural guarantees of the rights and legitimate interests of a person in court proceedings"; "Crimes and misdemeanours against the guarantees of independence and inviolability of officials, defenders, representatives of the person in court proceedings, during the execution of court decisions"; "Crimes and misdemeanours against the timely disclosure and suppression of crimes and misdemeanours"; "Crimes and misdemeanours against the established procedure for obtaining reliable evidentiary and other information that has legal significance in legal proceedings and enforcement proceedings"; "Crimes and misdemeanours against the procedure for executing court decisions".

2. It seems appropriate to provide in the above-mentioned structural subdivision of the draft Criminal Code of Ukraine responsibility for unlawful influence on special victims – participants in relations on the implementation of legal proceedings, execution of court decisions, providing for the differentiation of forms of such influence on the relevant victims depending on its intensity, which, accordingly, have

different degrees of public danger, in particular, for interference without the threat of violence; interference with the threat of violence; interference with the use of violence.

3. It would be justified to place in the structural subdivision of the draft Criminal Code of Ukraine on responsibility for crimes and misdemeanours against justice (against the established procedure for legal proceedings and enforcement of court decisions) norms that would protect the activities of a defender, a representative of a person within the framework of these relations (legal proceedings, enforcement of court decisions). At the same time, in the structural division of the special part of the Criminal Code of Ukraine, where the object is public relations to ensure the socio-economic rights of a person (in the draft Criminal Code of Ukraine – section 4.8), it seems appropriate to allocate a separate article, which would provide for liability for acts that constitute deliberate obstruction of the lawyer's legitimate professional activity, violation of the guarantees of their activities defined by law and professional secrecy, in the absence of signs of elements of criminal offences that provide for liability for illegal influence on the defender or representative of a person in legal proceedings and within the framework of relations for the execution of court decisions.

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Проблемні питання відповідальності за правопорушення проти правосуддя в доктрині кримінального права

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Анотація. Дослідження проблемних питань відповідальності за злочини і проступки проти правосуддя набуває особливої актуальності з огляду на реформу судочинства, а також обговорення в наукових колах проєкту Кримінального кодексу України. У процесі цього дослідження було застосовано діалектичний підхід і відповідний йому метод, системний підхід, методи системного аналізу, техніко-юридичного аналізу, формально-логічний, соціологічний. Метою цього дослідження є формулювання пропозицій щодо структури підрозділу про відповідальність за злочини, проступки, які посягають на встановлений порядок судочинства, виконання судових рішень, вихідних положень щодо регламентації матеріальної підстави кримінальної відповідальності за окремі групи посягань на встановлений порядок судочинства, виконання судових рішень, підходів щодо кримінально-правової охорони професійної адвокатської діяльності в проєкті Кримінального кодексу України. У результаті проведеного дослідження було зроблено висновки про те, що критерієм систематизації норм у межах структурного підрозділу проєкту КК України про відповідальність за посягання на встановлений порядок судочинства і виконання судових рішень, треба брати видовий об'єкт відповідних злочинів і проступків. Запропоновано передбачити в проєкті КК України відповідальність за втручання в діяльність спеціальних потерпілих – учасників відносин щодо здійснення судочинства і виконання судових рішень з диференціацією форм такого впливу на відповідних потерпілих залежно від його інтенсивності, що, відповідно, мають різний ступінь суспільної небезпеки. Обґрунтовано доцільність розміщення у структурному підрозділі проєкту КК України про відповідальність за злочини, проступки проти правосуддя норм, які б охороняли суспільні відносини, що забезпечують здійснення діяльності захисника, представника особи. Водночас запропоновано у структурному підрозділі Особливої частини КК України, де об'єктом є суспільні відносини щодо забезпечення соціально-економічних прав особи, передбачити окрему норму, де було б установлено відповідальність за умисне перешкоджання адвокатові в здійсненні його законної професійної діяльності, за відсутності ознак кримінальних правопорушень, що передбачають відповідальність за протиправний вплив на захисника чи представника. Сформульовані у цій статті положення та пропозиції можуть бути корисними для врахування під час розробки проєкту Кримінального кодексу України

Ключові слова: злочин, проступок, правосуддя, судочинство, виконання судових рішень, адвокат, захисник, представник особи, диференціація кримінальної відповідальності

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Special Ways to Protect the Inheritance Rights of Minors

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Abstract. The relevance of the subject matter is primarily conditioned by the specific features of the civil status of minors as participants in hereditary legal relations. Their lack of absolute autonomy and legal independence requires the use of special ways to protect their inheritance rights, but the structured list of special ways to protect them is not legally consolidated. The purpose of the study is to identify and reveal the essence of special methods of protection that can be applied in case of violation of the inheritance rights of minors. Using the method of analysis, the content of the legal nature of special ways to protect the inheritance rights of minors is clarified. The comparative legal method helped determine how much external objective factors and social factors determine the choice of certain special ways to protect the inheritance rights of minors. As a result of the conducted research, the content of special methods of protecting inheritance rights is revealed. The expediency of applying specific special methods of protection to hereditary legal relations involving minors is substantiated. The features of protecting the inheritance rights of minors are illustrated. The following special ways of protecting the inheritance rights of minors are identified and analysed: invalidation of the certificate of inheritance rights; reduction of the size of the mandatory share; interpretation of the will carried out by the court; recognition of the will (separate order) as invalid; certification of the fact that an individual (legal entity) is the executor of the will. Special ways of protecting inheritance rights, consolidated in civil legislation, are investigated, considering the specifics of the legal status of the subject whose inheritance rights are violated. It is indicated that the level of effectiveness of such methods of protection depends primarily on the type of right that has been violated and is subject to protection. It is noted that in practice, the chosen algorithm for protecting the inheritance rights of minors should first of all ensure the effectiveness of protecting the violated right. The results of the study can be used in notarial activities when it is necessary to ensure compliance with the rights and legitimate interests of a minor as an heir. In addition, the conclusions of the study are of practical importance for ensuring the unity of judicial practice in resolving inheritance disputes involving a minor and for choosing the most effective way to protect their rights

Keywords: invalidation of the certificate of inheritance rights, reduction of the amount of the mandatory share in the inheritance, interpretation of the will by the court, recognition of the will (separate order) as invalid, executor of the will

Introduction

The Constitution of Ukraine establishes the right of everyone to protect their rights and freedoms, the rights and freedoms of other people from violations and illegal encroachments by any means not prohibited by law [1].

It is with the category of protection that the implementation of inheritance rights by a minor is closely related. There is a need to coordinate and achieve a balance both in the behaviour of the minor heir and in the behaviour of other participants in hereditary legal relations, to coordinate such relations with each other in order to eliminate obstacles in the exercise of inheritance rights.

Article 15 of the Civil Code of Ukraine establishes the right to protection of civil rights and interests, establishing that everyone has the right to protection of their civil right in the event of its violation, non-recognition, or challenge. Everyone has the right to protect their interest, which does not contradict the general principles of civil legislation [2].

J.L. Chorna notes that the right to protection is inextricably linked to the subjective civil right itself, which is a measure of the possible behaviour of an authorised person. This includes the ability to: act independently, expect appropriate behaviour from a third party, demand to perform certain actions, and protect the violated right by law-free measures of law enforcement protection [3, p. 19].

The civil rights protection institute has undergone significant changes with the latest codification of the civil legislation of Ukraine. In comparison with other post-Soviet states, in Ukraine, the institute for the exercise and protection of civil rights has received detailed legislative regulation. This, in turn, gave rise to the development of scientific civil studies, in particular, on the protection of subjective inheritance rights.

In the scientific plane, the issue of protection of subjective civil rights in general has become the object of numerous studies and remains relevant in the Ukrainian science of civil law.

The institute for civil rights protection was comprehensively and fragmentarily studied by such prominent researchers as: T.V. Bodnar, who investigated the most common methods of protection in civil law as a change and termination of legal

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relations [4], I.O. Dzera analysed civil law methods of protection of property rights, categorised them, and analysed their features [5], and also revealed the content of the methods of protection used by co-owners in the exercise and disposal of the right of common partial ownership and its termination [6]. Topical issues of civil protection of property rights and the practical effective application of such issues have been studied by Ye.O. Charytonov. The reseacher established a comprehensive vision of civil protection of property rights, characterised the features of the implementation of the right to protection of property rights in modern conditions [7]. At the same time, O.A. Pidopryhora analysed problems of civil protection of intellectual property rights [8]. These researchers have made a significant contribution to the study of the issue of civil protection, which does not negate the need and relevance of further study of certain (narrower) aspects of this issue.

In the current conditions, the issue of effective protection of the rights of minors, in particular, in the field of inheritance, is becoming particularly relevant. The legislator has not identified a clear list of special ways to protect inheritance rights, but these can be identified based on the results of a systematic analysis of Book 6 "Inheritance Law" of the Civil Code of Ukraine. This determines the purpose of this study, which is to investigate the effectiveness of special methods of protecting the inheritance rights of minors. To achieve this goal, the study sets the following tasks: to conduct a systematic analysis of the norms of the Civil Code of Ukraine and identify special ways to protect inheritance rights; to consider the possibility of using special methods to protect the inheritance rights of minors; to determine the expediency, sufficiency, and effectiveness of using special methods to protect the inheritance rights of minors.

Materials and Methods

In order to comprehensively and thoroughly investigate the issue of special ways to protect the hereditary rights of minors, and to clarify their essence and qualitative characteristics, a system of general scientific and specific methods was applied.

The scientific provisions of the fundamental theoretical scientists in Ukrainian legal science were used to choose the right methods for conducting the research and implementing the tasks set.

The method of analysis was applied to find out the legal nature of special ways to protect the inheritance rights of minors. Using this method, both the norms of current legislation and studies on the specifics of protecting the inheritance rights of minors were analysed. The legal status of property that is part of the inheritance and the legal status of minors as heirs of such property was also analysed. Scientific approaches to understanding the very concept of "protection of civil rights" and its reflection by the legislator in the norms of civil legislation were considered.

The content of special methods of protecting the inheritance rights of minors was characterised using the comparative legal method. With the help of the comparative legal method, the issues of conditionality of special methods of protecting the inheritance rights of minors by external objective factors and social factors were investigated. The authors compared the content and composition of the legal norms that set out the considered methods of protection. A synchronous comparative analysis of the norms of Book 6 "Inheritance Law" of the Civil Code of Ukraine was carried out and they were compared with the general provisions of the Civil Code of Ukraine in the context of civil rights protection, considering the peculiarities of inheritance relations and the legal status of minors – their participants.

In addition, the linguistic and systematic methods of the formal legal method were applied to analyse the norms of the Civil Code of Ukraine, which define special ways to protect the hereditary rights of minors, and their requirements and relationships in the legal system of our state were determined. This ensured the comprehensiveness of the information on the issue under study.

The method of interpretation was used to reflect the application of the norms of the Civil Code of Ukraine in the practical implementation of the protection of inheritance rights of minors using special methods of protection. During the study, a systematic interpretation of the norms of civil legislation on determining the size of the mandatory share in inheritance by reducing it, issuing a certificate of inheritance rights, interpreting a will, and appointing its executor was carried out.

The systematisation method was used to obtain a complete description of special ways to protect the inheritance rights of minors. The content of each special protection method, the possibility and procedure of their application, both separately and in combination, were considered.

With the help of a functional approach, the question of the expediency of applying a particular special method of protecting the inheritance rights of minors in practice was revealed. Similarities and differences in the practical application of special and general methods of protecting the inheritance rights of minor heirs were reflected.

With the help of a clear application of these methods, the authors of this study ensured the achievement of the set research goal and fulfilled the tasks of the study. The necessary theoretical means of methodological research were comprehended and applied to conduct doctrinal research on the issue under study.

Results and Discussion

First of all, the analysis of the provisions of Chapter 3 of the Civil Code of Ukraine "Protection of Civil Rights" allows the protection of civil rights to be understood as a person's own actions to restore violated, unrecognised, or disputed civil rights, and the actions of an authorised entity, the activities of a jurisdictional body (its officials and officers), who, within the limits of the legally granted competence and in accordance with the established procedure, take measures for this restoration [2].

At the same time, the defining features of protection should be met in the actual implementation, and effectiveness should be determined precisely because of the ability to protect certain rights from violations.

At the same time, a harmonious combination of its static state and dynamics is important for understanding the category of protection, that is, a set of legal means should be combined with activities to protect the relevant subjective civil law [9, p. 150].

Considering a proper and effective way to protect the inheritance rights of minors, then first of all it is necessary to indicate that this depends both on the type of violation itself and on the specifics of the legal status of the person whose inheritance rights are violated – a minor. Despite the fact that the legislator imposes the obligation to protect the

inheritance rights of minors primarily on parents (adoptive parents), guardians, and relevant state bodies, however, this does not negate the possibility of independent protection.

Notably, the legal uncertainty in which the property is located from the time of opening the inheritance to the time of its acceptance also determines the peculiarity of protecting the inheritance rights of minors. For minor heirs who have accepted the inheritance, the right of ownership arises from the moment of opening the inheritance, regardless of the time of its acceptance.

Yu. Zaika identifies the conditions under which mandatory heirs (which include minors) acquire the right to protect subjective rights. To such conditions, the researcher refers: 1) persons not specified in the will as heirs or the amount of the share left to them under the will does not correspond to the size of the mandatory share, which is defined in the law; 2) other persons are indicated in the will (regardless of whether they are heirs by law) to whom the rights to inherited property are transferred; 3) property that the will does not cover is less than the mandatory share; 4) heirs under the will did not give up the inherited property [10, p. 78-79].

A systematic analysis of the norms of Book 6 "Inheritance Law" of the Civil Code of Ukraine identifies the following special ways to protect the inheritance rights of minors: invalidation of the certificate of inheritance rights; reduction of the size of the mandatory share in the inheritance; interpretation of the will by the court; recognition of the will (separate order) as invalid; certification of the fact that an individual (legal entity) is the executor of the will.

One of the most common in the practical application of special methods of protection in inheritance legal relations is the invalidation of a certificate of inheritance rights. This method is used when a will was drawn up in violation of the requirements that are mandatory for its validity.

Minors can be plaintiffs in this category of cases if their civil rights or interests are violated by the content of the certificate of inheritance rights. As a rule, such a violation is associated with non-receipt of the certificate or with incorrect determination of the share in the inheritance according to the certificate. In addition, if the certificate is issued to another heir for the property that minors claimed as subjects of the right to a mandatory share in the inheritance.

Claims to invalidate certificates of inheritance rights are usually combined with other claims. These may be claims that give rise to grounds for declaring the certificate invalid, for example, regarding: invalidity of the will, removal from the right to inheritance, invalidity of marriage, invalidation of adoption, invalidation of refusal to accept the inheritance, etc. In addition, it is permissible to combine claims for invalidation of a certificate with claims for recognition of property rights in the order of inheritance, payment of monetary compensation, etc.

According to O.Ye. Kukhariev, a special feature is that the issuance of a certificate of inheritance rights to the heir who accepted the inheritance is not restricted by any time limit. That is, in fact, the heir can apply and receive certificates of inheritance rights several years after the opening of the inheritance (for example, if there are no funds to issue the inheritance). At the same time, the conditions for accepting inheritance established by civil legislation must be met [11, p. 78-79].

This method of protection should not be identified with making changes to the certificate of inheritance rights, since the latter as a way to protect inheritance rights, in particular, minor heirs, is regulated by a separate article of Chapter 89 of the Civil Code of Ukraine (Article 1,300 of the Civil Code of Ukraine), is an independent method of protection, which is primarily associated with making adjustments to the certificate of inheritance rights. The latter should not always be conditioned by the preliminary recognition of the certificate as invalid.

The claim to make certain changes to the certificate of inheritance rights does not deprive the defendant of the right to inherit property in such court cases, but it changes its share [12].

For example, if the certificate of inheritance rights was received by the testator's son from the second marriage (the defendant), who accepted all the inherited property, and then the minor son from the first marriage (the plaintiff) applied to the notary, then the appropriate way to protect the plaintiff's rights is to make changes to the certificate. It is not advisable to recognise the certificate of inheritance rights as invalid in this case, since the defendant in any case remains the heir under the law of the first stage. At the same time, the defendant's share in the inheritance will decrease.

Changes to the certificate of inheritance rights are also made in the event of a change in the queues of heirs in court, a reduction in the size of the mandatory share in the inheritance, and in other similar cases.

One of the special ways to protect the inheritance rights of minors is to reduce the size of the mandatory share, that is, in fact, to change the object of legal relations.

The systematic interpretation of Paragraph 2 of Part 1 of Article 1,241 of the Civil Code of Ukraine indicates that the size of the mandatory share in the inheritance can be reduced considering the nature of the relationship between the testator and the heirs, and considering circumstances that are of significant importance, for example, the property status of the heir.

On the one hand, the legally consolidated impossibility of depriving a mandatory share in the inheritance is a way to protect the inheritance rights of minors, because the testator's children are referred by Article 1,241 of the Civil Code of Ukraine to the list of persons entitled to a mandatory share in the inheritance [2]. On the other hand, the share of a minor as an heir cannot be increased by depriving them of the right to a mandatory share in the inheritance of another heir, but the amount of such a share can be reduced. The choice of a legal successor with such a reduction is not allowed.

In turn, a minor as a subject of the right to a mandatory share can make claims to other heirs and other persons related to the protection of inheritance rights to a mandatory share, in particular, on the recognition of the right to inheritance, on the redistribution of inheritance, invalidation of the certificate of inheritance rights, etc.

As a special way to protect the rights of heirs, including minors, which is used only in hereditary legal relations, is the interpretation of a will by the court.

The specifics of applying this method of protection are actually determined by the nature of hereditary legal relations, the legal nature of the will as a unilateral transaction, and the postponement of its validity in time. The study agrees with the definition provided by O. Kukhariev that the interpretation of a will is an intellectual process aimed at clarifying the content of the will as a unilateral transaction, from the text of which it is impossible to establish the true will of the testator [13].

Only a valid will can be interpreted. Since an invalid transaction does not create legal consequences, except for those related to its invalidity (Part 1 of Article 216 of the Civil Code of Ukraine) [2], an invalid will is not subject to interpretation [14, p. 216].

The importance of determining the actual will of the testator is determined by the following objective factors: the ability to make a secret will, the content of which is not known to the notary; an increase in the number of subjects who have the right to certify the will; property that can be included in the inheritance, not limited in number and value; modernisation of the legal status of inherited property, for example, inheritance of a share in the authorised (compiled) capital of a legal entity, inheritance of unified property complexes, intellectual property rights; the existence of several wills, in which inconsistencies arise as a result of modified or cancelled testamentary orders; consolidation in the current legislation of new types of wills and testamentary orders that are more complex in their content [14, p. 207-208].

Notably, it is the judicial interpretation of a will that is a way to protect the rights of heirs. If the actual will of the testator is consistent with the will of the heirs, then there is no violation of the rights of the latter. If the content of the will is unclear and/or allows for an ambiguous understanding of the actual will of the testator, which, as a result, gives rise to a dispute between the heirs, and therefore, it is the court that has the obligation to carry out its interpretation [11, p. 20].

