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Traditions and innovations in Ukrainian jurisprudence: Ancient Greek roots

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Abstract. Ukraine's course toward European integration requires harmonisation of Ukrainian legislation with European law, which has its origins in the cultural and traditional foundations of the ancient era. Therefore, the research on the influence of the ancient Greek philosophy of law on the development of Ukrainian jurisprudence becomes relevant, and in the course of this, the problem of the clash of traditions of different legal families and areas of development of legal innovations arises. The purpose of this study – to identify the factor of the dialectic of traditions and innovations in Ukrainian jurisprudence as one of the driving factors of its development. The author uses the methods of axiological analysis, comparative legal method and the method of analogy to substantiate the results obtained and develop conclusions. As a result of the research, it was established that no matter how modified the forms of key legal values, doctrines and institutions are, they are always based on the fundamental ideas based on the intellectual traditions and philosophical and legal ideas of the thinkers of Ancient Greece. It is evidenced by the universalist approach they initiated, on which all European science (including legal science) is based, and modern anthropological concepts of law understanding in general and the justification of fundamental human rights, in particular, are based on principles genetically rooted in the teachings of Protagoras, Socrates and Aristotle. Therewith, it was established that the latest achievements in the organisation of democratic governance are focused on the implementation of the ancient Greek idea of democracy. The author demonstrates that in the dialectical process of development of any legal system, there is always an interaction of some established (traditional) components and various new developments conditioned upon the specifics of such development at each stage, and concludes that the time-influenced changeability of legal values, doctrines and institutions goes back to the intellectual tradition and philosophical and legal ideas of the thinkers of the Ancient period. The practical significance of this research is that the materials of the study can be used: in lawmaking – for the preparation and substantiation of draft laws on the further development of the legal system of Ukraine; in the educational process and research work – in teaching relevant disciplines

Keywords: ancient Greek philosophy of law, the idea of law, values of law, legal tradition, innovation of law, European integration

Introduction

The development of the legal system is a dialectical process in which there is always an interaction between some established – customary and traditional – components and some new developments caused by the specifics of such development at each stage of its life. This specificity is a natural consequence of the constantly changing economic, political and socio-cultural conditions of the functioning of law and, accordingly, its understanding in legal science.

Therewith, legal traditions embody the regulatory experience (both national and global) that has been tested for thousands of years, the preservation and transmission of which to future generations ensures the heredity and continuity of legal development, while value and legal innovations, embodying the cultural and historical specifics of legal relations within a particular society and the means of their regulation, are a kind of mediating link that connects and adapts traditional values to new conditions and deviations from past experience.

As noted by Yu. Oborotov (2004), the legal system, being a factor of stability in society, embodies traditions that are a link between the past, present and possibly even the future. Traditions in law – the fact of legal inheritance, a synonym for absolute, eternal, life-affirming at different times, and their authority is asserted through usefulness, prevalence, mass application, effectiveness, etc. Thus, traditions in the field of law do not require coercion for the most part.

It is through the presence of some consolidating traditions that different legal systems integrate into a common legal family. Thus, for example, the common law family is dominated by the tradition of accumulating experience in similar and special cases of legal relations that require judicial resolution, and "algorithms" for making court decisions in these cases. Instead, the Romano-Germanic legal family is based on the tradition of regulatory generalisation of standards of lawful behaviour and the development of general criteria for its distinction from various types of offences. Therewith, in the first of these legal families, procedural law traditionally prevails over substantive law, and in the second – vice versa.

Innovations, on the other hand, are deviations from traditional experiences associated with creative development (Oborotov, 2004). Even at the level of legal understanding, i.e., the fundamental interpretation of the essential content of law in legal science (including Ukrainian), an "innovative branch" is being noticeably developed, designed to overcome the traditional one-sidedness of the interpretation of

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the said content, which consists either in a narrow positivist reduction of law to law or in its jus naturalistic reduction to some "natural foundations" of the normativity of human behaviour. This tradition dates back to the ancient philosophical and legal idea of distinguishing between "absolute" ("divine", "universal") and "relative" ("human", "changeable") laws.

However, as a regulatory requirement that is not justified by any "meta-legal" grounds is perceived not so much as a will that must be obeyed as a "whim of the authorities", similarly, a "fair provision" not officially enshrined and not supported by appropriate state legal mechanisms will rely solely on the rather shaky foundation of "goodwill". Therefore, "it is not accidental that there are attempts to overcome the narrowness of traditional Western conceptions of law, at least the positivist natural and sociological ones, by establishing a single integrated jurisprudence. This new jurisprudence (social theory of law) should be based both on reason and on feelings, intuition and faith" (Oborotov, 2004).

In exploring this subject, it should be noted that Ukrainian scholars have not explored traditions and innovations in the process of reforming the legal system of Ukraine in terms of its ancient Greek roots, and accordingly, there are no dissertations on this subject. Therewith, Ukrainian scholars have explored some aspects of traditions in law, the influence of ancient Greek philosophy of law on Ukrainian jurisprudence, including the development of the institution of human rights, the establishment of a tradition of legal culture, the concept of punishment, the democratic foundations of society, the institution of private property, justice, etc. First of all, this refers to S.H. Melenko (2013), who explored the ancient Greek origins of Ukrainian philosophical and legal thought in his monograph of the same name, which is the most significant scientific study on this issue in Ukraine. The researcher traced the history of the assimilation and transformation of ancient ideas in Ukraine from the time of the adoption of Christianity in Kievan Rus, therewith, as and under the influence of which the ideas of Socrates, Plato and other thinkers came to the Ukrainian land, until the 20th century. In this way, the scholar demonstrated that over the centuries, ancient Greek philosophical and legal traditions have always been one of the most influential foundations of Ukrainian legal thought, but these foundations were frequently reinterpreted under the influence of Christianity, on the one hand, and national specifics, on the other.

P.I. Mamchyn (2021) considered in the philosophical and legal discourse the influence of ancient Greek law on modern Ukrainian justice and proved that the Ukrainian Constitution is based on the fundamental principles of the judicial system of ancient Greece, in particular the equality of all participants in hearings before the court, the competitiveness of the parties, the ability to freely provide convincing evidence, the right of the accused to defence, publicity, binding nature of court decisions, the possibility of collegial consideration of the case, etc.

T.O. Matvieieva (2021) explored the establishment of the continental system of European law, relevant to this research, using the example of ancient Athens and Sparta. In her research, the author proved that against the background of the oligarchic regimes of the time, the Athenian state legal system, despite being accessible only to free citizens, became a model of high political culture, as its legislation distinguished between crimes in the spheres of public life (state, family, property, against the person), by gravity and intent (intentional and unintentional); there was a clear system of punishment; self-defence was provided for; the perpetrator and instigator of the crime were distinguished, etc. Thus, Athenian principles of law became the foundation of Western democratic values.

D.V. Slynko (2018), in his works, disclosed the emergence and development of procedural provisions on the territory of Ukraine, in the ancient era, having explored the specifics of consideration of legal disputes by judges in ancient Greek polises that existed on the territory of Ukraine. O. Minkovich-Slobodianik (2019) explored the development of legal culture from Ancient Greece to modern Ukraine. T.V. Kotenko (2020) explored the issue of the establishment of human rights and freedoms in the teachings of philosophers of Ancient Greece and Rome, and in the ideas of several Ukrainian scholars.

However, despite considerable attention to ancient sources and their reinterpretation in the Ukrainian philosophical and legal culture from the Middle Ages to modern times, rather little attention has been paid to the reception of ancient views in the 21st century. With this study, which is primarily designed to substantiate the conceptual significance of the ancient Greek philosophy of law for reforming Ukrainian jurisprudence at the present stage, the author intends to explore the driving factors of the development of Ukrainian jurisprudence, uncovering the dialectic of traditions and innovations present in it. This research is the first attempt to substantiate that, despite Ukraine's long history of being under the harsh political influence of the Russian Empire and the Soviet Union, Ukrainian legal traditions and values are much closer to European ones, both in terms of content and genetics, which is of great scientific importance and has significant scientific potential in the context of the State's European integration course.