Recognition of a will (separate order) as invalid can also be considered as a special way to protect the rights of minors in hereditary legal relations. This method is used if the will was made without meeting all the necessary requirements for its form and content. In practice, it is not uncommon for the testator's order to transfer property to an outsider who was not a close relative of the testator, did not take care of the testator during the period of illness, and therefore, minor heirs, although entitled to receive a mandatory share in the inheritance, may not perceive such an order and doubt the free expression of the will, the actual will of the testator.

Recognition of a will as invalid may be a way to restore the right of a minor heir to inherit in the corresponding queue of heirs, and the size of the share in the inheritance in this case will be greater than the size of the mandatory share. Both the minor heir and their legal representative can file claims for invalidation of a will.

At the same time, given the legal nature of a will as a unilateral transaction, declaring a will invalid is not equivalent to such a general method of protection as declaring a transaction invalid. As with the interpretation of a will, in this case, the content of the will should not change after the inheritance is opened, since this will lead to a change in the actual will of the testator, which is unacceptable. In fact, the invalidity of a will is equal in terms of the legal consequences of the absence of a will.

An important special way to protect the inheritance rights of minors is to certify the fact that an individual (legal entity) is the executor of a will. Such certification is essentially a multi-stage notarial process, which goes through three stages in its development. The first step is to issue a certificate to the executor of the will. The next stage depends on the actions of the participants in the inheritance legal relationship (heirs, notary, executor of the will), which are aimed at fulfilling the will of the testator. The last, third stage is the termination of the powers of the executor of the will. Each of these stages in its development goes through three stages [13, p. 13].

The status of a minor heir imposes on the notary the obligation to notify the relevant guardianship authority about the issuance of the certificate of the executor of the will. The powers of the executor of the will end with the full implementation of the will of the testator. It is the executor of the will, in accordance with the requirements of Article 1,290 of the Civil Code of Ukraine, who is obliged to contribute to the fact that the minor children of the testator receive their share in the inheritance as mandatory heirs [2].

According to the provisions of Article 1,293 of the Civil Code of Ukraine, minor heirs, their legal representatives, and the guardianship authority have the right to appeal in court only those actions of the executor of the will that do not meet the requirements of the Civil Code of Ukraine, other laws, or violate the interests of heirs [2].

At the same time, the executor of the will is personally interested in preserving the inherited property and further distributing it among the heirs in accordance with the will of the testator.

It is important for national law-making and law enforcement practice to investigate and analyse ways to protect the inheritance rights of minor heirs in the European Union countries. The constant growth of the volume of capital that is under the legal regulation of different states, the intensive relocation of individuals to foreign countries, the increase in private law relations with the participation of a foreign element necessitates the adaptation of Ukrainian legislation to the legislation of the European Union countries, to coordinate existing conflicts in the legal regulation of this sphere of relations.

Interesting in the framework of this issue are special ways to protect the inheritance rights of minors, which are consolidated in the national legislation of the EU country and which are manifested through the activities of specially authorised bodies (officials). For example, in Poland, there is a court for guardianship and custody, which is responsible for granting permission by parents (one of the parents) or another legal representative of a minor heir to renounce the inheritance. At the same time, considering the actual circumstances, this court may decide that it is more profitable for the child to accept the inheritance than to refuse it [16].

Considering the role of the activities of Ukrainian courts in the structure of the system of special methods of protection, then such courts act primarily as impartial arbitrators, unbiased and independent of the interests of a particular party in the case. That is why, according to the researcher, the existing model of the guardianship and custody court in Poland could be borrowed by Ukrainian legislation. This would not only ensure that the best interests of minors are respected, but also introduce a narrow specialisation of judges, which would have a positive impact on the level of their competence and reduce the burden on courts of general jurisdiction.

According to the researcher, special ways to protect the inheritance rights of minor heirs include judicial protection in force in Italy. The law of this state provides for the possibility to apply to the court for protection of the violated (disputed) right of inheritance by filing a claim for restitution. The defendant in this claim can be any buyer of inherited property or a person from among the receiving parties and/or beneficiaries under the will [17].

The researcher is convinced that the main disadvantage of this method of protecting minors, considering the norms of current legislation, is a significant duration in time, because the claim can be filed much later than the date of opening the inheritance. In this case, other heirs who have received the inheritance will not be able to provide guarantees of the plaintiff's absence of claims regarding the inherited property transferred to third parties, which, in turn, makes it difficult to alienate this property and transfer it as collateral.

Within the framework of the study, it is advisable to pay attention to the right of a minor heir to apply to other heirs with a "property (monetary) claim" consolidated in the legal systems of Germany and Austria. This right is based on the payment of monetary compensation to the minor heir, as a person entitled to a mandatory share in the inheritance, for the unimplemented expectation of receiving the inheritance.

The advantage of this method of protecting the inheritance rights of minor heirs, according to the researcher, is primarily that the person receives monetary satisfaction and does not violate the freedom of the will, and the rights of other heirs to the received inheritance. Especially considering that disputes regarding obtaining a share of an inherited property in practice are often quite long and financially costly, which can lead to the loss of the property itself or its value can decrease. In addition, having received a share in the inheritance in the form of specific property (movable or immovable), a minor cannot always dispose of this property independently. But the funds received as compensation would have a higher market turnover compared to inherited property.

Conclusions

Thus, the special methods of protecting inheritance rights laid down in the norms of Book 6 "Inheritance Law" of the Civil Code of Ukraine can be applied to minors, considering not only the specifics of their legal status but also the legal uncertainty in which the property is located from the time of opening the inheritance to the time of its adoption. The level of effectiveness of such methods of protection depends primarily on the type of right that is violated and subject to protection. That is why it is important in practice to correctly determine the feasibility of using in each specific case either one special method of protecting the hereditary rights of minors, or the correct combination of several special methods of protection, or the complex application of general and special methods of protection, which are consolidated by the norms of current civil legislation. The chosen algorithm for protecting the inheritance rights of minors should, first of all, ensure the effectiveness of protecting the violated right, correspond to its nature, the nature of the violation, and the consequences that the violation entailed. In addition, the chosen method of protection should ensure the restoration of the violated right or guarantee the minor the opportunity to receive appropriate compensation.

Considering the desire of the EU states to achieve unification of the substantive legal norms of all member states, including in the field of inheritance by minors, is advisable, according to the author of the study, to eliminate as much as possible the existing differences regarding the ways of protecting inheritance rights that can be applied. At the same time, it is necessary to consider the peculiarities of the legal system of our state.

It is advisable to adopt the experience of foreign countries in introducing specialised courts, whose activities will be aimed, in particular, at protecting the rights of minor heirs. It is also necessary to pay attention to the possibility of legislating the right of a minor heir to receive monetary compensation instead of a mandatory share in the inheritance. This method of protection would allow effectively and quickly restoring the violated rights of a minor heir.

According to the author of the study, in general, further development and deepening of relations between Ukraine and the EU states on the issue under study should be carried out by implementing legislative norms aimed at strengthening the protection of hereditary rights of minors, and the application of conflict-of-laws rules, which would have the task of determining which state's law will be applicable to private law relations with a foreign element with the participation of minors. This may be the subject of further study and more detailed analysis.

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Спеціальні способи захисту спадкових прав неповнолітніх осіб

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Анотація. Актуальність обраної теми дослідження зумовлена передусім особливістю цивільно-правового статусу неповнолітніх осіб як учасників спадкових правовідносин. Відсутність у них абсолютної самостійності та юридичної незалежності вимагає використання спеціальних способів захисту їхніх спадкових прав, однак структурований перелік спеціальних способів захисту нормативно не закріплений. Мета проведеного дослідження – виокремити та розкрити суть спеціальних способів захисту, які можуть бути застосовані в разі порушення спадкових прав неповнолітніх осіб. За допомогою методу аналізу з'ясовано зміст юридичної природи спеціальних способів захисту спадкових прав неповнолітніх осіб. Порівняльно-правовий метод допоміг визначити наскільки зовнішні об'єктивні фактори та суспільні чинники зумовлюють вибір певних спеціальних способів захисту спадкових прав неповнолітніх осіб. В результаті проведеного дослідження розкрито зміст спеціальних способів захисту спадкових прав. Обґрунтовано доцільність застосування конкретних спеціальних способів захисту до спадкових правовідносин за участі неповнолітніх осіб. Проілюстровано особливості захисту спадкових прав неповнолітніх осіб. Виокремлено та проаналізовано такі спеціальні способи захисту спадкових прав неповнолітніх осіб: визнання недійсним свідоцтва про право на спадщину; зменшення розміру обов'язкової частки; тлумачення заповіту, яке здійснює суд; визнання заповіту (окремого розпорядження) недійсним; посвідчення факту про те, що фізична (юридична) особа є виконавцем заповіту. Досліджено спеціальні способи захисту спадкових прав, закріплені цивільним законодавством, з урахуванням особливості правового статусу суб'єкта, спадкові права якого порушено. Зазначено, що рівень дієвості таких способів захисту залежить насамперед від виду того права, яке порушено, та підлягає захисту. Звернено увагу, що на практиці обраний алгоритм захисту спадкових прав неповнолітніх осіб повинен насамперед забезпечити ефективність захисту порушеного права. Результати дослідження можуть бути використані в нотаріальній діяльності, коли необхідно забезпечити дотримання прав та законних інтересів неповнолітньої особи як спадкоємця. Також висновки дослідження мають практичне значення для забезпечення єдності судової практики під час вирішення спадкових спорів за участі неповнолітньої особи та для вибору найбільш ефективного способу захисту її прав

Ключові слова: визнання недійсним свідоцтва про право на спадщину, зменшення розміру обов'язкової частки у спадщині, тлумачення заповіту, яке здійснює суд, визнання заповіту (окремого розпорядження) недійсним, виконавець заповіту

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Guilt and Responsibility of Russian Citizens for Aggression Against Ukraine: Modern Reading of Karl Jaspers

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Abstract. The purpose of the study is to analyse the problems of guilt and substantiate the expediency of establishing the collective responsibility of Russian citizens for aggression against Ukraine. Using the theoretical legacy of the German scientist K. Jaspers, the authors justify their own approach to the interpretation of the concept of guilt and responsibility of both the individual and the public community as a whole in the context of the war that Russia has unleashed against Ukraine. The urgency of the problem lies in incriminating moral and political guilt to Russian citizens for military aggression against Ukraine and in the expediency of them realising their personal share of guilt and responsibility for the crimes committed by the political leadership and military personnel of the Russian Federation. The paper highlights the dialectic of the relationship between personal guilt and the so-called collective culpability of the Russian public, which should bear the main responsibility for the politics and criminal actions of its state. It is noted that the solution of this problem is largely connected with ensuring that all citizens of the aggressor state realise their involvement in criminal actions and atone for their guilt. Based on the theoretical legacy of K. Jaspers, theses regarding the phenomenon of guilt, its varieties in relation to the period of fascism in Germany were developed and these approaches were applied to the analysis of Russia's aggressive policy. The study focuses on the moral and existential methodological paradigm of guilt as a determining factor in its awareness. Techniques and methods of comparative analysis of the behaviour of Germans during the Second World War and Russians in modern conditions, extrapolation of the experience of denazification of the German people to the Russian public are also used. The conclusion about the need for the perpetrators to bear not only personal criminal responsibility, but also the consolidated political and moral responsibility of the Russian nation, the community, and the public in general for the war against Ukraine, and to feel the need to change the totalitarian political regime in Russia as dangerous for all mankind, is substantiated. This paper would be useful for anyone interested in the problems of the modern political and legal continuum generated by the Russian-Ukrainian war

Keywords: culpability, moral guilt, metaphysical (existential) guilt, Russian public, direct and indirect guilt, collective guilt

Introduction

Russia's military aggression against Ukraine is accompanied by both a gross violation of international law and the commission of war crimes, the murder and terror of civilians, hundreds of Ukrainian children, and nuclear blackmail of the whole world, which categorically condemns this aggression.

At the same time, the number of Russian citizens who supported this aggression, unfortunately, has not significantly decreased today, and representatives of the Russian ruling elite and propagandists are threatening war on other peoples and states, which encourages the Kremlin to continue the war. In this regard, the problem of determining the guilt and responsibility of the Russian community, finding out the degree and share of guilt of both an individual citizen of Russia and the Russian nation as a whole for aggression against Ukraine is extremely urgent.

This problem has acquired a global scale, as evidenced by the corresponding sanctions against Russia by the countries of the European Union, the United States, Japan, Australia, etc., including many international organisations.

Recently, the problem of Russian responsibility for aggression against Ukraine has become the subject of numerous publications, the content of which is mainly reduced to the problem of collective guilt with reference to the corresponding work of K. Jaspers "The question of guilt" [1], with immediate consequences of the conviction of Nazi criminals. At the same time, as a rule, this refers both to individual

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responsibility and "collective responsibility" (D. Sudyn [2], A. Arkhangelskiy [3]). However, K. Jaspers and his follower H. Arendt [4; 5] rejected the term "collective guilt" as abstract and insisted on the category of political "collective responsibility" of society, which is supported by the authors of this study.

A historical and socio-philosophical analysis was carried out regarding the mentioned work of K. Jaspers: Bruno Jasieński revealed the extent of responsibility of the "indifferent" for their "criminal neutrality" towards Nazi policy [6]. A.B. Ponomarenko and D.V. Kovalov raised the question of the responsibility of the people for national policy [7]. O.V. Petukhova substantiated the term of consolidated liability [8].

The problem of guilt was also covered in the papers by V.A. Bachinin [9], M.M. Samuilik [10] and other researchers. They substantiated the need to both condemn Russian aggressors and bring them to justice. Also interesting in this context is the work by Oxford professor C.A. Koonz, who studied the mechanisms of instilling Nazi ideology in the political and everyday consciousness of contemporaries [11].

The purpose and objectives of this study are to theoretically analyse the problem of guilt and substantiate the need to establish collective responsibility of Russian citizens for aggression against Ukraine, and therefore, to contribute to achieving historical satisfaction for Ukrainians (not for the sake of quenching resentment, but for the restoration of justice) through the public recognition of Russians as world aggressors.

Materials and Methods

The starting methodological guide is an existential and humanistic analysis of the phenomenon of guilt of Russian citizens in the context of responsibility for direct and indirect support of the war against Ukraine. The methodological arsenal of the study includes techniques and methods of comparative analysis of the behaviour of Germans during World War II and Russians in modern conditions, extrapolating the experience of denazification of the German people to the Russian public. The authors are guided by a specific historical approach, identifying certain categories of citizens who should bear their share of the blame for what they did. It is proposed to change the paradigm in countering Russian propaganda, that is, the transition from a protective and defensive to an informational and offensive strategy. The paper uses the results of sociological research, thematic scientific publications, and author's own best practices.

Results and Discussion

The questions raised by this study are not trivially rhetorical. They are connected with the practical solution of the dilemma – to what extent Russians and the Russian public in general should be held responsible for the war unleashed by Russia against the Ukrainian people. One way or another, the answer to this question is related to the interpretation of the phenomenon of guilt and culpability as its specific embodiment. The experience of collective guilt in Russia for the crimes of the Soviet regime did not take place, which significantly affected the formation of public consciousness of Russians, which, being under the influence of Soviet apologetics, positively perceived the totalitarian imperialist policy of the Putin regime.

Consideration of the dialectics of these phenomena reveals the nature and social essence of individual guilt and shared responsibility of those who are the subject of this aggression. The immediate perpetrators and organisers of this war will inevitably be punished accordingly for their criminal actions in one way or another. They are subjected not only to political condemnation, which is already taking place today, but also to criminal punishment for what they have done. The fact that Ukraine documents the facts of the killing of civilians, the occupation of Ukrainian lands, and appeals to international and European political and legal institutions regarding the punishment of Russian occupiers is the basis for accusation and condemnation and represents Russia as a dangerous aggressive state for the whole world.

Therefore, the question naturally arises about the responsibility and guilt of those persons who do not directly take part in such actions, but under the influence of Russian propaganda openly support, or by their behaviour of non-interference and indifference tacitly do not seem to notice the aggressive policy of the Russian leadership.

This gives rise to a disorienting view of the causes and consequences of the war among the Russian public and gives the impression of the population's tacit support for these criminal actions. Therefore, the specific culprits of aggression, in addition to the state leadership, are also the following categories of the Russian population: indifferent, representatives of the so-called "Russian world" and everyone involved in the aggression in one way or another. Special attention should be paid to the layer of indifferent people, whose number is quite significant, since these citizens consider themselves unable to influence events, and therefore, do not feel guilty for their consequences. In fact, their share of guilt is no less than that of war apologists. As B. Jasieński notes: "be afraid of the indifferent – they do not kill or betray, but only with their tacit consent there is treachery and murder on earth" [6].

A. Arkhangelskyi, in his speech on Radio Svoboda in relation to the indifferent, argues that "being out of politics today means liberation from conscience, from natural human feelings – including from suffering. Today, many of the silent people are ashamed, but shame does not turn into political concessions. As a result, the massive 'rejection of politics' caused damage not only to their own country, but also brought numerous sufferings to the neighbouring state, and now it also threatens the whole humanity. We all have a political responsibility for this" [3].

The indifferent must bear their share of political and moral responsibility for the unleashed war, because they are representatives of the civil community, which means that they perceive its customs and laws, fulfil the conditions of the social contract, and are subjects of civil society. According to A. Ponomarenko and D. Kovalov, "the political responsibility of the people consists of the responsibility of every citizen of the state as a representative of their people. That is, every citizen is responsible for their state. Consequently, the political responsibility of a citizen is also total. The political responsibility of the people is collective and consists of the individual responsibility of each individual representative of their people" [7, p. 34].

Awareness of this responsibility is somehow connected with the establishment of a certain share of their guilt for the victims suffered by the Ukrainian people and other negative consequences of Russia's aggressive policy. To change this situation, there is no other way than to bring to the indifferent and supporters of the "Russian world" the belief that

they are somehow the culprits of this war and must bear their own share of responsibility for its resolution and not countering the criminal intentions of their leaders.

In this regard, there is doubt about the division of guilt in this case into two types: direct and indirect guilt. Direct – those who give criminal orders and carry them out, and indirect – the entire Russian population.

The reality of Russian public life makes adjustments to this categorical division. The fact is that it is too problematic to talk only about the indirect attitude of the Russian public to the war in Ukraine. Their electoral support for the current leadership of the Russian state and its aggressive course towards Ukraine and the West as a whole, solidarity with the unleashed war against Ukraine, the inability of citizens to objectively critically assess manipulatively propaganda clichés, the actual recognition of the war as a natural way of resolving conflicts, gives grounds to conclude that the Russian public politically supports the current regime, and therefore, acts as a direct subject of this war and, accordingly, bears the full political blame for this.

The recognition of the Russian public as a subject of war shows that Russia's social norms have come into conflict with the world's moral values and civilizational achievements of humanity and even threaten its existence. Hence, its direct guilt takes place not only before the Ukrainian people, but also before the entire international community.

Thus, the Russian public, which objectively, regardless of its desires, is responsible for the actions of its state and their consequences, must directly bear its share of moral and political guilt for what Russia has done as a state and is subject to condemnation both in Ukraine and on a global scale. According to K. Jaspers: "In the face of crimes committed on behalf of the German Empire, responsibility is assigned to every German. We 'answer' collectively. It is asked in what sense each of us should feel responsible for ourselves. Of course, in the political sense, it is the responsibility of every citizen for the actions committed by the state of which he is a citizen" [12].