Materials and Methods

In preparing this research, the author used both some primary sources that testify to the genesis of the foundations of evidentiary methodology in ancient Greece (in particular, the works of Plato, Aristotle, etc.) and the latest publications by Ukrainian authors.

In addition, the study included the Declaration of Principles "Building the Information Society: A Global Challenge to the New Millennium" (2003), Resolution of the Verkhovna Rada of Ukraine No. 3175-IV "On the Recommendations of the Parliamentary Hearings on the Development of the Information Society in Ukraine" (2005) and other regulations of Ukraine, registered draft laws and conclusions to draft laws.

In the course of the study of ancient sources, the author applied the method of axiological analysis, since at each stage of development of the legal regulation system of any country, the organisation of the latter is established and implemented under the determining influence of dialectically interacting traditional legal values and axiological shifts caused by dynamic changes in socio-political and cultural life. The axiological method of analysis allowed identifying the key values of ancient Greek philosophical and legal thought from the texts of primary sources to provide grounds for conclusions about the presence of ancient principles in modern Ukrainian legislation, and about the extent and manner of their rethinking, transformation, and modernisation.

To explore the traditions and innovations in the process of reforming the legal system of Ukraine, which is currently being implemented primarily in line with the European integration processes, and to substantiate the results and

formulate conclusions, the author uses the comparative legal method and the method of analogy. These methods allowed comparing the key principles of ancient law identified in the works of Plato and Aristotle and comparing them with the foundations of modern law in Ukraine, proving the continuity of ancient traditions and, therewith, demonstrating how they have changed and been updated under the influence of modern innovations, in particular in the context of the digitalisation of society.

Results and Discussion

The concept and meaning of traditions in law: Ancient roots

Modern integrative approaches to the law are developed on various grounds (sociological, psychological, religious, axiological, etc.). However, the most common among them are ontological versions based on the idea of the organisational and principled unity of actual and proper being. In addition, law is not a pure idea, an entity that seems to "hover" in the space of human activity. Law, as an idea, is always connected in an ontological sense with the world's existence, where the legal order is established based on law. Thus, it is quite utopian to consider the existence of law without linking it to the rule of law, and thus, the realisation of legal existence is possible only if the conditions of its existence in the world are correlated (Stovba, 2005).

As for the deontological and value dimension of law, in the projects of its integration based on legal existence as such, the value space is an organic component of the system of social existence, since both natural and biological inclinations of a person and the communication mechanisms of their integration into social relations and their assimilation of the legal standards of their social existence are determined by the so-called "axiological matrices" indicating the degree of importance of each of these inclinations for the individual and their social environment. In addition, this valuable space is the closest to the subject's consciousness and, being not in the depths of existence but on its surface, completes the pyramid of the ontological hierarchy (Timush, 2009). Accordingly, the dynamics of establishment and functioning of regulatory guidelines is primarily determined by the values of the subject as the main carrier of the generation and implementation of the law. Thus, the system of integral legal ontology should be crowned with an axiological layer of human existence, where the value attractors of the dynamics of legal phenomena are concentrated (Tsymbaliuk, 2008).

Such innovative approaches to the integration of ontological and deontological aspects of the law are conditioned upon the fact that its essential foundations cannot be unambiguously defined either by actual existential or purely regulatory boundaries. The main reason for this, as A. Kaufmann (1997), is the fact that law manifests itself as a kind of connecting channel through which "mutual coherence between the existing and the proper" occurs. Indeed, "there is no point in thinking about the reality of Ought, which is fundamentally different from the reality of Being (Is)... In general, people comprehend the Proper first of all as an objective reality, although they do not understand it clearly and still believe in its existence" (Pattaro, 2005), since developing ideas about the "proper", "desirable" order, somehow foresee its potential *realisation* (i.e. transformation from the mental ideal into the real one), and, consequently, harmonise such ideas with organisational principles and conditions of reality, as otherwise these ideas of the "proper" will never be realised in the system of existing legal relations.

It is traditional for Ukrainian law to belong to the Romano-Germanic legal family with its inherent tendency to develop general rules for regulating social relations, which are the foundation for distinguishing between lawful and unlawful behaviour, and for qualifying offences and determining appropriate legal sanctions in case of their commission. Therewith, it must be noted that the overly abstract and generalised nature of legal provisions always provides for a fairl significant range of "own discretion" of law enforcement entities in the course of development and decision-making in specific cases, and, therefore, the real content and scope of rights are ultimately determined not so much by legal provisions as by judicial decisions in a particular situation, the specifics of each of which cannot be foreseen by law (Hirsin, 2013). It is primarily for this reason that the current democratisation processes are leading to the fact that even in the countries traditionally dominated by the Romano-Germanic (European continental) legal system, "the crisis of parliamentarism and the strengthening of the role of courts" (Van Hoecke, 2002) is becoming increasingly noticeable.

Moreover, the preference for a casuistic approach to the law over a regulatory one is the central idea of legal realism in jurisprudence, whose representatives believe that even obvious facts, let alone any generalised rules or abstract principles, are always interpreted individually, being evaluated by different people with different worldview, political, moral, gender, psychological and other attitudes. Therefore, as one of the brightest representatives of this school, F. Cohen (1960), "this dependence of individual meaning on a personal system of correlations is something that the majority take for granted when refusing to argue about religious matters" – the scientist convinces and asks several questions: is not the same dependence of meaning and truth on a variable context observed outside religion, even in those secular areas that are the subject of the activities of lawyers and their clients? Isn't it even appropriate to say that law, as a field of constant dispute, is a field within which the imposition of different meanings on the same oral formula appears as its most characteristic and essential attribute? (Cohen, 1960).

In general, considering the above circumstances, representatives of legal realism have concluded that absolutely uniform and logically consistent application of the law is unrealistic in principle. Therewith, lawyers should be aware of their preferences, ideological attitudes and prejudices that establish significant obstacles to the objective application of the law. Thus, just as no two judges have the same mindset, no two cases have identical factual circumstances, which means that judges should make decisions not so much based on abstract legal provisions as on the unique circumstances of each case (Merezhko, 2002).

It, evidently, should not be understood as a complete rejection of the regulatory approach to law. Subjective judicial discretion should be exercised within some objective legal framework that would limit judicial arbitrariness and serve as a general regulatory foundation for legal equality (at least in terms of the applicable law common to all participants in legal relations). However, in the context of the European integration course of the Ukrainian state, there is a growing need for convergent innovations of national law in the field of its assimilation with European law, where there is a fairly stable trend towards convergence of regulatory and case law. Therefore, in the context of national legal science, the attitude to judicial precedent should be rethought, which is essentially at least a specification of an existing legal provision,

and sometimes the actual foundation for its fundamental reform or establishment of a fundamentally new regulatory provision. Approximation of national law with European law, signing of the Association Agreement with the European Union (Association agreement between…, 2014), ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adoption of the Laws of Ukraine "On the Ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention" (1997) and "On the Ratification of Protocols No. 15 and No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms" (2017) necessitate appropriate changes in the traditional Ukrainian legal mentality of inappropriate attitude to judicial precedent as a source of national law. Moreover, the de facto judicial precedent has been used as a source of law in Ukraine for quite some time. In the end, it is already quite obvious that over the past two decades, the attitude to judicial precedent as a source of law in Ukrainian jurisprudence has been changing significantly, although, admittedly, the inertia of conventional thinking is still evident in both general legal theory and specialised legal sciences. However, "due to the active convergence of national and European law, the issue of the need to introduce legal precedent and determine its place in the national legal system of Ukraine is more relevant and necessary than ever, especially against the background of judicial reform" (Stepanenko, 2018).

Innovations in law against the background of historical and modern legal traditions: Meaning, development, and application in Ukrainian jurisprudence

For more than three decades, the tradition of prioritising state interests over personal ones, which national law inherited from the Soviet system, has been innovatively replaced by a tradition based on the principle of legal equality of all subjects of legal relations – state, public and individual. In this regard, the rights and freedoms of man and citizen, the universality of which is conceptually based on the principles of the intellectual tradition of antiquity, acquire a fundamental status. However, in modern conditions, these fundamental rights themselves are subject to constant adjustment given economic, political, cultural and other transformations in the course of social and dynamic processes.

The first generation of human rights was mainly of a public and political nature, enshrining guarantees of personal and civil security (prohibition of slavery, torture and other inhumane treatment of people), freedom of religion, the right to participate in political life, etc. The second generation is economic, social and cultural rights, which provide for guaranteed equal access to basic public goods, services and opportunities (including the right to work, education, health care, recreation, etc.). The third generation includes, thus defined, "self-determining" rights: the right to a peaceful existence, to determine one's future, to a safe environment, etc. Therewith, the rapid technological development of modern society results in the expansion of not only human capabilities but the demands of the people themselves. Accordingly, discussions about the next – fourth – generation of human rights, which include primarily "somatic" rights (the right to euthanasia, transplantation, gender reassignment, etc.), are becoming more and more relevant and heated. An important reason for the controversial nature of issues associated with the legalisation of such rights is that there are not yet sufficient opportunities to recognise such requests as universal rights in terms of developing mechanisms for their implementation for any person.

In addition, progress in the field of information technology has resulted in the phenomenon of virtualisation of life, which has necessitated the development of appropriate legal and regulatory tools to govern relations in the network space ("digital law"). The latter usually include: the right to freedom and personal security in online space; privacy; freedom of expression in online space; the right to peaceful assembly, association, and use of electronic tools of democracy; the right to digital self-determination; the right to disconnect from online, etc (Marushchak, 2021). The modern era of social history is no longer just an information society, whose main difference is generally a shift from an industrial dominant to an information one, but a so-called digital or digitalised society.

Considering this, the Declaration of Principles entitled "Building the Information Society: A Global Challenge for the New Millennium" (2003) adopted in Geneva at the World Summit under the auspices of the United Nations proclaimed that international governance of the Internet should be multilateral, transparent and democratic. Several fundamental provisions have been developed concerning this task. First, political authority over Internet-related national policy issues should be the sovereign right of states; second, the private sector should continue to play an important role in Internet development; third, civil society participation, especially at the community level, should be maximised; and fourth, intergovernmental organisations should promote coordination of national Internet policies.

An important step in terms of legislative promotion of the development of the information society in Ukraine was the adoption of the Resolution of the Verkhovna Rada of Ukraine "On the Recommendations of the Parliamentary Hearings on the Development of the Information Society in Ukraine" (2005), which stated that the level of development of the Ukrainian information society was insufficient compared to world achievements in this area. The main reasons for this situation in Ukraine as of 2005 were: the absence of a national strategy for the development of the information society in Ukraine and an action plan for its implementation, insufficient development of the information regulations, the slow establishment of the national information infrastructure for the provision of information services by state authorities and local self-government bodies to legal entities and individuals using the Internet, absence of coordination of efforts of the public and private sectors for efficient use of available resources, low level of information representation of Ukraine in the Internet space, insufficient presence of Ukrainian-language information resources on the Internet, uneven access of the population to computers and telecommunications, deepening of "information inequality" between particular regions, economic sectors and different segments of the population (Resolution of the Verkhovna Rada of Ukraine "On the Recommendations...", 2005).

Accordingly, to offset the existing reasons for the extremely low level of development of the information society in Ukraine, several key areas of activity were proposed to remedy this situation, namely: accelerated introduction of information and communication technologies in all spheres of public life, in the activities of state authorities and local governments; state support for the economic growth of new "electronic" sectors of the economy (trade, utilities and

banking services, etc.), resolving regulations on electronic interaction, protecting the information rights of citizens, primarily in terms of access to information, protecting personal information, supporting democratic institutions, improving the legal regulation of intellectual property issues and minimising the risk of information inequality, etc (Marushchak, 2021). In particular, the basic principles for the development of the information society in Ukraine from 2007-2015 were enshrined in law, which resulted from Ukraine's integration into global international systems and infrastructure.

Modern society varies in many respects from all its previous historical forms, and therefore, referring to the European legal traditions that began in ancient Greece, it is necessary to consider this specificity when using the legal experience of the past in the current environment. It applies both to legal practice and jurisprudence in general. As noted by N.V. Kushakova-Kostytska (2019), "in the light of modern information threats and challenges, Ukrainian society must determine its future by developing an optimal information policy that covers the establishment of e-jurisprudence, and the development of a legislative framework for combating crimes in the information sphere, the development of legal awareness of citizens in the context of information and psychological wars (considering the emergence of a new type of personality – *Homo virtualis*), and, finally, the development of new legal disciplines related to the theoretical and didactic substantiation of various aspects of the information society". Therewith, it is necessary to consider the global nature of modern legal science, the impact on its nature and content of the processes of integration of various branches of humanitarian and natural scientific knowledge and the interconnection of scientific, philosophical and religious ideas at the worldview level of understanding of legal phenomena. Thus, in the philosophical and legal context, such concepts as information, information society, information law, information security, etc. are being reinterpreted, and, therefore, multifaceted scientific research in these innovative areas is being encouraged.

Moreover, the virtualisation of modern society ultimately results in a shift in basic values in society, in particular, the importance of instrumental rationality is diminishing, and postmodern values, such as the rights, freedoms and legitimate interests of the individual ("second-order values" according to Plato), are beginning to prevail. It is reflected in the necessity to respect human rights and freedoms to produce, receive, use and transmit information (Kushakova-Kostytska, 2019). In addition, considering the transnational nature of information, the necessity for the legal regulation of information exchange on an interstate and global scale is becoming more urgent, which in turn stimulates the design and development of such new branches of law as Internet law, international telecommunications law, international information law, media law, etc.

The current body of international regulations in the information sphere should address the regulatory content of its provisions to protect universal human values (axiological dimension), and influence social, economic, political and other significant factors of society (ontological dimension), religious preferences, moral, ethical and cultural traditions, respect for state sovereignty, mentality and other differences of the population (cultural and identification dimension). As for the legal regulation of the information society in Ukraine, the sources of international law on such regulation are represented by general legal provisions, legal provisions concerning specific categories of people (children, disabled persons, journalists, etc.), legal provisions regulating the information sphere at the regional level, legal provisions on cybercrime, legal provisions on the principles of using information and communication technologies in lawmaking, and various recommendations designed to develop e-governance and e-justice (Kushakova-Kostytska, 2019).

Evidently, the informatisation of society is a significant factor in its tendency toward "openness" and globalisation. Therewith, it should be noted that such transformations of the modern world are rather ambiguously assessed in the political and legal literature: "On the one hand, globalisation can be considered a driving force of progress, as it provides each country with the opportunity to join the information technology of exchange of goods, services, information, capital, etc. ... However, on the other hand, globalisation can pose significant threats to the national system of social life, traditions, worldview and other social values" (Humeniuk, 2007).