All these circumstances raise the problem of theoretical coverage of the phenomenon of guilt, which goes beyond its conventional interpretation as a purely subjective phenomenon. It is worth noting that in its essence, guilt is really a subjective factor, while the content of guilt is always objective, since it reflects specific acts.

The specificity of guilt is that it is not limited to the sensory world, but tends to a rational and conceptual understanding, awareness of this phenomenon. Guilt is not just experienced, it, like conscience, is redeemed, needs to be realised in certain actions. Hence the constructive and regulatory function of guilt. It is the awareness of guilt that allows taking retribution measures for what has been done. That is, guilt is not something abstract, eternal "Damocles sword". On the contrary, it is a fault for specific, real actions. And this determines the degree, measure of guilt and, accordingly, the limits of responsibility and its measure.

V. Bachinin, who defines guilt as "a religious, socio-ethical and legal category that characterises the objective position and subjective state of the subject who has violated social norms... and is forced to bear responsibility for what he has done before his conscience and the law" is correct in this sense [9, p. 14]. The category of liability in this case allows clarifying the completeness of the fault and its derivatives. This is especially true for the concept of guilt, in which the phenomenon of guilt acquires its own objectivity. This objectification is carried out through awareness of guilt, that is, feeling and conceptualising it. The category of guilt determines the degree of this awareness. Admittedly, awareness not only by the direct subject of guilt, but also by the environment, the environment to which this degree of awareness of guilt serves as the basis for incriminating the charge.

At the same time, the category of guilt in both political and moral aspects has not yet become an independent subject of research. Almost all scientific research and journalism identify guilt with culpability. However, these really related phenomena do not coincide in their essence. In addition, the category of culpability, when it comes to such a tragedy as war, gets a special resonance, becomes a priority.

A certain proof of this is the mentioned work by K. Jaspers "Question of guilt". However, all its content actually reveals the phenomenon of guilt of the Germans as instigators of the Second World War. It is no coincidence that V. Bachinin translates this work under the title "Questions of culpability" [9, p. 147].

To clarify the essential nature of guilt, obviously, it makes sense to consider this phenomenon within three epistemological categories: general, individual (separate), and special, where the general is an actual guilt as a reproach of conscience, a specific guilty act as a single act, and culpability as a special concept that expresses the degree of guilt for violating a social contract, an agreement that gives guilt the status of public conscience. That is, culpability objectifies guilt, makes it, so to speak, an additional phenomenon for the subject, an object of redemption and repentance.

Since it is the state that guarantees the implementation of this social contract, its citizen bears their measure of public responsibility for national policy, forms their guilt for violating the principle of justice, for observing human rights and freedoms.

In this case, the Russian state, with its propaganda influence, actually eliminates the possibility of the public developing guilt for the unleashed war against Ukraine, imposing on the Russians a false thesis of the need for denazification of Ukraine, which tries to justify aggression. This stereotype does not create a sense of guilt for aggression, but on the contrary, creates in the public consciousness of Russians an idea of its legality and the absence of guilt among its specific subjects. This also imposes responsibility on the state as a subject of guilt. In this case, it is a natural conclusion that such a state, being a political organisation of society, needs political, moral condemnation, and legal condemnation. As an organisational subject of politics, a state that violates political norms and international and domestic obligations acquires the status of a subject of political guilt responsible for aggressive policies. Due to its particular danger to both Russian citizens and humanity as a whole, it must be limited in its ability to influence international politics and its ability to continue the war against Ukraine.

Such actions of the Russian state should be properly evaluated not only in Ukraine, but also on an international scale. In particular, "the Seimas of the Republic of Lithuania recognises the full-scale armed aggression against Ukraine by the armed forces of the Russian Federation and its political and military leadership, which began in 2022, as genocide of the Ukrainian people", and "Russia is a state that supports and commits terrorism", including since the armed forces of the Russian Federation "deliberately and systematically choose civilian targets for bombing," – says the document

published on the parliament's website. Among the crimes that the Russian army is involved in in Ukraine, Lithuanian deputies named mass killings, including children, kidnappings, torture, rape, shelling of civilian facilities – hospitals, maternity hospitals, schools and kindergartens, blockade of settlements, obstruction of the delivery of humanitarian aid and evacuation of civilians, seizure and deliberate destruction of infrastructure necessary to meet the basic needs of the population [13].

Famous sociologist and philosopher Z. Bauman, studying the issue of genocide (on the example of European Jewry), suggests looking at the genocide (Holocaust) not as a manifestation of the fragility of civilisation, but as evidence of its powerful collective potential. At the same time, he believes that the roots of genocide have the nature of modernity, the important features of which are nationalism, the construction of an artificial social order, rational bureaucratic management, etc. [14].

According to the British journalist D. Patrikarakos, the Russian-Ukrainian war is a new type of war, where the world of conflicts of the old type finally gave way to the new world. As he writes, "the boundaries between politics and war have never been so blurred, and politics has never been so unstable" [15]. His field research on the territory of Ukraine demonstrates the interweaving of military operations and information carried by "operatives of the 21st century" (media professionals) and which forms public opinion and manipulates public perception of everything that happens in reality (retells isolated cases for generalisation and "collectivisation" of what is done through mass participation).

Another of the largest researchers of the problems of genocide A. Jones emphasises the human dimension of this tragedy: it is human collectives (even vulnerable and oppressed) that are able to initiate genocide [16, p. 19]. He also draws attention to the fact that he described examples of specific genocides in very general terms, but this does not mean complete abstractness and depersonalisation, because one way or another this crime against humanity, as a rule, concerns one people in relation to another.

K. Jaspers, noting that the people are not responsible, at the same time addresses his book to the "silent majority" of the population, with the connivance of which (its collective and individual responsibility) the Second World War became possible.

For this majority, he introduces and justifies such two types of guilt: moral and personal (existential). Moral, like reproaches of the conscience of "the whole nation", to which a false, falsified conscience was imposed, which led a significant part of the population to self-deception. The victims of this falsified conscience were not only the population, but also soldiers who carried out criminal orders. Existential guilt, as a self-awareness of the guilt of each individual person in the fact that they did not do everything to prevent and prevent what the political rulers did. In other words, it is about forming a sense and understanding of the degree of one's own guilt for crimes, although committed by others.

At the same time, Jaspers considers only one repentance as an atonement for guilt insufficient, the main thing is specific actions of each person to restore a true sense of conscience, to prevent its distorted understanding in the future. Admittedly, this ideology was positively received by the German public, which allowed this state and nation to take its rightful place in the European family.

In this regard, the concept of "collective guilt" of Russia, which is now actively postulated in scientific publications and journalism, requires a critical rethinking. In particular, K. Jaspers, emphasising the "limitations and harmfulness of the thesis of collective guilt", stated that "there is no such thing as people in general" [12]. He wrote: "It is quite obvious that it is pointless to place moral blame on all people, and to blame the entire nation for the crimes of its individual representatives. The moral and metaphysical aspects of guilt imply an internal transformation of the individual, which is impossible on a collective level. As for criminal guilt, in this case, punishment is possible only for those people who directly participated in the commission of crimes" [12]. Notably, the "metaphysical" type of war is considered by Jaspers as existential and personal.

Thus, K. Jaspers argues that what really takes place is not the collective guilt of the German people, but their "collective thinking", acquired by them in the conditions of a totalitarian fascist regime. He recommends that each individual be freed from the legacy of this collective thinking as soon as possible, since "any real change occurs only through the individual" [12].

This recommendation should be especially addressed today to Russians, where the collective-choral, herd thinking acquired by them during the Soviet era and the rule of the Putin regime has become the object of information manipulation, in particular, Ukrainophobic. According to K. Jaspers, such purification from the depth of guilt awareness should become the main concern of a person, and not the complacency of simple animal-type existence [12].

This rejection of the concept of "collective guilt" is also supported by H. Arendt, emphasising its social harmfulness: "The result of this spontaneous recognition of collective war was an extremely successful (though unintentional) whitewashing of all those who really did something... where everyone is to blame, no one is to blame." At the same time, the researcher makes a categorical conclusion: "There is no such phenomenon as collective guilt or collective innocence; guilt and innocence have meaning only in relation to an individual" [5, p. 60].

But it is not just the practical harmfulness of such a concept, focusing on collective guilt somehow reduces the potential for the guilt of the real perpetrators, in particular, Putin and his political apologists, for the crimes they commit. First of all, the legality of using the term "collective guilt" itself is questionable. After all, the word "collective" means the unity of interests of people belonging to a particular community. As for the collective guilt of the Russians, they have no unity of interests. A significant part support the Putin regime or are indifferent to its atrocities. The minority today protests and fights against the war, sacrificing their position and freedom.

Obviously, these latter can be blamed for not doing everything possible to prevent this war and other crimes. But only these people themselves can incriminate themselves to the extent, to the extent of their perceived guilt. Thus, guilt cannot be collective in any way, it is only individual. At the same time, guilt is a factor of general responsibility of society in its entirety, especially when it comes to the totalitarian regime that has developed in Russia. According to H. Arendt: "Total power extends to all aspects of life, not just political ones. A totalitarian society... completely monolithic... There is not a single, at least any socially significant position... from whose

representatives it would not be required to unconditionally support the accepted principles of behaviour. Anyone who takes part in public life, regardless of whether they belong to the party or the ruling elite, is somehow involved in all the actions of the regime as a whole" [5, p. 65].

Thus, the relationship between the categories of guilt and responsibility is specific. Collective responsibility exists, but so-called collective guilt does not. A person (community) is responsible for the fact that they exist, act, even for their inaction. Responsibility, so to speak, is an eternal category, it is consonant with existence itself, it is an attribute feature of human existence. Guilt does not have such a quality; it is only a partial, transient, variable case of existence. Its essence is only in the violation of the existing. The attributive nature of responsibility is the ability to give an answer for what has been done and not done, violated, and undisturbed before the law and conscience, that is, it can only be conscious.

K. Jaspers thoroughly analysed the culpability of almost all strata of German society: criminals, those who support the war, the indifferent, those involved, observers, etc. At the same time, he made an unambiguous conclusion about the general sense of responsibility of each citizen, and therefore, of a particular community as a whole, for what they have done. The terms "individual guilt" and "collective guilt" for K. Jaspers is not a sophism, but a stubborn reality, a condition for bringing to justice (legal, political, moral, metaphysical) all those responsible.

The specificity of moral responsibility is that it reflects the fact that personal behaviour corresponds (does not correspond) to social customs, traditions, and public assessments of certain events, that is, it reflects the real connection of a person with other people and its influence on public opinion in general, so it is quite evidentiary and legitimate to consider the existence of collective responsibility of Russians for the unleashed war against Ukraine in the form of individual and solidary guilt of the Russian national, professional, and social community for what has been done. K. Jaspers writes "This is the fate of every person – to be woven into the way of power, due to which it lives. This is the inevitable fault of all, the fault of human existence. Non-participation in the struggle for power in the meaning of serving the law is the main political fault, which is at the same time a moral fault" [12].

Therefore, the guilt of Russian society is a consolidated feeling of each of its participants: ("indifferent", supporters of the "Russian world", all those involved in the war unleashed by Russia against Ukraine) for violence against the Ukrainian people. In support of this, M. Samuilik makes the following conclusion: "Consolidated responsibility of civil society subjects arises in the course of their activities and the activities of its institutions – political parties, public associations, etc." [10, p.53].

In this case, the term "consolidated" responsibility more successfully reflects the content of collective responsibility, considering both the general sense of guilt and the specific guilt of each citizen. As stated by O. Petukhova [8]: "consolidation is primarily a joint activity of government bodies and institutional structures of civil society; it is a consent based on trust and solidarity of views, joint efforts of citizens, the state, political and public organisations", in fact, an organisational association of public life at all levels of its functioning and development.

This category is practically embodied in the idea of "social solidarity as a social state of unity of common interests, inherent in humanity throughout its history. "Solidarism" means common interests and unanimity of actions, unity, interdependence, common responsibility [8, p. 131]. Notably, the term "solidarity" is also used by K. Jaspers: "In relation to moral guilt, one can truly speak only … to people in solidarity with each other" [12].

Thus, all social partners of the Russian public should bear a common, consolidated responsibility for Russia's aggressive policy towards Ukraine, where everyone's guilt is conditioned by the awareness of their own responsibility to conscience and the law for solidarity with the current political Russian regime.

Analysing the guilt of each of the strata of the German population, K. Jaspers synthesised it into a common guilt of a particular society, implemented through the consolidated responsibility of the entire society. Thus, he has armed us today with new knowledge to understand the indisputable consolidated solidary guilt of the Russians.

As for those Russians who support the war against Ukraine, it is necessary to rid them of propaganda bias, to free them from false propaganda stereotypes, to reveal the truth about Ukraine, its real and historical past.

At the same time, as for the Ukrainian community in the temporarily occupied territories, in addition to their awareness of their share of responsibility for what they have done, it is necessary to encourage them to engage in a constructive dialogue, the platform of which should be not so much ideological and political as universal values. This is primarily the right to life, to a safe existence (individual and in the family, collective, community, etc.). It is these, so to speak, pain points and the implementation of information influence on them that should contribute to the growth of this category of people's awareness of their national mentality as immunity against separatism.

Conclusions

The problem of guilt and culpability of Russians for military aggression against Ukraine has now acquired the status of a worldwide resonant factor that threatens the very existence of humanity and its civilizational development.

The phenomenon of guilt has acquired a new meaning in the current conditions of the Russian aggression against Ukraine, namely – the problem of incriminating those Russian citizens who are not directly involved in the war, but their political position serves as a factor of its support and further escalation, has become acute.

This category of Russian citizens should be considered not abstractly, but by carrying out their gradation according to the political principle: supporters of the so-called "Russian world", indifferent, and observers, which is conditioned by the need to determine and consider the degree of guilt of each of these strata for the consequences of their actions or omissions.

In this context, the analysed work by Karl Jaspers has actually become extremely relevant for the modern world. After all, despite the position that the entire people are not responsible, the author addresses his book to the "silent majority". By analogy, it is precisely because of the indifference of such a majority of Russian citizens that the threat of a Third World War has now become quite real. And here it is necessary not only to focus on individual guilt, but also to pay attention to the concept of consolidated (joint) responsibility

of Russians for what they have done. The term "consolidated guilt", as noted, is the most appropriate category in terms of collective guilt and responsibility. Consolidation is essentially a type of social obligations of citizens to the state, civil society institutions and the overall society, and allows fully considering the specifics of assessing the behaviour of each individual category of citizens.

Considering the above, it is necessary to develop a whole cycle of measures to activate the implementation of anti-Russian propaganda in the latest information and security paradigm, which should become a likely area for further study. At the same time, it is necessary to rethink the phenomena of statehood, national identity, and collectivity in the context of the current state of the globalised world and an adequate understanding of the content of the latest phenomena and processes caused by the increasing aggression of the current Russian Federation against Ukraine and world democracy as a whole. Such an information and security paradigm should be able to contribute to the development of the most optimal solutions based on large-scale service predictive analytics, considering all the many factors of the current situation and designing possible solutions to it.

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Вина та відповідальність громадян Росії за агресію проти України: сучасне прочитання Карла Ясперса

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Анотація. Мета дослідження – проаналізувати проблеми вини та обґрунтувати доцільність встановлення колективної відповідальності російських громадян за агресію проти України. Використовуючи теоретичний спадок німецького вченого К. Ясперса, автори обґрунтовують власний підхід до трактування концепції вини та відповідальності як окремої людини, так і громадської спільноти загалом у контексті війни, яку росія розв'язала проти України. Актуальність проблеми полягає в інкримінації морально-політичної винуватості російським громадянам за військову агресію проти України й у доцільності того, аби вони усвідомили особисту солідарну частку вини та відповідальності за те, що вчинило політичне керівництво та військовослужбовці російської федерації. У статті висвітлено діалектику співвідношення особистісної вини і так званої колективної винуватості російської громадськості, яка повинна нести основну відповідальність за політику і злочинні дії своєї держави. Наголошено, що вирішення цієї проблеми значною мірою пов'язане з тим, аби всі громадяни держави-агресора усвідомили свою причетність до злочинних дій і спокутували вину. На основі теоретичної спадщини К. Ясперса розвинуто тези щодо феномену вини, її різновидів відносно періоду фашизму в Німеччині та застосовано ці підходи до аналізу агресивної політики росії. У центрі уваги дослідження – моральнісно-екзистенційна методологічна парадигма вини як визначальний чинник її усвідомлення. Використано також прийоми та способи порівняльного аналізу поведінки німців під час Другої світової війни та росіян в умовах сьогодення, екстраполяції досвіду денацифікації німецького народу на російську аудиторію. Обґрунтовано висновок про необхідність того, щоб винуватці понесли не лише особистісну кримінальну відповідальність, а й консолідовану політичну та моральну відповідальність російської нації, спільноти, громадськості загалом за війну проти України, відчули потребу змінити тоталітарний політичний режим у росії як небезпечний для всього людства. Ця розвідка буде корисною для всіх, хто цікавиться проблемами сучасного політико-правового континууму, породженого російсько-українською війною

Ключові слова: винуватість, моральна вина, метафізична (екзистенційна) вина, російська громадськість, вина безпосередня і опосередкована, колективна вина

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Discrimination of Housing Rights of Certain Categories of Persons in Ukraine

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Abstract. This paper is devoted to the problem of housing discrimination. The relevance of the study is conditioned, on the one hand, by the presence of facts indicating the existence of discriminatory phenomena in the housing sector, and on the other – by the lack of modern research on this issue. In addition, researchers have not yet established a stable terminology on discrimination issues and have not revealed the characteristic features of housing discrimination as a civil category. The solution of these problems is important both for further theoretical and legal developments in this area, and for bringing national legislation in line with international standards as soon as possible. The purpose of the study is to define the essence and features of housing discrimination as a civil category, identify its facts and grounds. The research material includes statistical data on the number and situation of vulnerable persons in the housing sector in Ukraine, facts of discrimination in Ukrainian society; scientific publications on housing rights and housing discrimination; report of the Commissioner for Human Rights in Ukraine for 2020; national legislation; statistics of internally displaced persons in 2022, etc. The materials and objectives of the study determined the choice of research methods. The primary method is axiological, which allows substantiating the value of housing for a person. Methods of analysis and synthesis helped identify general approaches to the concept of discrimination, characterise its grounds, and formulate a definition of housing discrimination. It is established that housing discrimination is a restriction of the right to housing, as a result of which a person does not have the opportunity to purchase housing and live in it. It was found out that most often a vulnerable group of people (internally displaced persons, families with children, homosexual couples, etc.) face housing discrimination. It is noted that national legislation does not distinguish housing discrimination as an independent legal category. The paper describes the content and features of housing discrimination in Ukraine. The characteristics (gender, nationality, citizenship, age, sexual orientation, family residence without marriage registration, the presence of children and animals, internal displacement) that cause housing discrimination and inability to exercise the proper right to housing are established. It is proved that discrimination can manifest itself in refusal to conclude or extend a lease/rental agreement, unjustified rent increases, etc. The paper can be used for further scientific study by young researchers dealing with the problems of improving housing legislation

Keywords: discrimination, housing, right to housing, restrictions, vulnerable persons, residence, fundamental human rights

Introduction

Nowadays, housing discrimination in Ukraine is not perceived as an independent legal concept, and it does not stand out in the field of social security. Unfortunately, the state and society do not pay due attention to the cases of discrimination against the housing rights of vulnerable persons, in particular, persons with disabilities, persons with non-traditional sexual orientation, combat veterans, victims of domestic violence, large families, internally displaced persons (hereinafter – IDPs). At the same time, this category of persons is represented by a significant segment of Ukrainian society. Thus, as of the beginning of 2022, there were 2,725,800 people with disabilities in Ukraine, including 207.2 thousand people with disability group 1, 886.7 thousand people with disability group 2, 1,469.7 thousand people with disability group 3, 162.2 thousand children with disabilities, and 107,084 people with war-related disabilities [1]. As of 2020, 460,079 veterans of military operations in Eastern Ukraine were registered in Ukraine [2]. The number of vulnerable people increased in 2022 as a result of martial law. In particular, during the six months of the full-scale invasion of Ukraine by the Russian Federation (as of 08/23/2022), the number of IDPs has increased again and amounts to 6.9 million people [3].