Therewith, such ambiguity in assessments of globalisation processes in the modern world is largely explained by their internal dialectic, which is as follows: any systemic entity (including national-political) does not exist as a completely isolated object and, accordingly, interacts with other similar entities in its environment, it thereby develops higher-order integrity (metasystem), in the context of which it functions according to both to its principles of organisation and the laws of interaction within the established metasystem. In turn, such interdependence implies the existence of some differentiated (and, therefore, relatively autonomous) elements between which this interaction occurs. Therefore, it would be incorrect to reduce the movement towards global unity of the world to the processes of its homogenisation. In this regard, it is rather a question of the functional unity of heterogeneous and relatively independent national and cultural communities. Moreover, it is impossible to foresee and ensure the realisation of variable and dynamic human interests, purposes and requirements on a purely global scale. Effective mechanisms for such implementation can be developed and function only at the local level – in the system of national statehood and public self-organisation (Hirsin, 2013). Therefore, the unfolding of globalisation processes dialectically combines such opposing (and, therewith, supporting and balancing each other) aspects as "homogenisation" and "heterogenisation" (in this regard, R. Robertson (1995) uses the term "glocalisation" to emphasise the unity of the tendencies towards "global alignment" and "local identification"), objective determination and subjective motivation.

According to L.H. Udovyka (2011), globalisation is an objective process, in other words, the need of humanity for unity, a specific megatrend of world-historical development, a product of global informatisation, where the changing role of finance is recognised both as a positive aspect and as a process with not so positive trends, such as environmental problems, the rapid growth of the world's population, uneven distribution of resources, etc. While the danger associated with the subjective aspect of globalisation is expressed in the desire of specific participants in geopolitics to use objective globalisation processes and their consequences in their interests, subjective globalisation relays the ideology of the market, the content and rules of which are dictated by industrialised states, oligarchic clans, the IMF, and the IMB. Thus, Ukrainian scholars are concerned about the contradictory combination of objective and subjective components of globalisation, which can increase the risks, in particular, of various forms of destabilisation, anthropological disasters and

the destruction of society in all spheres of public life. "Risk is becoming a permanent phenomenon in modern global society" (Udovyka, 2011). Therefore, Ukrainian jurisprudence is currently facing a growing demand for rethinking many conventional approaches to legal regulation of modern society, and for developing effective innovative mechanisms for its implementation.

In this regard, one of the key issues that are the subject of active debate in Ukrainian and international political and legal literature is the problem of revising the classical concept of democracy as a fundamental value of European law. Therewith, the democratic traditions that began in the era of Ancient Greece are largely demonstrating their insufficiency to the current socio-political realities.

Notably, how democracy is exercised have been constantly subjected to critical analysis, revision, and innovative improvement since the very beginning of this form of government (especially after the "democratic trial" of Socrates). Already Plato (2000) tried to resolve such contradictions of democracy, which were expressed, on the one hand, in the desire for universal happiness in the state and the preservation of the "dignity of the soul of every citizen", and, on the other hand, in the lack of natural inclinations of a "reasonable and just ruler" in most of them. After all, just as eyes and ears have completely different purposes, thus different human souls have different ways of realising themselves in life (Plato, 2000). "In a worthless soul, government and care will be bad, but a good soul will conduct its affairs well" (Plato, 2000), and therefore Plato insisted that not everyone should be involved in democratic government, but only the "elect", i.e. the wisest, since they are the ones who best understand what the Good is, both "divine" and "human" (Plato, 2016).

The fact that ancient Greek thinkers already realised that democracy can take different forms is manifested in Aristotle's (2005) distinction of five types of democracy. The first implies the participation of all in public administration, i.e. equality, as a manifestation of democracy, in which neither rich nor poor have specific advantages, and the decisions of the majority have a levelling effect. In the second case, the achievement of public office is conditioned by a low property price. The third type of democracy provides for the right to hold public office to all those who are citizens of the state by birth, and the fourth extends this right to persons who have acquired citizenship. However, in both of these forms of democratic government, according to Aristotle, "the law is the ruler." Finally, the fifth type of democracy is one in which the same conditions are necessary as in the fourth type, but power belongs to the demos rather than to the law (here, popular decrees rather than the law are decisive and are achieved through demagogues) (Aristotle, 2005).

Therewith, it should be noted that democratic legal traditions are an integral component of the history of Ukrainian law. Even under the autocratic rule of the Russian Empire, the Ukrainian Cossacks, as a symbol of freedom as the highest value, founded the Zaporozhian Sich, whose organisational foundations contained many "republican" elements characteristic of ancient Greek and Roman statehood. Although the Constitution of Pylyp Orlyk (Agreements and decrees on the rights…, 1710) enshrined the hetman's lifelong power, this power was limited in every way by the Constitution and was designed to be coordinated with the decisions of the Cossack council (similar to the popular assembly in Greek polities). Therewith, the hetman was elected at a Cossack assembly, attended by all adult men. Thus, Article 6 of this Constitution emphasises that even in autocratic European countries, "always, regardless of whether it is peace or war, councils are held privately and publicly for the common good of the Fatherland, where the autocrats themselves, present at them, do not prohibit their decisions to be criticised (discussed and approved) by ministers and advisers. Therefore, why can't such a good system be preserved among a free people? In the Zaporozhian Army under the hetmans, according to ancient rights and freedoms, it was definitely preserved. If something incompatible with the rights and liberties, harmful and unprofitable for the Fatherland is noticed in the actions of the Hetman, then the General Elders, colonels and general advisers will be authorised to reproach His Majesty for violating the rights and liberties with free votes either privately or, if necessary, publicly at the council without censure and the slightest insult to the high regional honour. The Hetman should not be offended and take revenge, but, on the contrary, try to correct the imperfections" (Agreements and decrees on the rights..., 1710). Thus, the very first sprouts of independent Ukrainian statehood that emerged against the backdrop of imperial autocracy were imbued with the spirit of European constitutionalism and the democratic traditions of antiquity.

The state of innovation in modern Ukrainian jurisprudence

The objective tendency of the dynamics of modern political and legal reality to increase the degree of openness of society and increase its self-organising potential contributes to the corresponding innovative changes in understanding the very content of democracy and the forms of its implementation. In particular, its purpose is increasingly becoming not so much the development of certain "strict directives" on the regulation of legal relations as the development of a common opinion in a decentralised mode (Habermas, 1996). If even on the rather "modest" (compared to modern states) scale of the ancient Greek polis such a purpose would not always be achievable, then at present it should be considered utopian. However, with the development of information and communication technologies, the possibilities for covering both the population of a particular nation-state and its transboundary (up to the global) reach by discursive democratic processes have significantly expanded. In the current environment, an effective way to overcome the deficit is electronic democracy (or e-democracy), which can involve more citizens in democratic processes. Therewith, using electronic resources is becoming both one of the auxiliary means of its implementation and a necessary condition for it, since, as current trends demonstrate, the ties between citizens and government representatives are weakening. Hence the necessity to use electronic Internet tools (websites, social networks) that can strengthen the relationship between elected representatives, citizens, civil society and political authorities. In addition, they can help mobilise and activate voters, including increasing citizen participation in various discussions, promoting innovation and economic growth, and ultimately even strengthening democracy (Marushchak, 2021). One of the most striking examples of successful e-democracy is Estonia, which chose to develop a digital society a quarter of a century ago when it launched an e-government system where public services are provided online.

N.V. Hrytsiak and S.H. Solovyov (2015) propose to distinguish between the broad and narrow meaning of the concept of "e-democracy". In a broader sense, this is reflected in the form of community involvement in addressing various socio-political issues through information technology. In a narrower

sense, this concept covers the technological side of the procedures for submitting various applications, appeals and requests to the authorities to receive a particular service. Such opportunities, among other things, provide for the more accessible implementation of citizens' rights, in particular the right to send individual or collective appeals, as defined in Article 40 of the Constitution of Ukraine (1996).

As an example of e-democracy in the broadest sense, the authors cite the model of providing citizens with the opportunity to participate in local council meetings, when, through online broadcasting via the Internet, everyone can express themselves and influence a particular position of participants, government officials, etc. (Hrytsiak & Solovyov, 2015).