Most of the social surveys conducted in Ukraine prove that these groups face discrimination, in particular, in the implementation of housing rights. Despite this, housing discrimination as a legal category is not regulated in the legislation of Ukraine. There is also no uniform solution in judicial practice. For example, in the report on the rights of the LGBT community in Ukraine for 2020, the issue of discrimination

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in the housing sector is ignored [4]. This only emphasises that Ukrainian society and the state are still in a state of non-highlighting the facts of housing discrimination against vulnerable persons.

Failure to recognise or lack of special studies on housing discrimination in Ukraine is not proof of its absence. This is one of the tendencies to ignore scientific research on housing rights, in particular, the right to adequate and affordable housing, and fair housing. At the same time, the scientific foundation for the development of a new democratic system of housing rights already exists. First of all, this is the study by V.P. Maslov, who in 1973 substantiated the existence of independent housing rights that arise in the sphere of meeting housing needs [5]. Among modern Ukrainian researchers, it is necessary to single out M.K. Haliantych, who refers housing rights to the homeowner rights [6, p. 143]. This scientific position of the researcher has become one of the negative factors in the development of the concept of modern housing rights aimed at overcoming discrimination in the housing sector, since it does not take into account the fact that housing rights are an independent legal entity.

Only in recent years has the problem of discrimination against housing rights begun to manifest itself clearly and formalise in the legal field of Ukraine. Thus, on 06/22/2022, a separate opinion of Judge of the Constitutional Court of Ukraine H.V. Yurovska was published regarding the decision of the Constitutional Court of Ukraine in the case of O.V. Abramovych's constitutional complaint regarding the compliance of Paragraph 2 of Part 2 of Article 40 of the Housing Code of Ukraine (regarding discrimination in the exercise of the right to housing) of 06/22/2022 No. 5-r(II)/2022, regarding discrimination at the place of residence when applying the contested provision of Article 40 of this Code [7]. Ukrainian researchers also address issues related to the protection of housing rights in their works. In particular, O.I. Chaikovskyi notes that, exercising their right to housing, citizens of Ukraine are increasingly faced with the problem of its protection [8, p. 160]. International legal sources also draw attention to discrimination against the right to housing. For example, J. Ondrich, A. Stricker, and J. Yinger investigated discriminatory phenomena in relation to the acquisition of the right to housing on racial grounds [9]. The importance of housing discrimination in Ukraine is also enhanced by the fact that the Ukrainian statehood is in a crisis situation caused by the military operations on a large territory of the country, the annexation of certain parts of the territory of Ukraine, the economic and social crisis that arose as a result of the COVID-19 pandemic and significantly worsened during the six months of war with the Russian Federation.

The originality of this study is conditioned by the fact that the authors of the study identified the facts of discrimination against housing rights on various grounds, focused on the existence of this phenomenon, and proposed legal mechanisms aimed at overcoming this negative phenomenon in the housing rights system of Ukraine.

The Right to Housing and its Relationship to Fundamental Human Rights

The basics of housing rights are consolidated in the Constitution of Ukraine [10], Article 47 of which proclaims the right of everyone to housing. The content of this right is reduced to the ability of everyone to purchase housing in ownership or rent or receive it in the form of social assistance. Forced deprivation of housing is possible only on the basis of a court decision. The right to housing is supplemented by Article 30 of the Constitution of Ukraine, which guarantees the inviolability of housing. However, these constitutional norms do not provide for fair living conditions. They also do not contain provisions prohibiting discrimination in the housing sector, sufficiency and adequacy of housing. Most Ukrainian researchers who deal with housing law disclose the constitutional norm (Article 47) and the right to housing as the right to stable, permanent use of residential premises; the possibility of improving housing conditions; ensuring a healthy living environment, and a housing environment worthy of every civilized person, which is consolidated in the Universal Declaration of human rights [11, p. 12]. K. Wells described this approach as a minimal approach, complemented by the right of autonomy of living in a certain living space [12]. Ch.U. Schmid argues that the right to housing can be extended to the right to decent housing, which is ensured by judicial control, sufficient housing stock, various options for housing tenure, and stabilisation of social housing policy. He also notes that the study of the right to housing can mobilise society to resist the housing crisis [13, p. 177].

In general, it can be argued that the right to housing can be considered as a social right aimed at ensuring sufficient, minimum living conditions for a person. This right is directly related to the right to health protection. Bret Thiele draws attention to this feature by analysing General Comment No. 4. "Right to Adequate Housing" of the Committee on Economic, Social and Cultural Rights (Article 11, paragraph 1, of the Covenant) [14, p. 713]. In particular, this commentary includes six principles that point to the relationship between housing and the fundamental right to health: protection against infectious diseases; protection against injuries, poisoning, and chronic diseases; reducing psychological and social stress to a minimum; improving housing conditions; conscious use of housing; and protection of at-risk groups [15]. B. Thiele rightly emphasises that the first two principles are especially important for health. The first notes that the following conditions are necessary to ensure proper housing: safe water supply, sanitary disposal of faeces, solid waste disposal, surface water drainage, personal and home hygiene, safe food protection, and structural guarantees against disease transmission. The second concerns building materials and technologies, and structural safety, including ventilation and lighting, and suggests that physical housing should be such that residents are not exposed to dangerous conditions or harmful substances [14, p. 713]. It is worth noting that in the context of the COVID-19 pandemic, housing has become not only a place of residence, but also a place of self-isolation and treatment at home. Therefore, in the context of the socio-economic crisis in which most states found themselves as a result of the pandemic, the availability of housing has become particularly important, which is associated with the preservation of individual and collective health.

The right to housing can also be considered within the framework of private law. As a private legal category, this right is aimed primarily at meeting the housing need, that is, the need to live in housing. Accommodation in housing covers the following powers, such as the ability to use and manage housing, the obligation to maintain housing, maintain a balance of interests with neighbours, use housing for living and exercising family and private life. At the same time, the right to live in housing cannot be considered as a complete

analogy of the right to use, which is an element of property retention, since residence can arise both on the basis of real rights (property, easement) and obligations (lease agreement) [16, p. 55]. The right to housing covers such rights as: 1) the right to safe housing; 2) the right to affordable housing; 3) the right to manage housing; 4) the right to stable use of housing; 5) the right to protection of housing rights. In each of these groups of rights, it is possible to distinguish legal transactions [17, p. 6]. Thus, the right to housing has a direct connection with fundamental human rights.

The Concept of Housing Discrimination: Statement of the Problem in Ukraine

Only in recent years, there has been an increase in scientific interest in discrimination as a socio-legal phenomenon in Ukraine. According to the official surveys, 5% of people often experienced discrimination, 35% – only occasionally suffered from this problem, 78.5% – consider discrimination a serious problem, and only 13.6% – do not consider it such. At the same time, 52% of people have not personally experienced discrimination. Of these, 35.5% share this position, while 18% cannot answer this question. The position on the severity of the problem is shared by only 46.5% of people [18]. These figures indicate that a person who is discriminated against finds themself in a situation that restricts the exercise of their fundamental rights, which is a threat to the development of civil society and statehood. For Ukraine, cases of discrimination can pose a threat to national security, as they undermine human confidence in a state that is in a crisis situation due to temporary occupation of part of its territory. Therefore, the definition of the concept and characteristics of various types of discrimination is an urgent issue for legal science.

The concept of discrimination in Ukraine is consolidated in the Law of Ukraine "On the Principles of Prevention and Counteracting Discrimination in Ukraine" dated 09/06/2012 No. 5207-VI [19]. This law provides for two types of discrimination: direct (referring to a situation where a person or group of persons is treated less favourably than another person or group of persons on certain grounds in a similar situation) and indirect (referring to a situation where a person or group of persons has less favourable conditions or a situation against other persons or a group of persons on certain grounds in a similar situation). At the same time, direct discrimination can be carried out on one of the following grounds: gender, nationality, citizenship, sexual orientation, living in a family without marriage registration [20]. And in case of indirect discrimination, as a rule, formally neutral legal norms, rules of claim, etc., are applied.

Article 4 of the Law of Ukraine "On the Principles of Prevention and Counteracting Discrimination in Ukraine" [19] states that the norms of legislation on preventing discrimination also apply to housing relations. However, the legislator did not single out such a category as "housing discrimination". This general approach determines the housing discrimination as a situation when a person or group of persons on certain grounds (gender, age, race, disability, citizenship, social origin, property status, etc.) may be subject to restrictions on the recognition, exercise, or use of the right to housing, in particular, obtaining housing, living in it, staying in self-isolation, and exercising private life.

J.C. Benito Sanchez describes three discriminatory legal concepts: direct discrimination, indirect discrimination, and discrimination through harassment. Direct discrimination includes cases of domestic violence against women, that is, when a woman is made dependent on the right to live in her husband's house. Indirect discrimination occurs when a rule, policy, or practice that appears to be neutral creates a particular disadvantage for a group defined by a prohibited feature, without the measure being justified by a legitimate aim and implemented by appropriate and necessary means. Discrimination due to harassment occurs when rent increases or illegal evictions [21]. J. Ondrich, A. Stricker, and J. Yinger prove the existence of housing discrimination based on race and skin colour. [9] These types of housing discrimination are also supported by V. Roscigno, D. Karafin, G. Tester, complementing them with discrimination based on gender and family presence [22]. Modern researchers point to the existence of housing discrimination based on sexual orientation, emphasising the need for additional legal protection of the housing rights of transgender and cisgender LGBT people [23].

These types of discrimination were highlighted in the analysis of the US housing sector. At the same time, housing discrimination exists in a hidden form in Ukraine. It is not customary to discuss this issue in our society, because as a general rule, everyone in Ukraine has the right to housing. Official social studies of landlords' preferences and the problems faced by vulnerable people are not conducted. However, sociological studies of housing discrimination are being conducted at the level of individuals and analytical organisations. Thus, in 2020, Ye. Khassai conducted a sociological survey on the topic "Discrimination of students in the course of seeking and renting housing". According to its results, it can be argued that students in Ukraine face housing discrimination based on age (up to 25 years), gender (women spend more on housing and communal services), marital status (students who are in a traditional marriage are desirable), the presence of children and animals, nationality, internal displacement, appearance (non-standard dyed hair discourages tenants from entering into a lease agreement) [24].

In 2019, the CEDOS Analytical Center, while clarifying the state of the State Housing Policy of Ukraine, revealed the existence of bias in the purchase and use of housing. Thus, 18% of respondents-tenants of housing faced unfair and biased attitude towards them during the search and rental of housing. Half of them experienced a bias about having children (48%); a third – related to having pets (35%); almost a third (27%) experienced a bias related to territorial origin or registration. Age was also a common reason for biased attitudes – 15% of respondents reported this [25]. At the same time, bias is understood as a stable and systematic subjective assessment of a person or group of people mainly in an unfavourable perspective. Having such an assessment affects decision-making, especially when a person has certain benefits and decides how to dispose of them [25]. These figures on biased attitudes in the housing sector indicate that housing discrimination in Ukraine is most often manifested on the basis of age, gender, the presence of children and animals, nationality, and internal relocation.

To verify these facts, the authors of this study conducted a survey in January-February 2022 in Kyiv: 10 landlords (7 women, 3 men) and 10 tenants (2 IDPs, 2 families with children, 6 international students). The survey was conducted in the form of an interview during a face-to-face meeting. It turned out that landlords prefer families without children and without pets. According to landlords, unwanted tenants

are IDPs and students who come from Indian or Arab origin. This situation is conditioned by the fact that IDPs and international students require official registration at their place of residence. In addition, there may be a conflict of interest when evicting IDPs and families with children. Foreign citizens quite often violate the rules of living in housing, which leads to conflicts with neighbours. The tenant's sexual orientation is not a common ground for housing discrimination. Tenants noted that they had faced discrimination in housing rights related to the use of housing. It concerned cases when the rent increased during their stay and, as a result, they were required to be immediately evicted.

Summing up the above, it can be argued that housing discrimination actually exists in Ukraine. However, unlike in the United States, it is not sufficiently discussed in society and is almost not investigated at the scientific level. Housing discrimination can be represented as a situation when a person or group of persons on certain grounds (gender, age, race, disability, citizenship, social origin, property status, etc.) may experience restrictions on the recognition, exercise or use of the right to housing, in particular, obtaining housing, living in it, conducting self-isolation in it, and exercising private life. The basis for housing discrimination is bias, that is, a negative, systematic, stable subjective assessment by the landlord of the future tenant mainly in an unfavourable perspective on the basis of gender, age, beliefs, internal displacement, nationality, race, the presence of children and animals, etc. The existence of housing discrimination can be established if a person cannot exercise the right to housing on one of the following grounds: gender, nationality, citizenship, sexual orientation, living as a family without marriage registration, having children and animals, internal displacement, age, etc. Discrimination can manifest itself in refusal to enter into a lease/rental agreement, renewal of this agreement, unjustified rent increases, etc.

Housing Discrimination Against Internally Displaced Persons

Most Ukrainian sociological studies on the rights of IDPs from the Donbas and Crimea for 2016-2021 prove that displaced persons most often face discrimination in two cases: when looking for work and housing. According to researchers, restricting access to housing according to a person's income is discriminatory. Thus, according to the State Statistics Committee of Ukraine in 2019, the average monthly rent for a one-room apartment in Ukraine was 3,700 UAH. In every second family of displaced persons, the monthly income does not exceed UAH 7,000 [26]. Discrimination against the housing rights of IDPs was indicated in the special report of the Verkhovna Rada Commissioner for Human Rights (hereinafter – the Commissioner) on the implementation of the right of IDPs to housing. The report notes that over 7 years of Russian aggression in Eastern Ukraine, more than 500,000 people from Donetsk and about 300,000 people from Luhansk oblasts have become IDPs and moved to Ukrainian-controlled territory. Most of them registered as IDPs in Kyiv (more than 160,000 people) and Kyiv Oblast (almost 63,000 people) [27]. At the same time, the Commissioner's report states that housing, permanent income and employment are the defining conditions for successful integration of IDPs. At the same time, approximately 60% of IDPs live in rented housing, at least 27% of them indicate the risk of being evicted from their current housing due to inability to pay rent. However, the lack of monthly targeted financial assistance to IDPs, its insufficiency to cover living expenses encourages IDPs to return to territories where they may potentially be in danger [27]. In 2016, Kharkiv Human Rights Group published data on the revealed facts of housing discrimination against IDPs. In particular, IDPs pointed out the existence of discrimination. The survey identified the main areas of discrimination: 30% of respondents noted that they were refused to rent housing precisely because of the status of IDPs; in 22% of cases, landlords overestimated the cost of renting housing due to the fact that they were approached by IDPs [28]. Consequently, housing discrimination against IDPs is a modern reality of Ukrainian society and the state.

On March 13, 2022, the government of Ukraine began the process of registering IDPs, the number of which increased significantly due to the invasion of Russian troops in Ukraine, expanding the use of the existing system of the Unified Register of IDPs, which was launched in 2016 [29, p. 6]. According to an estimate made by the International Organisation for Migration, the number of people who received IDP status as of the beginning of May 2022 was approximately 7.1 million. At the same time, the Ministry of Social Policy reported more than 2.7 million people who properly registered and received an IDP certificate. 55% of the total number of IDPs came from the eastern regions, and 13% – from the southern ones. At the same time, their number is constantly increasing. However, in contrast to the first month of the full-scale war, the share of IDPs from Kyiv and the northern regions significantly decreased. Today it is 16% and 12%, respectively [30, p. 2]. IDPs have also faced cases of housing discrimination. Thus, the legislation does not provide for the possibility of renting apartments for IDPs from private owners by the state. The problem is also the lack of available apartments for rent in cities. This indicates a significant shortage of housing in cities. According to official data, a certain number of vacant apartments and outdated private houses exist only in non-urban localities (more than 470 thousand) [31].

This situation is also taking place in other countries. For example, the UK faced IDPs and migrants immediately after the Second World War. The problem of housing discrimination remains relevant to this day. Thus, according to the 2011 census, it turned out that imperfect housing policies led to the emergence of migrants, and subsequently a part of the population in an unfavourable housing situation, which is evidence of the presence of housing discrimination [32]. Housing discrimination against refugees also exists in Germany [33]. Researchers state existing problems with the fundamental rights of internally displaced persons in India [34]. Notably, housing discrimination exists for both IDPs (internally displaced persons) and external migrants. This situation is caused by subjective and objective factors, since the housing problem can be solved both through the implementation of property rights, and on the basis of the right to ownership or use of someone else's housing [35]. Subjective factors are associated with the appearance of a new person in a traditionally formed settlement, that is, difficulties arise for both IDPs and the host party. Objective factors are related to material difficulties that arise due to the abandonment of housing in the occupied territory and the lack of housing stock designed to receive internal and external migrants. In general, it can be assumed that housing discrimination against IDPs is a situation when IDPs due to actual displacement within

the country, lack of permanent income, loss of property, or change of life traditions may experience restrictions in the recognition, exercise, or enjoyment of the right to housing, in particular, in obtaining housing and stable residence in it.

Housing Discrimination Against Persons Who Live as a Family

The development of civil society in Ukraine is directly related to the establishment of the institution of the family. The concept of family in Ukrainian legislation is defined in Part 2 of Article 3 of the Family Code of Ukraine [36]. This code applies a broad approach to the term "family", and the analysis of its provisions allows distinguishing the following forms of family life: marriage, cohabitation of a man and a woman, LGBT family, family with children, concubinage, etc. At the same time, the homosexual union in Ukraine is regulated by the norms of morality, not law. Definitely, marriage relations are versatile, because they include both various aspects of the conclusion or dissolution of marriage, and the legal norms intended to regulate these relations. For example, they are used to consolidate the property rights and obligations of spouses, provide for the possibility of entering into a prenuptial agreement, and determine the possibility of separate residence of spouses [37]. Given the variety of forms of family life, it can be stated that situations of housing discrimination may arise in relation to persons living with a family, which restricts some families in the exercise of the right to housing.

The legislation of Ukraine does not recognise the existence of housing discrimination against the family. However, in American law, families are classified as vulnerable categories [38]. This issue is relevant, because not every landlord provides housing for families with children. This is conditioned to the fact that children can create additional noise, which affects the comfort of neighbours, they can spoil furniture and home interior. In addition, children pose additional risks to living conditions. For example, sometimes children fall out of windows. Families with children may be charged a higher rent. This approach puts families with children in a more vulnerable position when looking for housing than families without children. Gay couples may also face housing discrimination due to the landlord's homophobic beliefs.

Thus, housing discrimination against persons living in a family is a situation in which families, due to non-conventional forms of family life, the presence of children, may be subject to restrictions in the recognition, exercise or enjoyment of the right to housing, in particular, obtaining housing and stable living in it.

Conclusions

The conducted study of housing discrimination in Ukraine allows for the following conclusions. Housing is of paramount importance for the realisation of fundamental human rights, in particular, the right to life and health, the exercise and protection of private life, and the creation of a family. At the same time, housing in the context of the COVID-19 pandemic has become not only a place of residence, but also a place of self-isolation and treatment at home. Therefore, the availability of housing has become particularly important, which is associated with the preservation of individual and collective health. Consequently, the facts of housing discrimination should be identified and characterised so that the legislator can avoid a situation with restrictions on the exercise of the right to housing.

It was found out that housing discrimination actually exists in Ukraine. However, it is not sufficiently discussed in society and is not investigated at the scientific level. Housing discrimination is a situation where a person or group of persons on certain grounds (gender, age, race, disability, citizenship, social origin, property status, etc.) may be subject to restrictions when recognising, exercising, or using the right to housing, in particular, obtaining housing, living in it, staying in it in self-isolation, and exercising private life. The basis for housing discrimination is prejudice – this is a negative, systematic, stable subjective assessment by the landlord of the future tenant mainly in an unfavourable perspective on the grounds of gender, age, beliefs, internal displacement, nationality, race, the presence of children and animals, etc. The existence of housing discrimination can be established if a person is unable to exercise their right to housing on one of the following grounds: gender; nationality; citizenship; sexual orientation; living in a family without marriage registration; presence of children and animals; internal displacement; age, etc. Discrimination can manifest itself in refusing to enter into a lease/rental agreement, extension of this agreement, or unjustified rent increase. The paper highlights housing discrimination against vulnerable individuals. Thus, housing discrimination against IDPs is a situation in which IDPs, due to actual displacement within the country, lack of permanent income, loss of property, and change of living traditions, may be subjected to restrictions in the recognition, exercise or enjoyment of the right to housing, in particular, obtaining housing and stable residence in it. Housing discrimination against persons living in a family is a situation in which families, due to non – traditional forms of family life, the presence of children, may be subject to restrictions in the recognition, exercise or enjoyment of the right to housing, in particular, in obtaining housing and stable living in it. It is seen that in the future, promising areas of scientific study are problems related to discrimination in the housing sector during the operation of various types of special legal regimes: martial law, state of emergency, state of war, state of defence, state of siege, state of public danger, etc.

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Дискримінація житлових прав окремих категорій осіб в Україні

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Анотація. Статтю присвячено проблемі житлової дискримінації. Актуальність роботи зумовлено, з одного боку, наявністю фактів, що вказують на існування дискримінаційних явищ у житловій сфері, а з іншого – відсутністю сучасних досліджень із цієї проблематики. Крім того, науковці й досі не сформували сталого понятійно-категоріального апарату з питань дискримінації та не розкрили характерних ознак житлової дискримінації як цивільно-правової категорії. Вирішення вказаних проблем є важливим як для подальших теоретико-правових розробок у цій сфері, так і для якомога скорішого приведення національного законодавства у відповідність до міжнародних стандартів. Метою статті є визначення сутності й особливостей житлової дискримінації як цивільно-правової категорії, виявлення її фактів та підстав. Матеріал дослідження – статистичні дані про кількість та становище вразливих осіб у житловій сфері в Україні, факти дискримінації в українському суспільстві; наукові публікації, присвячені проблематиці житлових прав та житловій дискримінації; звіт уповноваженого з прав людини в Україні за 2020 рік; національне законодавство; статистика внутрішньо-переміщених осіб у 2022 році тощо. Матеріали та завдання дослідження зумовили вибір методів наукового дослідження. Первинним методом обрано аксіологічний, який дає змогу обґрунтувати цінність житла для людини. Методи аналізу та синтезу допомогли виявити загальні підходи до поняття дискримінації, охарактеризувати її підстави та сформулювати визначення житлової дискримінації. Встановлено, що житлова дискримінація – це обмеження права на житло, внаслідок чого особа не має змоги придбати житло та стабільно в ньому проживати. З'ясовано, що найчастіше із житловою дискримінацією стикається вразлива група осіб (внутрішньо переміщені особи, сім'ї з дітьми, гомосексуальні пари тощо). Зазначено, що національне законодавство не виокремлює житлову дискримінацію як самостійну правову категорію. Охарактеризовано зміст та виявлено особливості житлової дискримінації в Україні. Визначено ознаки (стать, національність, громадянство, вік, сексуальна орієнтація, проживання сім'єю без реєстрації шлюбу, наявність дітей та тварин, внутрішнє переміщення), які стають причиною житлової дискримінації та неможливості реалізувати належне право на житло. Доведено, що дискримінація може виявлятися у відмові укласти чи продовжити договір оренди/найму, безпідставному підвищенні орендної плати тощо. Дослідження може бути використано для подальших наукових розвідок молодих науковців, які займаються проблематикою удосконалення житлового законодавства

Ключові слова: дискримінація, житло, право на житло, обмеження, уразливі особи, проживання, фундаментальні права людини

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Liberation of Critical Infrastructure Facilities of the Autonomous Republic of Crimea

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Abstract. The relevance of this study is conditioned upon the fact that Ukraine is doing and will do everything possible to restore control over the Crimean Peninsula. Therefore, the development of measures for its reintegration is of immense importance today, especially in the field of critical infrastructure. This topic has not yet been covered by Ukrainian scientists and requires analysis and development of corresponding legal mechanisms, which is the purpose of scientific research. The analysis of current Ukrainian legislation and foreign practices (using the methods of analysis, synthesis, and systemic approach) allowed finding several main organizational and legal factors that would contribute to the acceleration of liberation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea. The study substantiates the need for public monitoring of the natural environment in the temporarily occupied territory, namely: the landscape of the earth's surface, minerals, water, air, flora and fauna, natural resources of the exclusive (marine) economic zone of Ukraine, the continental shelf and sea waters to record the facts of environmental illegal acts (crimes). Emphasis is placed on the effective application of international cooperation procedures in the field of environmental protection. The study proved the need to create a unified register of damage caused to the Ukrainian state in general and to citizens and legal entities in particular because of the illegal actions of the occupation administrations, which led to contamination and pollution of nature in the temporarily occupied territory. Emphasis is placed on compliance with the international obligations undertaken by Ukraine, related to the implementation of the provisions of international treaties in the field of environmental protection, primarily regarding the problems of preserving the natural environment of the Azov and Black Seas and preventing the spread of chemical or bacteriological weapons in the waters of the Black Sea. The practical significance of this study lies in the developed legal mechanism of measures to improve the water supply system of the Autonomous Republic of Crimea after the complete liberation of the occupied territory

Keywords: temporarily occupied territories, strategically important enterprises, return of state control, reintegration, regulations

Introduction

The relevance of the chosen topic is determined by the fact that, pursuant to the provisions of the Law of Ukraine "On Critical Infrastructure", the security of critical infrastructure is determined as the state of critical infrastructure security, which ensures the functionality, continuity of work, restorability, integrity and stability of critical infrastructure [1]. Critical infrastructure facilities should be understood as enterprises and institutions (regardless of the form of ownership) of such industries as chemical industry, transport, energy, finance and banks, telecommunications, and information technologies (electronic communications), food, healthcare, communal economy. These facilities are vital for the economy and security of the state, society and population, their destruction or failure affects the natural environment, national security, and defence, leads to human casualties, significant financial and material losses [1, p. 85]. On the territory of the Autonomous Republic of Crimea temporarily occupied by the Russian Federation and its occupation authorities (Russia), basic freedoms and human rights are systematically violated. This includes the right to freedom of worldview and religion, peaceful assemblies, freedom of speech, war crimes, and other violations of norms ensuring security of critical infrastructure facilities, crimes against humanity, international criminal and international humanitarian law, criminal prosecutions based on political motives, systematic persecution of persons condemning the occupation of the territory of Ukraine by Russia, conscription of the local population into the military service of the occupying state, widespread forcing the internal population to acquire Russian citizenship, illegal deprivation of liberty, searches, torture, and the right to a fair trial are violated.

The acuteness of the problem for Ukraine is indicated by the global trends towards the strengthening of natural and anthropogenic threats, the increase in the level of terrorist threats, the increase in the number and complexity of cyberattacks, as well as the damage to infrastructure facilities and numerous attempts to cause such damage during the last decade, which were timely detected and stopped by Ukrainian law enforcement agencies. The danger is increased not only by the hostile behaviour of the neighbouring

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state, but also by the actions of individual unconscious citizens and groups supported, and often financed and armed, by the aggressor country.

It is worth agreeing with the researcher who believes that "the illegal annexation of Crimea by Russia in 2014 is widely regarded as a paradigm shift for NATO. After a quarter-century of focusing on crisis management operations, the transatlantic alliance has been prompted to rediscover its traditional core mission of collective defence and deterrence. Accordingly, NATO has embarked on the largest military build-up since the end of the Cold War". [2]

Certain issues of ensuring the safety of critical infrastructure objects were investigated by such leading legal experts as: M. Gonchar (studied the issue of the seizure of energy infrastructure in Crimea by Russian troops) [3], J. Johannesson, D. Clowes (studied the causes of the Russian-Ukrainian war 2014 from the standpoint of energy industry and energy markets) [4], S.D. Ducaru (studied national methods of protecting critical energy infrastructure, emphasizing that NATO can contribute to solving the problem of infrastructure protection at many levels) [5] and others. Furthermore, worthy of attention is the monograph that started the study of this topic and which presents the author's opinion on the theoretical and practical aspects of using the provisions and scientific developments of forensics in ensuring the activities of intelligence search and investigative units of law enforcement agencies of Ukraine for the solution and pre-trial investigation of crimes committed on critical infrastructure facilities [6]. It should be noted that the issues of liberation of critical infrastructure objects of the Autonomous Republic of Crimea were not the subject of research by Ukrainian scientists. It was the analysis of these scientific papers that allowed the author of this study to form their opinion of the scientific issue. Therefore, the purpose of this study is to improve the mechanism of liberation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea.

This study investigated the legal framework of the regulations defining the legal measures for the liberation of critical infrastructure objects of the Autonomous Republic of Crimea. Based on this, the author's position was determined regarding the implementation of practical measures for the implementation of the Strategy of liberation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea in general and critical infrastructure facilities in particular.

National Policy on Ensuring Liberation of Temporarily Occupied Territories and their Safe Reintegration

It is expedient to classify the objects as critical infrastructure objects of the Autonomous Republic of Crimea by categories, according to the provisions of the Resolution of the Cabinet of Ministers of Ukraine "On some issues of critical infrastructure objects" [7]:

The first category includes particularly important objects that are of national significance, have a considerable impact on other critical infrastructure objects, and the malfunction of which will lead to the emergence of a long-term crisis of national significance.

The second category includes vital objects, the failure of which will lead to the occurrence of a critical situation of regional importance.

The third category includes significant objects, the failure of which will lead to a critical situation of regional importance.

The fourth category includes necessary objects, the failure of which will lead to the occurrence of a critical situation of local significance.

Therefore, reliable protection of critical infrastructure facilities of each state is one of the priorities in ensuring national security needs. Solving this problem at the national level demands a systematic approach to its urgent solution [8].

Regulations prescribe that the main provisions of the Strategy for Liberation and Reintegration of the Temporarily Occupied Territories of the Autonomous Republic of Crimea provide that a cross-cutting part of the policy of liberation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea (hereinafter – the temporarily occupied territory) is the implementation of a complex of diplomatic, humanitarian, and economic measures, rather than military measures [9].

The formation of the policy of liberation and reintegration of the temporarily occupied Ukrainian territories is consistent with peace-making activities, strengthening the state's defence capabilities and ensuring the future Ukrainian economic [10], social, and political genesis based on Euro-Atlantic and European integration.

The author of this study agrees with I.H. Gdanov's opinion regarding the presence of political, structural, and functional components of the institutional model of the organization and implementation of the liberation policy of the Autonomous Republic of Crimea. The first is characterized by the presence of a suitable regulatory field, the second involves a clear definition of the range of subjects, and the third involves the interaction of all involved institutions and representatives of civil society to clearly fulfil the defined tasks and achieve the set goals [11].

Therefore, the main goals of the national policy to ensure liberation and reliable reintegration of the temporarily occupied territories are as follows:

Firstly, the restoration of the integrity of the territories of Ukraine within its recognized state border, ensuring the sovereignty of Ukraine.

Secondly, ensuring the stability and cohesion of Ukrainian society and the Ukrainian state, national unity.

Thirdly, the cessation of the use of temporarily occupied territories for activities that threaten the national security of Ukraine and/or its purpose is the destruction of peace and international security.

Fourthly, defining the legal foundations of justice in the transition period.

Fifthly, the implementation and formation of policies in the legal, social, humanitarian, informational, educational, and other spheres regarding the growth and strengthening of the level of trust, guaranteeing the rights and legitimate interests of citizens of Ukraine who suffered from the temporary occupation.

Sixthly, ensuring a stable economic-humanitarian, socio-political Ukraine in compliance with the specified rules of external and internal policy, strategic vector of the state towards the full accession of Ukraine to the North Atlantic Treaty Organization and the European Union.

Since the beginning of the temporary occupation by Russia, there has been a systematic and massive blocking of access to the functioning and provision of access to

Ukrainian information resources on the territory of the Autonomous Republic of Crimea. This particularly concerns the security management of critical infrastructure facilities, official websites, media of state bodies of Ukraine and local self-government bodies, authorities, websites of individual public associations on the Internet, making information and propaganda resources of Russia sometimes the only available source of news for Ukrainian citizens in the temporarily occupied territories.

On the Strategy of Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea

The author of this paper agrees with the conclusion made by M. Bida and I. Ruda that "economic losses from the war comprise not only incurred losses and a decrease in GDP, but also lost development opportunities and unearned profits" [12].

E.A. Huddad believes that "given the internal geography of Ukraine's economic structure, damage to physical infrastructure and supply chain disruptions are likely to spread to other parts of the country due to the intricate pattern of production and income linkages" [13].

At the same time, it is worth agreeing with the results of the parliamentary summit of the Crimean platform, organized by Ukraine and Croatia in Zagreb on October 25, 2022. There, it was decided that the return of Crimea to the control of Ukraine is not a long-term prospect, and therefore the legal mechanisms proposed in this study will be useful. One of the consolidating joint efforts is "overcoming the adverse impact of the temporary occupation of Crimea on the economy, cultural, and educational rights of Ukrainians and Indigenous peoples, including indigenous Crimean Tatars, on the environment" [14].

Therefore, the provisions of the Strategy for Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea are correct in that the implementation of a complex of military, diplomatic, economic, humanitarian, informational, and other measures is relevant.

Specifically, the provisions of the Strategy for Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea clearly and correctly prescribe that the prerequisites for restoring state control over the temporarily occupied territory of the Autonomous Republic of Crimea are as follows:

– the development of democratic institutions and mechanisms for ensuring the protection of human and citizen rights and freedoms;

– the genesis of the Ukrainian economy, which should ensure the gradual approximation of the quality of life of Ukrainians to the standards of life in Europe;

– improvement of national stability, prevention of potential future conflicts;

– resolving the issues of internally displaced individuals who suffered from Russian armed aggression, armed conflict, temporary occupation of Ukrainian territories;

– constant development and support of humanitarian, cultural, informational, social relations with citizens of Ukraine living in the temporarily occupied territories;

– promoting the strengthening of Ukrainian society, modelling a static, patriotic outlook, improving, and preserving the moral and spiritual values of Ukrainian citizens;

– consolidation of international efforts to facilitate the liberation of temporarily occupied territories, solving problems related to Ukrainian territories bordering with Russia, namely regarding mediation during negotiations in various international formats, implementation of monitoring, provision of economic, humanitarian, military and technical, and other support to Ukraine;

– ensuring the education of Ukrainian citizens living in the temporarily occupied territories, as the right to education is enshrined in the Constitution of Ukraine [7].

Compliance with the provisions for ensuring the safety of critical infrastructure facilities on issues of liberation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea should be combined with measures regarding:

– continuation of monitoring of the natural environment of the temporarily occupied territories, namely subsoil, land, underground and surface waters, forests and other green spaces, atmospheric air, animal life, natural resources of territorial waters and marine environment, continental shelf and exclusive (marine) economic space of Ukraine, the state of the environment, natural objects and territories subject to special protection, and accounting of cases of environmental crimes and offences;

– full application of the mechanisms of global cooperation in the field of environmental protection;

– creation of a register of damages caused to the Ukrainian state, its legal entities, and citizens because of Russia's hostile activities, which led to adverse environmental consequences in the temporarily occupied territories;

– compliance with Ukraine's international obligations regarding the application of measures to ensure the implementation of international agreements in the field of natural environmental protection in the temporarily occupied territories, specifically by taking part in the improvement and implementation of various interstate projects, ensuring inspection activities, which lie in saving the Azov and Black Seas, destroying the remains of biological, chemical, and other weaponry in the waters of the Black Sea;

– ensuring the implementation of various measures for the organization of water supply to the Crimean Peninsula after the liberation of the temporarily occupied territories and the restoration of the constitutional order of Ukraine in this territory [15].

Clearly, the provisions of the Strategy for Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea prescribe that the defence and security policy of Ukraine makes provision for the reform and improvement of the defence and security sector according to the Law of Ukraine "On National Security of Ukraine" [16], the National Security Strategy of Ukraine [17] and some other legislative regulations of Ukraine.

According to Article 51 of the UN Charter, Ukraine is entitled to use all means of protection of human and citizen freedoms and rights, state control, independence, and territorial integrity, prescribed by international norms and legislation of Ukraine [18].

Legal Measures of Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea

It is worth agreeing with the opinion of scientists that to implement effective measures for the liberation and reintegration of

the temporarily occupied territory of Crimea, it is advisable to define and implement the following measures legislatively:

– firstly, to develop the Crimean platform as an important external political tool for the consolidation of international efforts planned for the liberation and restoration of the territorial integrity of Ukraine, as well as the protection of the interests and rights of Ukrainian citizens;

– secondly, to take measures to support the importance of the issue of only temporary occupation and Russia's attempts to include the lands of the Autonomous Republic of Crimea in European and world politics, Russia's violation of one of the principal norms of international law regarding the integrity of state borders;

– thirdly, to actively use international security mechanisms to increase pressure on Russia to ensure the liberation of temporarily occupied territories, namely the mechanism of the Memorandum on Security Guarantees, which makes provision for Ukraine's accession to the Treaty on the non-proliferation of nuclear weapons;

– fourthly, to carry out all potential foreign policy activities to counter and prevent cases of violations of the international policy of non-recognition of Russia's efforts to annex the territory of the Autonomous Republic of Crimea, recorded in the corresponding acts of the UN, NATO, the Council of Europe, the European Union, UNESCO, and other international organizations, decisions of friendly Ukraine states. Together with international partners, Ukraine is developing and implementing measures aimed at neutralizing Russia's activities aimed at the international legitimacy of Russia's attempt to annex the Autonomous Republic of Crimea;

– fifthly, to apply special economic and other limited methods (imprimaturs) against Russia, legal entities, and citizens of Russia, other foreign subjects involved in Russia's armed aggression against Ukraine and the temporary occupation of the territory of the Autonomous Republic of Crimea, cooperate with foreign partners to strengthen international sanctions for putting pressure on Russia to restore the territorial integrity of Ukraine;

– sixthly, to use the real possibilities of international judicial instruments and international cooperation in general to reduce the adverse impact of Russia's temporary occupation of the Autonomous Republic of Crimea;

– seventhly, to take an active part in cooperation aimed at preventing crimes and protecting freedoms and human rights, the rights of national minorities and the indigenous population in the temporarily occupied territory;

– eighthly, to actively cooperate with foreign partners and ensure effective monitoring and documentation of the facts of Russia's violation of international law and bringing it to international legal responsibility for the forced aggression against Ukraine, the temporary occupation of the territory of the Autonomous Republic of Crimea.