The main purpose of e-democracy is to establish opportunities for those who are even apolitical to be heard and involved in the political life of the country. Therewith, the key role in the functioning of e-democracy in Ukraine is played by the websites of central and local governments, which simplify access to open data and public services and inform the public about their activities (Makhnachova, 2018).

However, the intended meaning of e-democracy (in particular, in Ukraine) is both to provide access to public information and to ensure direct participation in the process of governance by citizens who can communicate with the authorities by submitting questions, suggestions and complaints, and participate in discussions of draft laws and decisions without leaving their homes.

The currently known e-democracy tools include: electronic petitions (introduced in 2015); e-declarations (introduced in 2016); open data portals, etc. Several regulations govern the procedure for exercising and ensuring the right of citizens to access public information, including the Law of Ukraine "On Information" (1992), the Law of Ukraine "On Access to Public Information" (2011), etc. Therewith, the adoption of the draft laws "On Public Consultations" and "On the All-Ukrainian Referendum" in Ukraine is quite important for the further development of e-democracy (Buchkovska & Veremchuk, 2020).

One of the most convincing proofs of the effectiveness of the Internet in the process of public administration is the example of Iceland, which faced the necessity to modernise its state system in connection with the 2008 crisis. In this regard, virtual communication of citizens has proven to be a very effective tool. The new fundamental law of this state was written online with broad public participation. In the course of this online discourse, Icelanders were asked to approve a text prepared by a group of politicians elected by citizens to the council of 25 representatives who were preparing a draft constitution on Facebook. In the process of its preparation, they received more than 370 proposals and thousands of comments, and after considering them, they had to vote for the new constitution (Hrytsiak & Solovyov, 2015).

E-democracy is one component of a broader innovation system such as e-government. From the standpoint of legal science, the latter is considered in terms of the integration of the state into the digital space by organising public administration (including local governments and other public authorities) through the Internet. In addition, e-government can be implemented through the provision of public services by the state to individuals and legal entities. A separate aspect of such governance is the organisation of public communication between public authorities and citizens, other individuals and legal entities. Finally, e-government is the management activities of public authorities integrated into the Internet (Bernaziuk, 2019). Therewith, the structure of e-government is based on the following three key sections: e-democracy, e-services, and e-administration. In this list, the automation of document flow and the introduction of an electronic archive is of particular importance (Konoval, 2018).

As for e-services, they are essentially information, communication, and transactional services provided in various areas of social activity, such as healthcare, social security, education, etc. (Konoval, 2018). The list of state e-services provided to citizens in Ukraine is published on the Government Portal in the section "Electronic Services" (Buchkovska & Veremchuk, 2020). Admittedly, using such services greatly simplifies administrative procedures and saves time, materials, and effort, as it is much faster and easier to apply for any service from your computer or phone than to visit government offices in person and complete the relevant documents manually. In addition, electronic services minimise any manifestations of corruption, as they eliminate the necessity for citizens and businesses to meet with officials in person.

Notably, Ukraine has now established an appropriate regulation framework for the full implementation of e-government functions. However, according to N.V. Kushakova-Kostytska (2019), its implementation in practice is moving too slowly. According to the scientist, the main reasons for this slowdown are the presence of a corruption component in the activities of public authorities and the low level of computer literacy of a large part of the population.

It is interesting to note that according to the results of the United Nations E-Government Survey 2016, conducted by United Nations, Ukraine was ranked 62nd among 193 countries (Department of Economic and Social Affairs..., 2016), while only two years later, according to the E-Government Survey 2018, Ukraine was ranked 82nd (Ukraine in international rankings, 2019).

As can be seen, the e-government development index in Ukraine has slightly decreased. However, it is difficult to deny the positive changes in legislation towards the development of e-governance, as evidenced by the recently adopted laws, including the Law of Ukraine "On Access to Public Information", the Law of Ukraine "On Electronic Trust Services", the Law of Ukraine "On Approval of the Concept of E-Governance Development in Ukraine until 2020", etc. Therewith, the number of portals and websites of state and local government agencies has grown exponentially, and the public service sector has been successfully modernised, including the opening of administrative service centres (ASCs), the establishment of electronic registers and databases, etc. (Buchkovska & Veremchuk, 2020).

Thus, Ukraine (not without the pressure of today's Internet) has made significant progress, both at the legislative level and in practical application, towards using information and communication technologies in all spheres of activity, and this is impossible without innovations at the legislative level, which in turn try not to contradict legal traditions dating back to ancient times.

Conclusions

As a result of the study, it can be stated that even modified forms of legal values, doctrines and institutions are based on the fundamental ideas that are based on the intellectual traditions and philosophical and legal ideas of the thinkers of ancient Greece. And the universalist approach proposed by them is the foundation of modern democratic governance, including electronic governance. Moreover, the legal traditions

developed over the centuries, originating from the ideas of ancient thinkers, even nowadays, in the age of the Internet, are oriented towards the embodiment of the ancient Greek idea of democracy. This study demonstrates that in the dialectical process of development of any legal system, there is always an interaction between specific established (traditional) components and various new developments which are conditioned upon the specifics of such development at each stage of its establishment and implementation.

Having achieved the purpose of the study, based on the results obtained, it can be stated that this subject is extremely relevant in terms of Ukraine's course towards European integration and, therewith, has not been explored at all. Probably, this study will be an impetus for new research in this area of scientific knowledge, as it should be remembered that the above conclusions were developed only at the stage of active reform of Ukrainian legislation in line with the standards (traditions) of European law, and any reform always gives room for innovations, and they can be based on the ideas of ancient thinkers.

The study of traditions and innovations in Ukrainian jurisprudence gives impetus to the continuation of scientific research in this area, based both on the Hellenic philosophy of law and the theory and provisions of Roman law and Christian ethics, which are methodological sources of Western and, consequently, Ukrainian law.

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Традиції та новації в українській юриспруденції: давньогрецькі корені

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Анотація. Курс України на євроінтеграцію зумовлює гармонізацію українського законодавства з європейським, яке бере свій початок з культурно-традиційних основ епохи Античності. Тому набуває актуальності дослідження впливу давньогрецької філософії права на розвиток української юриспруденції, у процесі якого постає проблема зіткнення традицій різних правових сімей та напрямів розвитку правових новацій. Мета цього дослідження – розкрити фактор діалектики традицій і новацій в українській юриспруденції як один з рушійних чинників її розвитку. Для обґрунтування здобутих результатів та формулювання висновків застосовано методи аксіологічного аналізу, порівняльно-правовий метод та метод аналогії. У результаті проведеного дослідження з'ясовано, що як би не модифікувалися форми ключових правових цінностей, доктрин та інститутів, у їхній основі завжди відстежуються ті фундаментальні ідеї, які базуються на інтелектуальних традиціях та філософсько-правових уявленнях мислителів Античної Греції. Свідченням тому є започаткований ними універсалістський підхід, на якому будується вся європейська наука (у тому числі й юридична), а сучасні антропологічні концепції праворозуміння загалом та обґрунтування основоположних прав людини зокрема, ґрунтуються на принципах, генетично укорінених ідеях у вченнях Протагора, Сократа та Аристотеля. Поряд з цим також з'ясовано, що новітні досягнення в організації демократичного урядування зорієнтовані на втіленні давньогрецької ідеї народовладдя. Виявлено, що в діалектичному процесі розвитку будь-якої правової системи завжди має місце взаємодія певних усталених (традиційних) компонентів й тих чи інших новоутворень, зумовлених специфікою такого розвитку на кожному його етапі схиляє до висновку, що змінюваність під впливом часу правових цінностей, доктрин та інститутів сягає своїм ідейним корінням до надбання інтелектуальної традиції та філософсько-правових уявлень мислителів Античної доби. Практична значущість цієї статті полягає в тому, що матеріали дослідження можуть бути використаними: у законотворчій діяльності – для підготовки та обґрунтування законопроєктів щодо подальшого розвитку правової системи України; в освітньому процесі та науково-дослідній роботі – у викладанні відповідних навчальних дисциплін