According to the author of this paper, the expected results of the implementation of the Strategy for Liberation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea are currently important and absolutely necessary, namely:

– restoring the territorial integrity of the Ukrainian state within its internationally recognized borders, ensuring state control by Ukraine, and establishing security and peace;

– complex economic, legal, security, ecological, political, informational, social, and humanitarian aspects of the temporarily occupied territory;

– restoration and improvement of the social, humanitarian, and economic spheres of the liberated territories;

– increasing the degree of social stability and unity of Ukrainian society;

– development of the legal foundations of justice in the transitional period, namely the implementation of the mechanism of compensation due to the military aggression of the Russian Federation, the temporary occupation of the territories of Ukraine, the restoration and protection of rights that were forcefully taken away, the prosecution of those guilty of crimes against peace, the international legal order, and human security, ensuring the right to the truth about armed confrontation, preventing the emergence of a military conflict in the future.

– ensuring the rights of representatives of the Crimean Tatar people and other national minorities and peoples;

– increasing the local stability of Ukraine;

– increasing the capacity of the bodies of the defence and security sector of Ukraine;

– presentation of an example of economic and social development of liberated territories.

– resistance strengthening of territories that became the object of Russia's military aggression.

Therefore, the effectiveness of the Strategy for the liberation of the temporarily occupied territory of the Autonomous Republic of Crimea should be based on early preparation, an agreed detailed action plan of all stakeholders (considering the probable consequences that are contrary to the expected ones) and the symbiosis of civil society and state authorities. Helping increase citizens' awareness to prevent panicky moods and actions also stays a prerequisite.

At the same time, the development of criminal law and procedural standards at the international level with further implementation into national legislation is necessary for comprehensive countermeasures against threats to critical infrastructure facilities. This will enable the effective investigation of crimes on a global scale, the acquisition, storage, investigation, and provision of electronic evidence, considering the cross-border nature of crimes.

Conclusions

Having investigated the issue of liberating the critical infrastructure assets of the Autonomous Republic of Crimea, it should be noted as follows:

Firstly, Ukraine should legislatively adopt national programs that would ensure internal security through cooperation with infrastructure operators, owners, and the Agency for Cybersecurity and Infrastructure Security, which find potential vulnerabilities in infrastructure facilities.

Secondly, to introduce government support for the creation of national laboratories on the platform of public institutions of higher education (universities) and private industrial colleagues, to develop better ways to protect critical infrastructure and, in case of a malfunction, to ensure measures to promptly restore it.

Thirdly, to engage in constant testing and development of innovative ideas to provide better protection against floods, explosions, various anthropogenic and natural disasters and solar storms that threaten critical infrastructure facilities.

Fourthly, the work to ensure the security of facilities will help improve critical infrastructure and significantly minimize the threat of disruption of daily trade and interaction provided by such systems and increase the security of Ukraine.

The proposed legal measures are quite real and can ensure the performance of the tasks set in the Strategy before the start of the active phase of liberation.

An important recommendation arising from the results of the conducted research is the creation of a single register of damage caused by the Russian Federation. This is necessary for reliable recording with the further purpose of filing a lawsuit regarding the illegal activities of the occupying authorities in international courts, to compensate for the damages and unreceived benefits (losses).

The further development of comprehensive measures by the state to counter illegal influence on the functioning of critical infrastructure objects, which would involve the use of modern knowledge and capabilities, stays a promising vector of research.

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Деокупація об'єктів критичної інфраструктури Автономної Республіки Крим

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Анотація. Актуальність дослідження зумовлено тим, що Україна робить і робитиме все можливе для відновлення контролю над півостровом Крим, а тому розробка заходів щодо його реінтеграції має велике значення вже сьогодні, особливо у сфері критичної інфраструктури. Ця тема поки не досліджувалась українськими науковцями та потребує аналізу і напрацювання відповідних організаційно-правових механізмів, що і є метою наукової розвідки. Аналіз чинного українського законодавства та закордонного досвіду (із застосуванням методів аналізу, синтезу та системного підходу) дав змогу визначити низку основних організаційно-правових чинників, які б сприяли прискоренню деокупації та реінтеграції тимчасово окупованої території Автономної Республіки Крим. У статті обґрунтовано необхідність здійснення суспільного моніторингу природного середовища на тимчасово окупованій території, а саме: ландшафту поверхні землі, корисних копалин, води, повітря, рослинного та тваринного світу, природних ресурсів виключної (морської) економічної зони України, континентального шельфу та морських вод з метою фіксування фактів екологічних протиправних діянь (злочинів). Наголошено на ефективному застосуванні процедур міжнародного співробітництва у сфері охорони довкілля. Доведено потребу в створенні єдиного реєстру заподіяної шкоди Українській державі загалом і зокрема громадянам та юридичним особам унаслідок неправомірних дій окупаційних адміністрацій, які призвели до зараження та забруднення природи на тимчасово окупованій території. Акцентовано на дотриманні взятих Україною на себе міжнародних зобов'язань, пов'язаних з виконанням положень міжнародних договорів у сфері охорони довкілля, насамперед щодо проблем збереження природного середовища Азовського та Чорного морів та недопущення розповсюдження хімічної чи бактеріологічної зброї в акваторії Чорного моря. Практичне значення статті полягає в розробленому організаційно-правовому механізмі заходів щодо вдосконалення системи водопостачання Автономної Республіки Крим після повного звільнення окупованої території

Ключові слова: тимчасово окуповані території, стратегічно важливі підприємства, повернення контролю держави, реінтеграція, нормативні акти

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Implementation of the Right to Protection of Civil Rights under Martial Law

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Abstract. The relevance of the study is conditioned by the peculiarities of martial law and its impact on the implementation of the rights of individuals and legal entities. The issue of giving each person the opportunity to use their powers to protect their benefits, which is guaranteed by the state, in the conditions of martial law, has become of great importance. The paper is aimed at defining and disclosing the concept of "protection of civil rights" and the possibility of its implementation under martial law. The leading methods of research are dialectical and systematic, which allow considering the legal nature of the category "protection". A systematic approach helped determine the most effective legal ways to protect rights under martial law. The study defines the concept of "protection of civil rights under martial law", reveals the specifics of the implementation of the right to protect one's rights, considering the peculiarities and restrictions of wartime, examines the most effective ways to protect civil rights and the possibility of their application under martial law, describes the jurisdictional and non-jurisdictional forms of civil rights protection. The theoretical value of the study is to define the concept of "the right to protection of civil rights", considering the specifics and restrictions caused by martial law, which can become the basis for further scientific research of related issues. The practical value of the study is the disclosure of the specifics of the implementation of the right to protection in the territories where military operations are conducted, and to determine effective forms and methods of protecting civil rights under martial law

Keywords: forms of protection, wartime, Civil Code, political conflict, authorities, mediation

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Introduction

The ability to ensure the implementation of individual rights and freedoms is the highest indicator of the functioning of a democratic state. Military actions on the territory of the entire state or in its individual regions carry significant restrictions on rights and/or the impossibility of exercising rights and interests. Decree of the President of Ukraine No. 64/2022 of February 24, 2022, imposed martial law on the territory of Ukraine [1]. To ensure the possibility of implementing measures related to the legal regime of martial law, the rights provided for by law and the interests of a person and citizen may be restricted. During the period of martial law, the rights and freedoms consolidated in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine are restricted [2]. Despite certain restrictions that currently apply on the territory of Ukraine, the state still guarantees an individual and citizen an adequate level of protection in case of encroachment on their rights under civil law.

The Civil Code of Ukraine (Article 16) provides that citizens are given the right to apply to the court in order to protect their personal property and non-property rights and interests granted to them by law [3]. This right cannot be subject to restrictions. In addition, according to articles 10 and 26 of the Law of Ukraine "On the Legal Regime of Martial Law", during the period of operation of the military regime, the powers of courts are not terminated [4].

Admittedly, life in the conditions of war has undergone significant changes. The values and priorities of each individual have changed. The changes affected both individuals and legal entities. However, despite such changes, everyone protects their rights and interests in a way that is not prohibited by law. The grounds for applying for the protection of rights under civil law are an encroachment on them. Violation of a civil right is an illegal action that led to its restriction, which as a result deprived the person who is endowed with it of the opportunity to use it in full or in a certain respect. The concept of non-recognition of civil law should be understood as an act of a person who is endowed with a passive civil duty, which, in turn, is associated with the denial of the civil right of an authorised person, resulting in the deprivation of the opportunity to exercise their rights in whole or in part. Negative conditions can arise under the conditions of absolute, as well as relative civil law relations. As for the challenge of civil law, it includes the state of civil legal relations, which is characteristic of the existing dispute between its subjects regarding the ownership of subjective law by them. The contested civil law may not be related to its violation, while a certain ambiguity in the law is formed, which provokes the impossibility of its implementation to any extent [5].

In addition, this issue has attracted special attention from researchers who study it in the doctrine of civil law to this day. In particular, M.K. Suleimenov *et al.* characterised the general content of the concept of civil rights protection [6]. The researcher established what belongs to its content and described its properties and characteristics. A.K. Sheremetyeva *et al.* studied international legislation, investigating the protection of civil rights. The researcher revealed the features of legislative consolidation of such a mechanism in different states [7]. This allowed analysing international experience to use it in the future. E. Titko *et al.* managed to specifically consider approaches and tools for protecting civil rights in the context of military operations [8]. The researcher described the main risks of such activities and revealed approaches to their elimination. V. Panasiuk *et al.* established the peculiarities in social and legal life that are formed as a result of the introduction of martial law [9]. Thus, she was able to describe what changes are being undergone in the main public spheres of life of the state on the territory of which military operations are taking place. Attention was also drawn to the conclusions by S. Bardutzky, obtained as a result of a study of the most common civil rights groups that are negatively affected by external interference [10]. In this context, it was investigated which civil rights of citizens are most often violated. Based on the results obtained, it is possible to form a mechanism for preventing such offences and satisfying the interests of citizens.

The scientific originality of the study lies in the fact that its provisions allow revealing the institute of civil rights protection under martial law, previously unknown in the history of independent Ukraine. This is explained by the fact that the scientific discourse has not yet presented positions on the specifics of the implementation and protection of personal property and non-property interests of citizens during hostilities. That is why this paper in the context of the war of the Russian Federation against Ukraine allows fully revealing approaches to the protection of civil rights by citizens in specific social conditions established as a result of the war.

The purpose of the study is to determine the organisational and legal basis for a citizen to use the possibility of protecting their rights and interests under martial law provided for by civil legislation. Based on this, a number of tasks were formed, namely:

– reveal the characteristic features of citizens' use of the opportunity to protect civil rights under martial law;

– define the concept of "protection of civil rights under martial law";

– consider the effectiveness of certain methods of protecting civil rights that can be applied during martial law;

– describe the jurisdictional and non-jurisdictional forms of civil rights protection under martial law;

– identify factors that influence the choice of how to protect civil rights.

Materials and Methods

To achieve the current goal and objectives, a wide range of methodological tools were used in the study. General scientific methods include analysis and synthesis, induction and deduction, system and structural, which, in turn, belong to the system of formal and dialectical logic. The dialectical method was used to investigate the legal nature of some concepts, in particular, "protection". The relationship and connection between the concepts of "protection of civil rights" and "relations in the field of civil rights protection" were established and revealed. Based on the historical and legal method, it was possible to investigate the peculiarities of the development of the institute for the protection of civil rights. The study used the formal legal method to describe the content of such legal concepts as "protection of civil rights", "forms of protection of civil rights", the concept of "alternative dispute resolution", and "judicial protection". Using the systematic method, the place of the mechanism for protecting civil rights in the system of state-guaranteed rights, freedoms, and legitimate interests of citizens was considered and established. Using the comparative method, jurisdictional and non-jurisdictional forms of protection of

rights were investigated. The analysis of the provisions of legislative norms regulating the right to protection was carried out based on the logical and dogmatic method, and the interpretation of legal norms. In addition, the method of theoretical and legal modelling was used to prove the author's recommendations aimed at developing the doctrinal definition of the concept of "the right to protect civil rights under martial law".

This study was carried out in three stages. At the first stage, the theoretical basis of the issue was considered, which was subsequently used for further scientific study as the main foundation. A range of basic concepts was outlined, which must be defined to fully and comprehensively cover the mechanism for implementing the right to civil rights protection. At the second stage, an analytical investigation of the forms of civil rights protection and the effectiveness of using each of them under martial law was carried out. In addition, an analytical comparison of the results obtained with the results and conclusions of other researchers who were engaged in the development of issues related to judicial protection of civil rights and out-of-court conflict resolution was carried out. This can help expand the prospects of scientific research in the field of civil rights protection, judicial resolution of disputes, and alternative resolution of civil disputes, considering the specifics and restrictions that arise under martial law. At the final stage of the study, a number of conclusions were formulated taking into account the results obtained, which can be used in the future in the context of an effective theoretical basis for analysing issues aimed at protecting civil rights during martial law.

Results

The conducted study of the implementation of the right to protect civil rights under martial law gave the following results. Numerous political conflicts taking place in the world require a quick response, as a result, the authorities impose martial law in the country or in its individual territories. The purpose of introducing a legal regime of martial law is to prevent danger, resist a military attack, ensure state security, and eliminate threats of danger to the national sovereignty of Ukraine and its territorial unity [4]. Since the 19th century, 81 countries of the world have been forced to impose martial law on their territories. These countries include China, Canada, Japan, Libya, Syria, and Turkey [11]. Therefore, the question of the possibility of exercising the right to protect civil rights during martial law requires careful study in order to determine effective ways to protect civil rights. Protection of civil rights is an action to prevent and stop violations of rights or restore the violated rights of individuals and legal entities. The protection of civil rights is aimed at eliminating adverse consequences that were caused by a violation of rights or a threat of such violation. The exercise of the right to protect one's civil rights may be complicated by the consequences of military operations in certain territories of the country. Such complications can be expressed in external factors that do not depend on the parties to the conflict, and personal factors that depend on the ability of the parties to the conflict to apply one or another method of protecting civil rights.

Thus, the protection of civil rights under martial law is a set of methods, techniques, and various procedural actions by which the prevention, suppression of an offence, or restoration of a violated civil right of a person is carried out, which can be applied in the conditions of special measures carried out by the state to stop armed aggression, ensure the independence of the state, its territorial integrity, providing for the granting of a certain number of power subjects with powers for defence, civil protection, public security and order, protection of the rights, freedoms, and legitimate interests of citizens. Effective protection of civil rights in times of armed conflicts is impossible without the full implementation of the protective function of civil law, which is a natural manifestation of the security principle inherent in private law [12].

The moment when the right to protection of civil rights arises is a specific fact that has legal significance, due to which there is an encroachment on the civil rights of other persons, including its challenge, and a legal fact that, in the opinion of a person, is a violation of their civil rights. Civil legislation provides numerous means of protecting rights and provides for specific forms of implementing civil rights and protecting them.

There are two approaches and methods of protecting civil rights, which include jurisdictional and non-jurisdictional. The jurisdictional form of civil rights protection includes general and administrative protection. General protection is provided by the courts, and administrative protection is provided by state authorities. A non-jurisdictional form of protection includes self-defence, which can be implemented either independently by the parties (without involving third parties), or with the involvement of competent persons who are not state authorities. Non-jurisdictional methods include ways to protect rights, which are combined into a group of so-called "alternative dispute resolution" (ADR) methods. The system of methods of protecting civil rights provides effective protection for participants in absolute (property and personal non-property), and binding (primarily contractual) relations. Both individuals and legal entities have the right to apply for protection of their rights. Judicial protection of civil rights under martial law is carried out by the judicial authorities. The advantages of judicial protection of civil rights under martial law are: 1) mandatory enforcement of court decisions; 2) judicial protection can extend to an unlimited number of persons; 3) the court is a specialised competent state body charged with administering justice and resolving a dispute about law; 4) the decision is made by a neutral, impartial person; 5) justice is carried out by the court in accordance with clearly established rules and norms. In addition to the advantages, judicial protection of rights also has its drawbacks, which should be considered when choosing a method of protection during a state of war or emergency. Such disadvantages are: 1) the length of the trial; 2) due to military aggression, the presence of participants in the trial is excluded; 3) judicial protection becomes financially costly; 4) the decision made by the court, most often, cannot satisfy both parties.

The administrative (special) procedure for protecting civil rights provides for applying to state bodies with an application or complaint. Undoubtedly, civil rights can be violated by various sectoral offences and are protected not only by civil law, but also by all public law branches and by bodies whose powers may be provided for by exercising influence to stop the offence or recognise the right. An example is an appeal to the state enterprise "Ukrainian Institute of Intellectual Property" to recognise the rights to an intellectual property object as invalid. Thus, one person may believe that the created object of intellectual property

violates their personal non-property rights (honour or dignity). In this case, the state authority may stop the offence with its authority and, as a result, the person protects their rights in an administrative manner. It is worth noting that this method is not common in the protection of civil rights. Often, individuals consider it more effective to apply to the court as a state body authorised to protect their rights.

In accordance with the provisions of Article 4 of the Law of Ukraine "On the Legal Regime of Martial Law" in areas where martial law has been introduced, temporary state institutions called military administrations can be formed to implement the Constitution and laws and regulations of Ukraine, implement together with the military leadership the introduction and implementation of measures of legal regulation of martial law, civil defence, protection of the rights, freedoms, and legitimate interests of persons [4]. Therefore, applying for protection of their civil rights to state authorities will not be effective due to the fact that state authorities during such a period perform functions related to ensuring measures of the legal regime of martial law.

According to Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law", the powers of courts cannot be terminated, in addition, a ban is also imposed on slowing down or speeding up all forms of legal proceedings [4]. However, the judicial system is not without the consequences of military operations. Such consequences are a change in the territorial jurisdiction of court cases and the possibility of remote consideration of cases. These changes are certainly positive in nature and were aimed at ensuring the exercise of their right to participate actively in court sessions, due to which, to carry out the content of their legislative opportunity for an impartial trial.

Such changes in the context of military operations and armed conflicts cannot fully provide an individual with effective protection of their rights. In addition to the trial, separate ADR methods must be applied. Only such a dualistic system, consisting of jurisdictional and non-jurisdictional protection of civil rights, can provide full protection for individuals. Considering the specifics of civil rights, it can be stated that such rights are suitable for protection both by jurisdictional bodies and by competent persons who are not representatives of state authorities or parties to the conflict independently.

Methods of alternative dispute resolution during martial law are aimed at protecting the rights of a person based on contractual and voluntary principles. Due to their flexibility, versatility, and informality, such methods can be used in times of military operations and armed conflicts. Alternative dispute resolution methods that can be applied under martial law include mediation, negotiations, a settlement agreement, dispute resolution with the participation of a judge, and facilitation. Various communication platforms can be used as auxiliary mechanisms for effective protection of civil rights online. When choosing a method of protecting civil rights, the key point is to determine the nature of the actions performed, that is, the legality or illegality of the actions. The right to protection for a person arises in the event of a conflict between the parties, and the conflict can be caused by both legitimate actions and illegal ones. For example, the freedom of creativity of one person acting within the framework of the law may cause a conflict with another person who believes that the result of creativity violates their personal non-property civil rights – the right to honour, dignity, and reputation.

Speaking about the exercise of the right to protect civil rights under martial law, this is a state-guaranteed opportunity to choose any method of protecting their rights that is not prohibited by law. Considering the peculiarity of martial law and the restrictions that apply during military operations, this concerns the effectiveness not only of judicial protection of civil rights, but also of the high efficiency of ADR methods. The advantages of functioning systems of jurisdictional and non-jurisdictional protection under martial law are: rapid settlement of a conflict situation and termination or even prevention of violation of rights; establishment of a decision that satisfies the interests of both subjects; making a fair decision by a competent person; the possibility of enforcement of the decision; ensuring the claim; maintaining professional contacts; normalising professional interaction; confidentiality of the case and preserving the business reputation of subjects.

Mediation and negotiations can establish communication between conflicting parties and quickly, without unnecessary financial and time costs, resolve the conflict without contacting state authorities and the court. These ADR methods are universal and can be used for any conflict. Conclusion of a settlement agreement and settlement of a dispute with the participation of a judge are reconciliation procedures that are aimed at exhausting a dispute that has reached the court. Facilitation can be used to resolve group conflicts and establish a dialogue between a large number of people (for example, a conflict involving residents of an apartment building).

With the development of technology, it has become possible to transfer conflict resolution procedures to the digital environment. Such new mechanisms for resolving conflicts and disputes are called "online dispute resolution" (ODR). This is an alternative way to resolve a conflict or dispute, in which the reconciliation process takes place using a negotiation platform. The platform is chosen by the parties at their sole discretion or by a third party. As practice shows, the most convenient communication platforms are Zoom, Viber, Telegram, Skype, etc. International experts focus on three main options for resolving a dispute online: conducting negotiations between the parties without involving intermediaries, mediation, and arbitration.

Nowadays, it is necessary to create initiative groups for the implementation of educational activities. The public should be informed of the possibility and accessibility of exercising their rights to protection. Such an initiative group should be tasked with developing reference materials describing various ways to protect civil rights, their advantages, disadvantages, jurisdiction of cases, and bringing to the attention of individuals through various possible ways of spreading information about the possibility of protecting rights not only through applying to the court, but also through forms of alternative dispute resolution. Such educational activities should be carried out regularly: during the period of martial law and after the end of hostilities. Currently, it is also necessary to take measures to increase the information awareness of judges and defenders of the parties regarding alternative ways of resolving disputes (to increase their knowledge about mediation; about the advantages of mediation over judicial proceedings; about facilitation as a group negotiation process aimed at resolving a conflict between a group of persons or establishing a dialogue; about resolving a dispute with the participation of a judge as an ADR method;

about conducting negotiations without involving third parties); to pay attention to the need to explain to the participants of the case their powers to pre-trial conflict resolution; and to emphasise the importance of communication during the activities of judges and lawyers with mediators, in order to ensure conditions for an effective mechanism for protecting citizens' rights).

Discussion

Scientific research on the protection of civil rights and interests has been carried out for a long time, but there are still no significant scientific achievements in the science of civil law on the implementation of the right to protection of civil rights during martial law. For a comprehensive study of this issue, it is necessary to determine the legal nature of the concept of "protection of civil rights". The category of "protection of civil rights" in legal science, legal literature, and laws and regulations is often utilised as a commonly used term, devoid of specific content. Some scientific studies in this area are narrow and incomplete. The lack of a complete doctrinal study of the concept of "protection of civil rights", including during martial law, can lead to serious shortcomings in legislation and reduce the level of trust in the state. Often, researchers, investigating the concept of "protection", correlate it with the concept of "security". The difference between the security of rights and their protection is revealed in the fact that regulations aimed at protecting the right determine adverse consequences for violators of these rights, and are applied in the case when the right is violated.

Studying the concept of "protection of rights", Ye.O. Kharitonov defines that the protection of rights includes certain characteristic parts: first, it is the ability of the authorised person to apply the legally permitted means of coercive influence on the violator of rights or the ability of the right holder to protect the right belonging to them by their own actions without applying to state bodies (self-defence); second, it is the use by the authorised person of legal measures of operational influence on the person who violated civil rights (operational sanctions); third, it is the ability of the person to apply to the competent state and non-state bodies with the requirement to perform certain actions to the violator of rights in order to stop the offence and restore rights [13].

The authors of the study agree with the opinion of Yu.N. Andreev, who notes that the category "protection of civil rights" has both a substantive and procedural nature and concerns material methods of protection and procedural approaches that are closely interrelated [14]. To confirm this position, A. Shtanko notes that "protection methods are dynamically implemented together with tools and approaches: methods are provided with tools according to a certain algorithm as a result of the implementation of human rights powers by jurisdictional bodies and directly authorised entities, and protection tools usually depend on its form" [15].

In the literature, there is no single view on the relationship between the concepts of "forms of protection" and "methods of protection". M.I. Braginsky does not distinguish between the concepts of "form" and "method" of protection, pointing out that there is such a way to protect rights as applying to the competent authority. Another scientific position is held by M.V. Grygorchuk, who points to different, qualitative characteristics of these concepts. The researcher suggests considering the concept of "method" as a collective concept for certain actions aimed at the subject, and "form" acts as a boundary reference point in space in relation to a particular object [16]. The study suggests that it is impossible to identify the concepts of "form" and "method". A form of protection is a set of orderly organisational measures to protect subjective rights. The method of protecting rights is defined as a certain action aimed at protecting rights or removing obstacles to the exercise of a subjective right.

Such researchers as N. Bashurin [17], G. Ulianova [18] and L. Galupova [19] indicate that the protection of civil rights can take place both in a jurisdictional form and in a non-jurisdictional one. The jurisdictional form of protection of rights provides for a person to apply to the court or state authorities for the protection of their civil rights. Judicial protection is also called general protection. Protection carried out by state authorities is called administrative or special protection. A non-jurisdictional form of protection consists of certain methods that are implemented independently by the parties (without involving third parties) or with the involvement of competent persons who do not belong to state bodies. Non-jurisdictional methods include ways to protect rights, which are combined into a group of so-called methods of alternative dispute resolution. According to the authors of this study, this position is substantiated, because here the criterion for distribution is the subject (body) competent to perform the function of protecting civil rights.

One of the most commonly used forms of protection of rights provided for by civil legislation is judicial protection. The introduction of martial law does not formally affect the process of conducting legal proceedings. The Law of Ukraine "On the Legal Regime of Martial Law" (Article 26) prohibits slowing down or speeding up any form of justice under martial law [4]. At the same time, as practice shows, it is impossible to ensure the smooth operation of the court in some regions of the country during the period of armed aggression. To resolve this issue, on 02/24/2022, the Council of Judges of Ukraine adopted a decision "On Taking Urgent Measures to Ensure the Sustainable Functioning of the Judiciary in Ukraine in the Context of the Termination of the SCJ and Martial Law in Connection with Armed Aggression by the Russian Federation" [20]. According to this decision, the work of the court should continue even in conditions of martial law or a state of emergency. In the same decision, there is an indication that "provided that there is a danger to the health and life of visitors and staff of the court, the implementation of legal proceedings by the court is terminated until the elimination of the factors that provoked the threat to citizens." Thus, the work of the court is determined by the specifics of the current situation in the region where the court is located. To date, the decision of the Supreme Court has changed the territorial jurisdiction of more than 100 courts that cannot operate during military operations. The authors agree with the position of K. Chernilevska that the state in times of war should ensure proper access to justice, and the courts should quickly adapt to new, temporary conditions – martial law [21].

The team of authors, including O.I. Kharitonova, Ye.O. Kharitonov, K.G. Nekit *et al*, distinguish the following: ways of judicial protection of civil rights and interests: 1) the court may recognise the right of a certain subject; 2) the court may declare the transaction invalid; 3) the court may impose an obligation on the guilty subject to stop the act by which he infringes on the rights of others; 4) the court may restore the violated civil right and the situation that

existed before the violation of the right; 5) the court may oblige a certain person to fulfil the obligation in kind – to perform the task or refuse to implement it; 6) the court may apply other ways to protect civil rights and interests. The list of methods of protecting rights regulated by the norms of civil legislation is not absolute, since the civil legislation of Ukraine defines other approaches and tools for implementing protection [22].

To be able to correctly choose the most effective way to protect civil rights, it is necessary to correlate judicial protection and protection using ADR methods. To do this, it is necessary to identify the differences between these categories. For the most part, they consist of:

– subject system of the parties to legal relations: the subjects of court proceedings are persons established by procedural rules (employees of the court, parties to the trial, other participants in this process); the subjects of the ADR process are conflict parties, other participants who are intermediaries (mediator, arbitrator, judge who allows the parties to resolve the conflict through an alternative approach), and other subjects whose participation is possible at the request of the parties;

– grounds for the emergence of legal relations: the basis for judicial protection is a statement of claim, the basis for protection with the help of ADR is an agreement between the parties;

– subordination of participants: the judge has power, intermediaries at the ADR, except for the arbitration court, do not have power;

– procedure for attracting persons who contribute to the settlement of the conflict: the judge is elected using systems and automatic distribution of the case; when protecting civil rights using ADR methods, the parties can choose an intermediary at their own discretion;

– the nature of the execution of the act: the court decision has a mandatory character and is binding; the decision adopted and fixed using the ADR approach (with the exception of the arbitration court) is characterised by contractual features [22].

Various types of civil rights are subject to protection both by judicial procedure and by ADR methods. When choosing a more convenient and effective method during the period of martial law, a person should pay attention to territorial accessibility to the court, the duration of dispute resolution, the ratio of the price of the claim and the actual value, emotional costs, and the desire to remain in good business relations. Most researchers who deal with the issues of alternative resolution of certain civil disputes, including L.I. Galupova, V.Ye. Prushchak, and O.M. Spector, indicate that such methods are primarily aimed at the reconciliation of the parties and exhaustion of the conflict [19; 24; 25]. The authors of the study agree with researchers and emphasise that the purpose of introducing ADR is to help jurisdictional authorities unload a large number of cases and reconcile the parties. Although it should be noted that not all ADR methods are primarily aimed at reconciliation. For example, arbitration proceedings, as one of the types of ADR, quite rarely make a decision that would reconcile the parties. With this resolution of the dispute, one side won, the other lost. Under such conditions, the parties cannot reconcile.

Today, ADR methods are used in many countries of the world and make a positive impression on the parties to the conflict. ADR was first used in the United States. Initially, ADR methods were used to resolve family and commercial disputes. Nowadays, various ADR methods can be used to resolve almost all conflicts. Researchers refer the following methods to ADR: mediation, negotiations, facilitation, arbitration proceedings, dispute settlement with the participation of a judge, settlement agreement, and other hybrid methods, such as mini-court and mini-process [19].

One of the most effective ways to resolve a conflict situation is through negotiations. There is no consensus in the scientific community about the legal nature of such a method of conflict resolution as negotiations. Some researchers point out that negotiations are an independent way to resolve a conflict situation [26; 27], while other researchers do not refer negotiations to a separate independent method of ADR [28]. According to the authors of this study, negotiations can be considered as an independent way of ADR, when the parties resolve the conflict without involving intermediaries, and as an integral part of other ways of ADR. Thus, mediation is a negotiation process between the parties with the participation of a third neutral party, facilitation is negotiations between a group of individuals to resolve a conflict, the parties come to a settlement agreement through negotiations, etc.

Special attention should be paid to such a form of ADR as mediation. It is because of this that ADR is often identified with mediation. However, the latter should be understood as a dispute resolution procedure involving a third impartial party. At the moment, it is possible to mention such mediation centres that implement their activities in Ukraine as the National Association of Mediators of Ukraine, the Ukrainian Centre for Understanding, and the Ukrainian Academy of Mediation. The purpose of creating these centres is to train professional mediators and resolve various conflicts [29; 30]. Such scientists as L.D. Romanadze [31] and Yu.D. Prytyka [32] report the effectiveness of mediation as a way to resolve conflicts. Indeed, today mediation has proven its effectiveness in different countries of the world, as evidenced by statistics. The effectiveness of mediation as a way to resolve conflicts is about 70-90%: in the United States, China, South Korea, and the United Kingdom [33; 34]. Other ADR methods can be used under martial law, considering the specifics of conflicts, disputes, and the ability of the parties to make a mutually beneficial, compromise solution.

In turn, D. Huber notes that civil rights cannot be properly protected during war [35]. The researcher analyses the experience of Lebanon and Iraq. He managed to find out that during military operations the sphere of civil legal relations is particularly affected. Therefore, the researcher considers it appropriate to restrict citizens in certain rights, in particular, civil ones, in order to avoid abuse by other citizens. However, to a greater extent, such imperativeness was negative for individuals, which led to a narrowing of their powers and the possibility of using their own property and personal non-property objects. According to the researcher, this approach is unacceptable, since it violates the constitutional principles. At the same time, the researcher agrees that during martial law, it is civil rights that most often become the object of offences. Therefore, he believes that in such conditions it is necessary to form a special state mechanism designed to provide citizens with civil rights and enable them to freely exercise them.

S.F. Jones also studied the approaches of various states to regulating civil legal relations during military operations [36]. He analysed the experience of Georgia in 2008, during the war with the Russian Federation. He established that there were no significant restrictions imposed

by state bodies on citizens, as well as their rights. However, the researcher drew attention to the fact that special procedures were applied that changed the procedure for providing certain services to citizens during the exercise of their civil rights. This approach allowed protecting the property rights of individuals, which made it possible to avoid the occurrence of negative consequences for private entities. According to the authors of this study, similar approaches, taking into account modern conditions, are used in Ukraine. However, in the context of using international experience, it would be advisable to develop a special institution that would ensure the protection of civil rights in the territories under occupation. This can be done through information technologies, in particular, special annexes that would provide citizens with the maximum level of protection from arbitrary encroachment on their rights during military operations.

Conclusions

The conducted scientific study of the possibility of exercising the right to protect civil rights under martial law has yielded the following conclusions. The right to protection may not be infringed or restricted during martial law, but the exercise of the relevant rights may be hindered by external factors inherent in the period of military operations in certain territories or in the country in general. The protection of civil rights under martial law is a set of methods, techniques, and various procedural actions by which the prevention, suppression of an offence, or restoration of a violated civil right of a person is carried out, which can be applied in the conditions of special measures carried out by the state to stop armed aggression, ensure the independence of the state, its territorial integrity, providing for the granting of a certain number of power subjects with powers for defence, civil protection, public security and order, protection of the rights, freedoms, and legitimate interests. Under the conditions established as a result of the introduction of martial law, the state must provide citizens with the opportunity to appeal both to jurisdictional forms of protection (appeal to the court or state authorities) and to non-jurisdictional forms of protection (methods of alternative dispute resolution).

When choosing an effective way to protect civil rights, it is necessary to pay attention to the following criteria: the ability to overcome the necessary distance to the court (territorial accessibility), the possibility of long-term dispute resolution, the ratio of the price of the claim and the actual cost, the willingness to bear emotional costs, the ability to remain in good business relations with the other party to the dispute. Applying to the court for protection of civil rights during martial law is effective when the copyright holder needs a mandatory act, when the parties are confident that there will be no obstacles to the full consideration of the case (the possibility of involving other participants in the process, the parties will be able to freely appear in the courtroom, the parties are not abroad) and that it will not be possible to resolve the conflict independently. The use of alternative dispute resolution methods is effective when the parties wish to remain in good business relations and continue cooperation in the future, the parties (or one of the parties) are abroad or at a great distance from each other, the parties want to resolve the conflict without significant monetary costs, the parties understand the possibility of making a decision that would satisfy both parties.

Consequently, under martial law, the parties cannot be restricted in the right to protection and in choosing the method of exercising this right. The non-exhaustion of ways to protect civil rights allows the parties to a conflict or dispute to weigh all external factors in the form of the consequences of military operations and personal factors – the ability of a person to apply one or another method of protection when choosing the most effective way to protect their civil rights. In future studies, it is advisable to focus on the specifics of providing administrative services to citizens during the war in Ukraine, in particular, both in the territories under its control and in the occupied ones.

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Реалізація права на захист цивільних прав в умовах воєнного стану

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Анотація. Актуальність заявленої тематики наукового дослідження зумовлено особливостями воєнного стану та його впливу на реалізацію прав фізичних і юридичних осіб. Великого значення набуло питання надання кожній особі можливості використати повноваження на захист своїх благ, яке гарантує держава, в умовах воєнного стану. Статтю спрямовано на визначення та розкриття поняття «захист цивільних прав» та можливість його реалізації в умовах воєнного стану. Провідні методи дослідження цих питань – діалектичний та системний, які дають змогу розглянути правову природу категорії «захист». Системний підхід допоміг визначити найбільш ефективні законні способи захисту прав в умовах воєнного стану. У статті визначено поняття «захисту цивільних прав в умовах воєнного стану», розкрито особливості реалізації права на захист своїх прав з урахуванням особливостей та обмежень воєнного часу, розглянуто найбільш ефективні способи захисту цивільних прав та можливість їх застосування в умовах воєнного стану, охарактеризовано юрисдикційну та неюрисдикційну форми захисту цивільних прав. Теоретична цінність науково-дослідної роботи полягає у визначенні поняття «право на захист цивільних прав» з урахуванням особливостей та обмежень, зумовлених воєнним станом, що може стати основою для подальшого наукового дослідження суміжних питань. Практичною цінністю науково-дослідної роботи є розкриття особливостей реалізації права на захист на територіях, де проводяться військові дії, та визначення ефективних форм та способів захисту цивільних прав в умовах воєнного стану

Ключові слова: форми захисту, воєнний час, цивільний кодекс, політичний конфлікт, органи влади, медіація

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Psychological Readiness as a Component of Professional Training of Future Lawyers

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Abstract. The relevance of the study is conditioned by the presence of a large number of problems of the professional training of future lawyers and the great importance of the practical application of attributes of psychological readiness in matters of their effective professional training. The purpose of the study is to comprehensively analyse the phenomenon of psychological readiness, to identify its relationship with the professional training of future lawyers, and to find out the most effective measures for the development of psychological readiness of future lawyers as a component of professional training. The following methods of scientific cognition were used in the study: terminological, logical and semantic, system and structural, functional, logical and normative, and non-experimental quantitative method of data collection by survey. The results showed that the psychological readiness of students to study has characteristics depending on what specialisation the law student chooses in the future. It was found that although students' psychological readiness for e-learning was high, they lacked technological and instrumental readiness. In general, the results obtained and the conclusions formulated on their basis have both theoretical and practical importance, which consists in improving scientific approaches to understanding the content of psychological readiness as a component of professional training of future lawyers. These results can be used in the future as a developed scientific base for investigating the prospects for studying the psychological readiness of law students, solving and developing problematic issues revealed in this study, and implementing them in the educational process

Keywords: psychological training, lawyers, modern education, online training, professional self-determination

Introduction

The development of social relations creates serious challenges for the transformation and rethinking of certain categories of psychological knowledge. The present is characterised by a complex educational process and rapid development of technologies. According to the document adopted on the basis of the summit "Transforming our world: The 2030 Agenda for Sustainable Development" of the United Nations Development Organisation, one of the fundamental goals for sustainable development is to provide quality education and motivate everyone to learn throughout their lives [1]. Along with this, there are a number of problematic aspects of the psychology of readiness as a component of the professional training of future lawyers. Psychological readiness for professional self-determination is associated with the professional orientation of cognitive processes, which requires their development in accordance with the objective requirements of the legal profession. The basis of professional self-determination is motivational and value readiness, which defines the effectiveness of professional self-determination of future lawyers [2].