Ключові слова: давньогрецька філософія права, ідея права, цінності права, правова традиція, інноватизація права, євроінтеграція

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Protection of certain types of labour rights in decisions of the European Court of Human Rights

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Abstract. The topic of protecting certain types of labour rights of citizens in decisions of the European Court of Human Rights is relevant in connection with numerous cases of discrimination of employees by employers, which determines the need to resist offenses in the field of labour. The purpose of the study is to clarify the content and essence of labour rights in general and determine the place and role of certain types of rights that are subject to protection. The theoretical and methodological basis of the study is the formal legal method, which allowed analysing the current decisions of the European Court of Human Rights. The use of analysis and synthesis methods allowed comparing the main norms of the Convention for the Protection of Human Rights and Fundamental Freedoms and the mechanisms used to protect certain types of labour rights. Using the structural and functional method, the main types of labour rights protected by the Convention are determined. The use of formal and logical facilitated the study of the achievements of researchers in the field of human rights protection. It is noted that among the list of articles of the Convention there are no norms that directly provide for the protection of the labour rights of citizens, but there are a large number of violations resulting from the implementation of labour relations. Such violations are related to the protection of the rights defined by the Convention, namely: discrimination on many grounds, violation of the right to freedom of speech, the right to privacy, a fair trial, and other rights. Most of them relate to defining the boundaries of privacy in the performance of labour duties; how the employer takes into account the employee's initiative; compliance with the norms of the employment contract, and administrative policy of the enterprise. The main types of labour rights protected by the Convention on Human Rights and Fundamental Freedoms are highlighted. Theoretical developments, conclusions, and proposals can be used for further scientific research on problematic issues in the field of protection of certain types of labour rights in decisions of the European Court of Human Rights

Keywords: right to work, employer, employee, employment contract, discrimination, freedom of expression, freedom of religion

Introduction

Labour accompanies a person for most of their life, it is the source of their existence. In addition to learning and entertainment, labour (work) is one of the main types of human activity, that is, an activity that is given a certain higher level of value and importance. Work can be considered as a vocation, an opportunity to generate income for self-realisation. Labour creates material goods, cultural values, and socially significant services. Nowadays, in the 21st century, work is an integral part of the life of every person, it determines the place and role of the person in society. Work brings aesthetic pleasure, joy, material support, and is the basis for the emergence of difficulties and worries, can lead to manifestations of anger, apathy, and frustration.

Success in the labour market is determined, first of all, by faith in own strength and abilities, the ability to plan activities, determine goals and consistency in their implementation. When planning a professional career, it is necessary to analyse the expectations of employers who, in addition to professional knowledge, require flexibility and ingenuity from candidates, value employees with a positive attitude to work, with a high level of motivation, stress tolerance, mobility, and self-discipline.

Since work is a special example of human activity, it has a significant impact on the development of their personality, is a system of life values and opportunities, it also falls under the influence of other factors: religion, traditions, philosophy, culture, and social progress. Thus, the protection of certain types of labour rights is associated with these factors. Since most employers try to unify the appearance of employees, working conditions, control the employee's personal space, and apply other measures that prohibit freedom of expression or self-realisation, there is a need to protect certain types of labour rights related to access to work, discrimination in labour relations based on gender, religion, social origin, citizenship, political and other preferences, etc.

Issues of protection of labour rights are not new for research in modern legal science, but they are becoming more relevant due to the development of international standards and mechanisms in the field of protection.

A large number of researchers have conducted studies in the field of labour and labour relations. O. Pleskun and V. Loktinova (2021) investigated the problems of protection of labour rights of citizens in Ukraine, among which they analysed the main issues that arise during the implementation

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of judicial protection of labour rights, special attention was paid to the consideration of individual labour disputes on applications of employees and employers in the field of reinstatement, on remuneration for forced absenteeism, the imposition of disciplinary penalties, transfer to another job, etc.

O.M. Kurulo *et al.* (2021) studied the international and national experience of the right to work and freedom of work, the right to choose a profession, the absence of discrimination in labour relations, the right to professional orientation, training, retraining of employees, advanced training, providing guarantees by states for the implementation of these categories of labour rights.

E.A. Tretyakov (2016) analysed the importance of labour rights in the system of basic human and civil rights, noted that human labour rights are a primary factor in the organisation of society and the state and the welfare of the nation, the level of social guarantees, and the authority of the state in the international arena depend on their development. I.V. Lagutina (2007) investigated the labour rights of citizens, analysed the legal forms of protection of labour rights of employees and the mechanism of their implementation and improvement. M. Panchenko (2019) studied the rights of civil servants to decent work and working conditions, the ability to challenge illegal actions of the employer by civil servants, make proposals to improve working conditions, the implementation of the ability of employees to demand an increase in wages, considering both the norms of national legislation and European standards.

Certain types of labour relations concerning: protection of labour rights of employees, part-time work, labour segments and entrepreneurship, labour rights of civil servants, social protection of labour rights, and international guarantees for the implementation of labour rights were considered by a number of researchers: A.V. Bohdanets (2020), Ye.S. Venediktov (2017), B.M. Hamaliuk (2015), H.I.Chanysheva & I.A. Rymar (2016) *et al.*

Polish legal scholar A. Ludera-Ruszel (2016) formulated the theoretical basis of the right to privacy in the context of implementation and labour relations, which means that it protects the individual and gives them the opportunity to "be left alone", including in the sphere of work. At the same time, she agrees with the opinion of American researchers S.D. Warren and D.D. Brenders in the context that since the right to privacy is not absolute, in some cases it may be restricted. Thus, certain types of restrictions can also be set by the employer (for example, wearing work clothes, using the specified behaviour model in the performance of work duties, etc.).

D. Dörre-Nowak (2005) considered the issue of protecting the dignity of the individual in the implementation of labour relations and described the limits of the right to privacy in the context of ensuring labour rights. Special attention was paid to the correlation of Polish and international law in the implementation of the protection of labour rights of citizens, considering professional risks, abuse by employers, equal treatment when applying for employment, and the right of an employee to compensation for moral and material damage.

A. Gonschior (2017), a researcher at the University of Wroclaw, studied the protection of employees' personal data in the implementation of labour relations. She analysed the relationship between the protection of personal data and the right to privacy, established common and distinctive features of these concepts, and remarked how the right to confidentiality in the field of personal data of employees and the limits of abuse of employers are preserved.

The purpose of the study is to determine the specifics of protection of certain types of labour rights in the practice of the European Court of Human Rights, in particular, the right to work and receive remuneration for work, the right to safe working conditions, the right to rest, paid leave, material support in connection with disability in the performance of labour duties, etc. These rights in the sphere of labour are not directly protected by the Convention on Human Rights and Fundamental Freedoms (1950) (hereinafter – ECHR), but among these articles of the Convention, there are norms that relate to labour rights and arise in connection with their implementation.

Scope of Article 8 of the Convention on Human Rights and Fundamental Freedoms in the context of the protection of certain types of labour relations

The condition for active participation in the creative transformation and improvement of oneself and society is the proper professional development of a person. This development is aimed at changing a person's consciousness as a result of finding their own place in the implementation of social relations and the division of labour that occurs throughout life. This is a socially desirable and expected process, because everyone should strive to manage their life in such a way as to take their rightful place in the professional hierarchy.