Readiness psychology as a component of the professional training of future lawyers is crucial if the educational system seeks to prepare its students to meet the needs of future public demands. The issue of psychological readiness is one of the key problems of the psychology of personality development. According to B.U. Rasulov and D.R. Rasulova [3], psychological readiness is a personal education, a construct that provides and outlines the possibilities of continuous growth of the individual both today and in the future. Researchers have found that psychological readiness reveals the attitude of a person to the world and to oneself [3]. According to A.R. Sattarov and N.F. Khaitova [4], it is difficult to assess such a concept as "psychological readiness", since this phenomenon gives an idea of the processes of transformation in the structure of the individual. Researchers say that readiness is primarily determined through self-awareness as a professional [4]. Definition of "psychological readiness for professional activity" is considered by V.Y. Drapezo et al. [5] as the most important element of personal readiness for professional development as a future specialist in the relevant

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field, including specific professionally-oriented characteristics of the individual, in particular, the process of thinking, stable beliefs or certain inclinations that are aimed at effective performance of professional tasks. The researchers found that all of the above elements occupy an important place in the structural framework of readiness for professional activity from the standpoint of the psychology of law students [5].

L.X.C. Oña et al. argue [6] that it is an indisputable fact that psychological readiness for learning directly affects the academic performance of both first-grade children and first-year students. Researchers have determined that changing temporal aspects and technical means requires a significant change in the learning model [6]. Of particular interest is the paper by G. Ilgaz and M. Eskici [7], where it is noted that the physical and mental development of a student is a complex and very serious part of personality formation in connection with the socio-natural process of development. The results of the study confirm that nowadays psychological readiness cannot but be influenced by events in the world [7]. Thus, the outbreak of COVID-19 caused a huge panic among people, including a large number of students who were experiencing considerable stress. E-learning and other innovative multimedia tools are being implemented to expand learning opportunities and facilitate students' access to education and success in it [7]. For ordinary universities, which initially used full-time training, online learning has become a problem that needs to be solved. These conditions negatively affect both teachers and students [8-10]. Lack of proper readiness makes the learning process unproductive and psychologically burdensome.

This study assessed the psychological readiness of law students as an integral part of their professional training in terms of the development of social relations and the direct impact on such readiness of events taking place in the world. Research hypothesis: the type and form of the curriculum directly affect the psychological readiness of law students for professional training.

The purpose of this scientific study is to comprehensively analyse the phenomenon of psychological readiness of law students to study at a higher educational institution for specialised education.

Materials and Methods

The methodological approach in this paper is based on such methods of scientific cognition as the terminological method, the logical and semantic method, the functional method, the system and structural method, and the logical and normative method. The theoretical basis of the study consists of the findings of a number of researchers on problematic issues related to the investigation of psychological readiness as a component of professional training.

The participants of this study were first-year students of the Faculty of Law. The number of respondents involved was 106 law students. The survey was conducted on an anonymous basis, orally and offline. The fixed number of questions was 10. In terms of content and form, the responses were open and detailed. Questions from this survey included problems related to students' psychological readiness to study at a higher education institution for specialised education; problems that students face during their studies; and whether students participate well in online learning.

The presented study consists of three stages. At the first stage, a theoretical basis was prepared, which in the future can be used as a basis for further study. At the second stage, a non-experimental quantitative method of collecting data through a survey was used to assess the psychological readiness of first-year students of the Faculty of Law before and after the relevant educational process. Descriptive statistics are used for data analysis. At the third stage, based on the results obtained, the final conclusions were formulated, which determine the main trends in the development of scientific thought, the study of psychological readiness as a component of professional training of future lawyers.

Results and Discussion

The law is gradually being transformed, as a result of which the legislation is changing. Such circumstances pose new challenges for lawyers. In this regard, it is impossible to bypass the training of future lawyers, which by its nature is a dynamic process that constantly changes depending on the needs of society. One of the most important aspects to consider before defining a learning model is the psychological readiness of students. This is closely related to the readiness of each student to study separately. After all, readiness for learning is associated not only with physical conditions, but the most important thing is psychological readiness. From a psychological standpoint, students are not ready to participate in online training. The psychological readiness of law students to study can be grouped into two categories: the first category refers to the level of development of a person that allows them to have the ability to learn; the second category refers to readiness in terms of cognitive, social, linguistic, and certain other skills that are similar in content.

Self-regulation is directly related to the personality of a specialist, and the most important component of activity is group communication. The centre of psychological readiness is mental processes and properties. The latter are an invaluable basis for the general system of personality qualities. Psychological readiness for professional self-realisation can be defined as a well-coordinated system, which manifests itself in the form of unity of mental states and properties, including:

1) self-attitude, which is an assessment of their capabilities, which can be expressed in awareness of their own vocation and special personalised purpose of the individual, which contributes to the ability to accept tasks that other individuals will not be able to solve in the same effective way;

2) orientation, which represents certain motives and needs, value orientations of the individual, which is transformed in the interests, desire and necessity of self-expression;

3) creative abilities of the individual, which are considered as one of the most important factors of self-realisation;

4) implementation of the need for creativity and self-realisation [11].

In the structure of psychological readiness of future lawyers, the following elements can be distinguished: motivational; orientation; cognitive and operational; emotional and volitional; psychophysiological; evaluative. The motivational component is a set of professional attitudes and the desire to work as a lawyer. It acquires practical significance through the prism of professional orientation, namely a high level of desire to implement their knowledge in the chosen professional field. In such circumstances, a person expresses a positive attitude "to be a lawyer", has a penchant and interest in the legal sphere of activity, and is also characterised by an indescribable desire for self-improvement in the

professional sphere. In turn, the orientation component is understood as a set of value-based and professional orientations. The foundation of the latter is the ethics of professionalism, specific ideals, views, principles, and beliefs directly related to professional activity. The cognitive and operational aspect of psychological readiness includes such elements as certain volitional processes, the main purpose of which is to ensure a successful course and effectiveness. It is this professional orientation that is undoubtedly necessary for the successful implementation of a lawyer's professional activity. Understanding their forces, calculating them, hard work, activity, and self-control are components of the psychophysiological aspect of the psychological readiness of future lawyers. The evaluation component is reduced to the ability to carry out a self-assessment of own professional training.

Psychological readiness for activity begins with setting a goal based on requirements and motives (or understanding a clear problem). Motives are understood as the professional development of personal efforts to the acquired values of the profession, which encourage a person to set a specific goal of a professional nature and take measures to achieve it. Psychological readiness is the result of professional training and personality traits. It serves as a regulator of the success of the professional activity, a form of attitude. One of the main goals of psychological observation of professional development is not only to provide timely assistance and support to a person, but also to learn how to overcome the difficulties of this process without outside help, to be responsible in the establishment, and to help a person become mature for professional life. Psychological observation involves the creation of a certain area of professional development of the individual, increasing the professional "ego", maintaining adequate self-esteem, rapid response and support, self-adjustment of life support, and acquisition of professional well-being. The result of psychological observation of professional development consists in professional development and self-consistency, realisation of the professional potential of personnel, ensuring professional independence, satisfaction from work, and improvement of the effectiveness of professional activities.

According to the results of the survey, 80 (73.4%) students have an average level of psychological readiness, 18 (17.5%) respondents showed the ability to reach a high level, and only 8 (9.1%) – have a low level of psychological readiness (Fig. 1). It is revealed that first-year students are characterised by a certain underdevelopment of psychological readiness, since they do not have sufficient resources of knowledge and skills that form the ability to think practically.

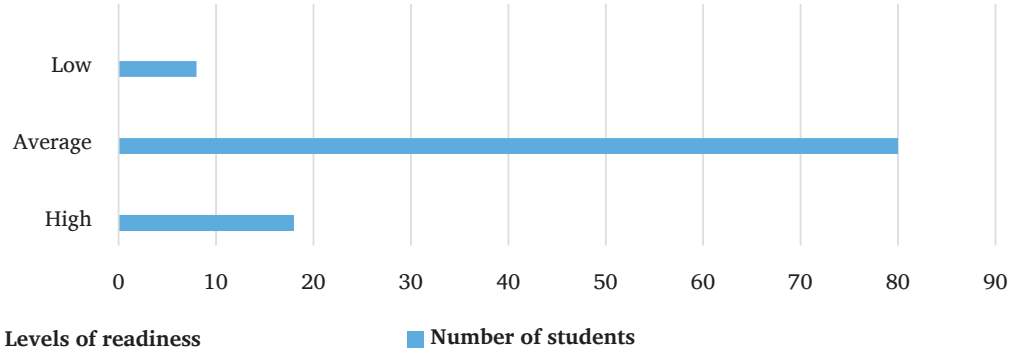

Figure 1. Levels of psychological readiness of first-year students of the Faculty of Law

Notably, 68 students with experience, for example, in legal circles or student professional associations, are able to control their emotions more, perceive and recognise their own feelings, and show self-control. At the same time, they have lower emotional awareness than 38 students who have never participated in any extracurricular legal circles (Fig. 2).

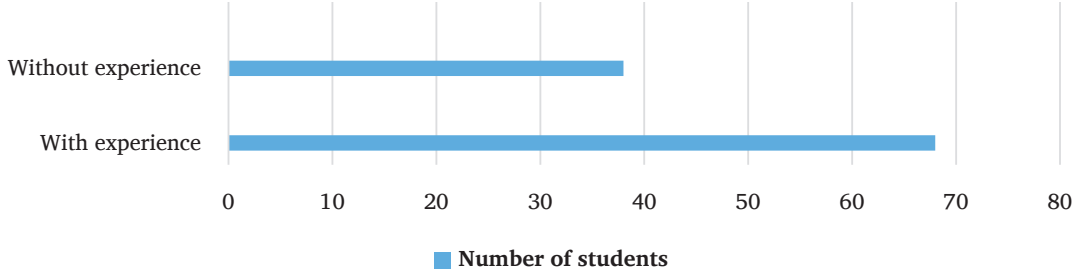

Figure 2. Experience in legal circles or student professional associations

According to the results of the survey, it is clear that first-year students of law faculties have characteristic features of psychological readiness. Their focus on the perception of educational material is directly related to the method and form of teaching. It is established that as a result of a dynamic process, psychological readiness for professional activity, which consists of experience and attitudes, leads to such a stable characteristic of the individual as awareness. In this context, the main mission of the higher education institution will be to both provide future lawyers with theoretical knowledge and instil a desire to have a return on their profession.

The stimulating prerequisite for introducing the latest effective teaching methods into the learning process is the goal and content of the concept of improving legal education for the professional training of a lawyer according to the criteria of European standards of higher education. The choice of methods to be used in the process of teaching legal disciplines should be based on the purpose and effective approach to learning. Such methods can include: methods of covering the knowledge of the subject (verbal or visual); methods of stimulation and motivation in educational and scientific activities (educational discussions, search, and research); control methods (including self-control), surveys, and testing. According to the author of this study, one of the most important components of the current scientific and methodological support is tools for strengthening motivation for students to independently obtain new knowledge. Modern methods of teaching legal sciences have a rich toolkit of various methods, techniques, and means of teaching.

Legal education remains one of the most important components of the national higher education system throughout the entire independence of Ukraine [12]. This situation is primarily related to the implementation of government reforms, in particular, political and judicial ones. The accelerated development of market relations in the economy occurred due to the difficult political and socio-economic situation of the country. That is why the development of legal education in Ukraine, in particular higher legal education, is very relevant. The author of this study notes the problems that slow down the creation of an effective system of legal training at the state level. In addition, considering the coefficients of labour market analysis in Ukraine, questions arise about the lack of vacancies for the position of a lawyer due to their excess. In this context, it is appropriate to cite the following study: as of the 1990s, there were only 6 universities in Ukraine that trained lawyers, among which the most popular now are the Ivan Franko National University of Lviv and the Taras Shevchenko National University of Kyiv. In 2013, there was a "boom" of law students. This phenomenon was caused by the fact that more than 40 thousand people with higher legal education and more than 34 thousand with higher economic education were registered with the State Employment Service of Ukraine [13]. Referring to the results of salary monitoring, it was obvious that a number of engineering professions, chemists, physicists, analysts, and psychologists had higher salaries than lawyers with a low level of training [14]. Thus, it can be concluded that the fact that there are unskilled young specialists on the labour market who have received a legal profession provoked a drop in demand for legal specialists. At the same time, the study agrees with the conclusion of V.F. Opryshko that such statements are quite categorical and one-sided. This is conditioned by the fact that the national labour market is overfilled with highly qualified lawyers, which has a positive impact on the sphere of labour in general [15]. However, even in 2022, the demand for applicants at the Faculty of Law in universities does not decrease [16].

Admittedly, international students, when talking about the learning process, first of all, emphasise the following points [17]. First, an important point is the choice of the method of conducting lectures. Thus, it is emphasised that instead of reading a dry academic text, it is necessary to pay more attention to the fact that the student receives more live communication. The second feature is a change in the order of studying subjects. Master's students of Vilnius University study one discipline for 2-3 weeks and immediately pass an exam on it, which positively affects the assimilation of educational material and does not "scatter" the student during the session "on everything" at once [18]. Therefore, mastering the profession of a lawyer occurs through the personal perception of each individual student. Modernity dictates an increase in the importance of psychological and volitional qualities of subjects of legal science. At the same time, the process of becoming a professional in the legal field is complex and multifaceted. Thus, there is a tendency to develop the emotional component of self-awareness. Another important aspect is the ability to live in harmony with own inner emotions. On the other hand, a direct understanding of feelings in both work and interpersonal relationships contributes to better and more effective outcomes in the same work. Information about the state of students' awareness of emotional qualities, psychological characteristics, personal states, and their role in professional activity allows understanding of exactly what level they are at, what is missing and how to influence them to increase this level in terms of the importance of this criterion for the effectiveness of activities.

In the aspect of this study, the author highlights the direct relationship between the cognitive component and the identification of such a trait as professionalism. The concept of legal professionalism is reduced to a set of knowledge and certain practical skills that together will allow achieving significant results in the legal field. The author agrees with O.B. Melnychuk, who considers the concept of "professionalism" not only as a specific process of developing abilities, but also as maximally and comprehensively covered knowledge in a specific professional field of activity [11]. Based on the theoretical analysis of scientific sources on the problems of professional training, it can be stated that there is a close relationship between the psychological aspect of the individual and its result, which is manifested due to the success of professional activity in general. Thus, the relevance of this issue of ensuring psychological readiness in the process of professional training of future lawyers in the new conditions of transformation of social foundations is only growing. This category, according to the author, will determine the potential opportunities of their professionalism not only in the near future, but maybe throughout their overall career. Requirements for professional training of future lawyers are formed, first of all, on the basis of determining the specifics of their activities in the future. The professional activity of a lawyer is aimed at effectively solving complex professional problems, and the stability of the functioning of legal phenomena as such.

Perception and focus can also play a big role in creating and removing barriers to change, thereby increasing psychological readiness for change. If the problem is perceived as manageable, or within individual resources, then attention will be paid to solving problems that create a challenge for a person (problem-focused overcoming) [19; 20]. If the challenge is perceived as an overload of resources, attention is focused on trying to control the stress or anxiety that has arisen (demands focused on emotions). Secondary evaluation has important implications for the change process. If resources are focused on the individual's attention to reducing anxiety, the ability to solve the problem decreases and the process of preparing for change can be seriously disrupted. On the other hand, if a person's cognitive resources are free, they are ready to solve problems related to change.

Conclusions

The requirements of modern society, the development of public relations, and globalisation processes lead to the need to provide a system of training of future lawyers for professional activities with a certain flexibility in timely response to the requirements of society. The development of psychological readiness of future lawyers is a specific goal and at the same time the result of a long-term process of academic training in the aspect of training a specialist in a higher educational institution, which is inextricably linked with a complex of organisational, psychological, and pedagogical activities. However, despite the increase in organisational efforts aimed at expanding the opportunities of higher education teachers in the field of decision-making, the type and form of training still need to be improved. The organisation of training requires the ability to adapt to the needs of modern times, which are constantly changing.

According to the results of the survey, only 18 students have a high level of psychological readiness. It is established that the focus of first-year students of the Faculty of Law on the perception of educational material is directly related to the method and form of teaching. Students with work experience (in legal circles or student professional associations) are able to show more self-control, unlike students who have never participated in any extracurricular legal circles. Thus, based on the results of the analysis, it can be concluded that the hypothesis is confirmed: the type and form of the curriculum directly affect the psychological readiness of law students. In a further study, it is proposed to develop a set of diagnostic methods and clear criteria for determining readiness for future activities in the professional space of the field of jurisprudence.

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Психологічна готовність як складник професійної підготовки майбутніх юристів

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Анотація. Актуальність заявленої тематики наукового дослідження зумовлюється наявністю великої кількості проблем професійної підготовки майбутніх юристів, а також великим значенням практичного застосування атрибутів психологічної готовності в питаннях їхньої ефективної професійної підготовки. Мета науково-дослідної роботи – здійснити комплексний аналіз явища психологічної готовності, виявити його взаємозв'язок з професійною підготовкою майбутніх юристів, з'ясувати найбільш ефективні заходи для формування психологічної готовності майбутніх юристів як складника професійної підготовки. У досліджені використано такі методи наукового пізнання: термінологічний, логіко-семантичний, системно-структурний, функціональний, логіко-нормативний, та неекспериментальний кількісний метод збору даних шляхом опитування. Результати показали, що психологічна готовність студентів до навчання має особливості залежно від того, яку спеціалізацію в подальшому вибере студент-правник. Виявлено, що, хоча психологічна готовність студентів саме до електронного навчання була високою, їм бракувало технологічної та апаратної готовності. Загалом результати, отримані внаслідок наукового дослідження, а також сформульовані на їх підставі висновки мають важливе як теоретичне, так і практичне значення, яке полягає в удосконаленні наукових підходів до розуміння змісту психологічної готовності як складника професійної підготовки майбутніх юристів. Ці результати можуть бути використані в подальшому як сформована наукова база для вивчення перспектив дослідження психологічної готовності студентів-правників, розв'язання та розвитку розкритих у цьому науковому дослідженні проблемних питань та здійснення імплементації та рекомендацій в освітній процес

Ключові слова: психологічна підготовка, правники, сучасна освіта, онлайн-навчання, професійне самовизначення

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