ECHR of 1950 does not contain direct norms for the protection of citizens' labour rights, namely: the right to work, the right to rest, the right to a 40-hour working week, the right to receive decent remuneration for work and a number of other labour rights. However, Article 8 of the Convention "The right to privacy" has a broad meaning and certain types of labour rights, such as: the right to privacy in the workplace, the possibility of self-expression in clothing, jewellery, religious preferences during the implementation of labour relations, access to work, compensation payments for work performed have the right to protection by the ECHR. Along with this, when implementing labour relations, there is a violation of other articles of the Convention: Article 9 (freedom of thought, conscience, religion), Article 10 (freedom of expression), and Article 14 (Prohibition of discrimination) (European Convention on Human Rights, 1950).

In the sphere of labour relations and the implementation of labour rights, there is also a large number of abuses both on the part of the employer and the state, which are associated with: discrimination on various grounds (gender, age, skin colour, religion). Harassment on these grounds is opposed by Article 14 of the ECHR "On the prohibition of discrimination". Freedom of expression of views and beliefs is guaranteed by Article 10 of the ECHR, and Article 9 of the ECHR stands for the protection of freedom of thought, conscience, and religion. These articles of the Convention define the protection of violated rights not only in relation to citizens, but also to employees, that is, persons who are participants in labour relations.

There are a large number of factors that negatively affect the employee, and all over the world r regulations and other documents are being developed to reformat the main approaches to the management of the labour collective, encourage the initiative of employees to apply creative approaches to the performance of work, eliminate factors regarding the

monotony of work performed, apply innovative approaches to the self-realisation of employees and other measures that ensure the humanisation of labour relations. This approach was first promoted by the German sociologist and political economist Max Weber (Ward, 2021).

A significant challenge for the implementation of the employee's right to privacy in the context of protecting labour rights is the development of modern technologies, and therefore, new areas and forms of control over the employee by the employer. Such forms of control are: monitoring of work performed, using video surveillance of the employee's workplace, monitoring of e-mail, and a list of phone calls and websites that the employee visited during the working day (Krawchenko, 2021).

Respect for the employee's privacy rights occupies an important place in the jurisprudence of the ECHR. The content of Article 8 of the ECHR has broad limits of application. Therefore, in the sphere of implementing labour relations, it is extremely important for the employer not to cross the line, not to abuse the full exploitation of the employee during working hours, ignoring their personal needs, preferences and behavioural features (Ludera-Ruszel, 2016). Setting wide limits on the application of Article 8 of the ECHR allows an employee to limit the arbitrariness of the employer and receive effective judicial protection.

Types of protection of citizens' labour rights

Protection of citizens' labour rights can have different types in accordance with labour legislation. This may apply to the protection or termination of an employment contract, the protection of life and health, that is, the obligation to guarantee employees safe and hygienic working conditions, or the protection of certain categories of employees. The employer also has special obligations for young employees, and must also provide disabled employees with an additional break for the period of their recovery in a rehabilitation centre. A separate category of protected employees are members of a trade union, or employees who are members of a trade union organisation of a given enterprise, authorised to represent this organisation before an employer or body or a person who carries out activities in the field of labour law as an employer.

Special protection of employees is excluded in the event of collective dismissal, liquidation, or bankruptcy of the employer. In addition, employees do not have the right to protection if there are reasons justifying the termination of the employment contract without warning due to the fault of the employee, and the trade union organisation representing the employee agrees to the termination of the contract with such employee.

Protection of employees is also expressed in the need to refer employees for periodic medical examinations and for a medical examination when the employee returns to work after an illness. In addition, if the doctor determines that the work performed is harmful to the employee's health, the employer is obliged to transfer them to another workplace that does not pose a health hazard. The protection of employees who are civil servants is also provided by separate regulatory legal acts that regulate the rights and obligations of individual professional groups. They can provide more protection for employees. In addition, employees of special services (military, police, etc.) enjoy protection during the performance of official duties. The protection that civil servants fall under is also enjoyed by inspectors who conduct inspections of the activities of employers and their enterprises (Dörre-Nowak, 2005; Yaroshenko *et al.*, 2022). The system of labour legislation of European countries, including Ukraine, contains norms on the protection of employees from the arbitrariness of employers (both private and public bodies). However, there are a large number of violations that occur in the implementation of labour relations between an employer and an employee, related to the peculiarities of the legal status of employees, working conditions, religious preferences, sexual orientation, etc. An important degree of protection after the exhaustion of all national means is the European Court of Human Rights, which does not explicitly contain rules protecting the rights of employees, however, if there is a violation of the norms of the Convention on Human Rights and Fundamental Freedoms, any employee can appeal against the decisions of the employer and the national courts regarding illegal dismissal, violation by the employer of the right to private and family life, freedom of expression and belief, and other rights provided for in the Convention.

Protection of certain types of labour rights

Access to work and confiscation of funds for work performed

The current legislation of Ukraine and the norms of international law, in particular, the International Labour Administration Convention (No. 150) (1978): role, functions and organisation of 26.06.1978 contains a number of general conditions under which the legislation of most states of the world is built, which indicate the main provisions on the activities of public administration bodies in the field of labour policy at the national level. Thus, the Convention provides for the creation of common national standards for the functioning of employers and the activities of employees, tenants who do not use labour, employees of the informal sector, members of cooperatives, and employees of other categories.

In Europe, in addition to the ECHR, there are other labour regulations, in particular: the European Social Charter (revised) (1996), the Community Charter of the Fundamental Social Rights of Workers (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), EU directives, in particular: the Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (1989), Directive 2009/104/EC of the European Parliament and of the Council concerning the minimum safety and health requirements for the use of work equipment by workers at work (2009), Council Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (1989), and a number of other documents. To ensure European standards of labour organisation, constant and maximally effective activity of structural subdivisions of the state involved in the system of labour organisation, coordinated cooperation of employees, employers, and the state are required. However, not all standards are fully implemented, there is a large number of abuses on the part of employers and gaps in legislation on the part of the state. Therefore, there is a large number of applications to the ECHR for the protection of certain types of labour rights (Sereda, 2015).

Many decisions of the ECHR concerned the right of access to work. For example, in Halford v. the United Kingdom of 25/06/1997, the applicant, a police officer who had held the high position of Deputy Chief Commissioner for 7 years,

claimed that her phone had been constantly tapped for the purpose of obtaining personal information in order to compromise her. The ECHR found that there was a violation of Article 8 (right to private and family life) when tapping the official phone from which the applicant called in personal matters (Judgment of the European Court…, 1997).

In the case of Naidin v. Romania dated 21.11.2014, the authorities prevented a former informant of the Romanian political police from taking up public office. The applicant complained about the refusal to reinstate him in public office, namely in the reserve of vice-prefects, on account of his cooperation with the political police for the rule of the communist regime. He argued that this had amounted to an interference with his private life and that he had been the victim of undue discrimination in respect of employment in the public sector. The ECHR found that there was no violation of Article 8 (right to respect for private and family life) in connection with Article 14 (prohibition of discrimination) of the Convention. Having regard to the decision of the Constitutional Court of Romania, according to which the prohibition of former political police officers to work in public positions was a justified normative legal act, which applies to all officials of a Democratic state. The ECHR also noted that states have a legitimate interest in determining the conditions of employment of citizens in public positions and noted that the legitimate interest of the state is to require officials to demonstrate loyalty to the constitutional principles on which the state is based (Arrêt de la Cour Européenne…, 2014).

Dismissal from work on the basis of religion

Many applications are submitted to the ECHR regarding the restriction by employers of the free expression of the will of religious views of employees. In the case of Eweida and others v. the United Kingdom of 15.01.2013, all four applicants were Christians. Eweida, a British Airways employee, and Chaplin, a geriatric nurse, complained that their employers had imposed restrictions on wearing a visible cross around their neck while working. Ladel, an employee of the state civil service, Macfarlane, a therapist, an employee of the confidential sexual therapy and relationship counselling service complained that their dismissal concerned a refusal to perform or promote acts of recognition and tolerance of homosexuality. The court found that there was a violation of Article 9 (freedom of religion) in the Eweida case. The court has not found that the lack of explicit protection in UK law that would regulate the wearing of clothing and religious symbols in the workplace means that the right to manifest their religion was violated, as these issues could and should have been resolved by the domestic courts in the context of discrimination claims lodged by the applicants. In the case of Eweida, the court noted that on one side of the scale was the applicant's desire to manifest his religious beliefs. On the other hand, it is the employer's desire to create a certain image of the company. As for Chaplin, the meaning of her religious symbols was not levelled, but the fundamental criterion was health protection (a chain with a cross could touch equipment or a patient) and safety in a hospital ward, which was inherently more important than religious beliefs. In the case of Ladel and Macfarlane, the employer followed a policy of non-discrimination between users of the service, and this right not to be discriminated against on the basis of sexual orientation was not violated under the Convention (Judgment of the European Court…, 2013).

In the case of Ebrahimian v. France of 26.11.2015, it was a decision not to renew the employment contract with a social worker of the hospital because of her refusal to stop wearing a Muslim headscarf. The applicant submitted that the failure to renew her contract as a social worker had violated her right to freedom of religion. The court found that there had been no violation of Article 8 (right to respect for private life) of the Convention, pointing out that the French authorities had not overstepped their power and that it had been possible to reconcile the applicant's religious beliefs with the obligation to refrain from them by identifying them and deciding to give priority to the requirement of neutrality and impartiality. The court noted, in particular, that the wearing of a headscarf was recognised by the authorities as an ostentatious manifestation of religion, contrary to the requirement of neutrality imposed on civil servants in the performance of their duties. The applicant must have adhered to the principle of secularism within the meaning of Article 1 of the French Constitution, since the requirement of neutrality follows from this principle. According to the domestic courts, this was necessary to preserve the secular nature of the state and thus protect hospital patients from any risk of influence or bias. This decision is based on the need to protect the rights and freedoms of others, that is, respect for the religion of all people (Judgment of the European Court…, 2015).

Dismissal of employees of diplomatic missions and state authorities from their jobs

The labour rights of employees of diplomatic missions are also poorly protected. As a rule, if an employment relationship is terminated due to the fault of the employer, the employee can defend their rights in court. The jurisdiction of the court in the host country of the applicant or in the country of their citizenship or origin remains questionable. This is how conflicts arise.

In the case of Cudak v. Lithuania, dated 23.03.2010, the applicant, a Lithuanian citizen, worked as a secretary and telephone operator at the Polish Embassy in Vilnius. In 1999, she filed a complaint with the Equal Opportunities Ombudsman of Lithuania regarding the sexual harassment of her work colleague. Despite the fact that her complaint was granted, the embassy dismissed her on the basis of her failure to show up for work. The Lithuanian courts found that they did not have the authority to examine an unfair dismissal claim lodged by the applicant after it had emerged that her employers were protected by the state's immunity from the jurisdiction provided for in the Vienna Convention on Diplomatic Relations (1961). Thus, Article 31 of this Convention stipulates that a diplomatic agent enjoys immunity from civil jurisdiction, that is, she cannot be a defendant in court in the host country. The Supreme Court of Lithuania found that the applicant had been a civil servant during her work at the embassy and that her duties contributed to Poland's exercise of its sovereign functions, which justified the application of the principle of state immunity. As regards the application of Article 6 (right of access to a court) of the Convention in the present case, the court noted that the applicant's status as a civil servant in the public administration had not afforded her special privileges and her claim to the Supreme Court of Lithuania for compensation for unjustified dismissal had found that there had been a violation of Article 6 §1 (right to a fair trial) of the Convention. It

established this by granting state immunity and declaring that there was no jurisdiction to examine the applicant's claim, the Lithuanian courts violated the essence of the applicant's right of access to a court (Judgment of the European Court…, 2010).

In the case of Sabeh El Leil v. France of 29.06.2011, a complaint by a former employee of the Kuwaiti Embassy in Paris, who claimed that he remained deprived of access to the court in order to file a claim against his employer for illegal dismissal in 2000. He complained that he had been deprived of his right of access to a court in breach of Article 6 §1 (right to a fair trial) of the Convention after the French courts had found that his employer had jurisdictional immunity. As regards the application of Article 6 (right of access to a court) of the convention in the present case, the court found that the applicant's obligations at the embassy could not justify restricting his access to a court on the basis of objective reasons in the interests of the state. Moreover, the applicant's claim was to pay compensation for dismissal without a real and valid reason. The court found that there had been a violation of Article 6 §1 of the Convention, and found that the French courts had failed to maintain a proper relationship of proportionality, thus violating the essence of the applicant's right of access to a court (Judgment of the European Court..., 2011). The principle of proportionality means that the public interest cannot exceed the interests of an individual. Compliance with this principle is aimed at protecting a person whose interests overlap with those of the state, but do not pose a threat to sovereignty, territorial integrity, and security. Compliance with the principle of independence implies, first of all, compliance with the requirements of both the legislator and judges, who in their decisions can limit the actions of the legislator on the legality of state interference in the implementation of certain human rights (Pogrebniak, 2012).

In Radunović and others v. Montenegro, the applicants, employees of the U.S. Embassy in Montenegro (secretary and security guards), complained about the proceedings they had lodged with the Labour and Social Welfare Court in Vienna against the United States, seeking compensation following their unlawful dismissal and reinstatement. The complaint also concerned the denial of access to the court, due to the fact that the judicial authorities of Montenegro cannot consider cases of US citizens, since the applicants entered into employment contracts with the US government, and therefore, the cases must be considered by the relevant court. However, the ECHR found that there was a violation of Article 6 §1 (right of access to a court) of the Convention. The court stated that in acknowledging the United States' refusal to examine the applicants' case, the courts of Montenegro had failed to maintain proper jurisdiction and to apply the principle of proportionality (applying a reasonable balance between the sphere of private and public interest), thereby violating the applicant's right of access to a court (Judgment of the European Court…, 2016).

The case D.M.T. and D.K.I. v. Bulgaria of 24.07.2012 referred to the prohibition of an official of the state administration in any way to work or carry out other paid work in the public and private sectors, except for teaching and research after the initiation of criminal proceedings against them. The applicant submitted that under Article 8 (right to respect for private life and family) of the Convention that, as a result of such restriction, he had been unable to receive wages and seek other work to support himself and his family. The court found that there had been a violation of Article 8 (right to respect for private life) of the Convention and determined that the prohibition was neither necessary in a democratic society nor proportionate to the legitimate aim of initiating criminal proceedings. Moreover, the court found that in the present case there had been a violation of Article 6 §1 (right to a fair trial; right to immediate information about the prosecution; right to an appropriate time and opportunity to prepare a defence, right to a fair trial within a reasonable time and an effective remedy) of the Convention (Arrêt de la Cour Européenne…, 2012).

Dismissal from work based on sexual orientation and gender

A significant number of claims to the ECHR are related to employment issues. This also applies to situations where discrimination on so-called protected grounds, such as sexual orientation and gender, conflicts with other rights, such as the right to freedom of expression. Often, applicants seek to protect themselves from discrimination on gender-critical grounds related to sexual orientation and gender, and defend the right to protect individuals or groups that cannot be discriminated against both in the sphere of their exercise of the right to work (work, service) and in other spheres of public life (Cowan & Morris, 2022). In general, homophonic attitudes are observed in many countries in Europe and around the world, and they affect both labour discriminatory legislation and labour relations between employer and employee. Strategic trials of LGBT communities attempt to change homophobic attitudes through various legal means, including the ECHR (Teklè, 2018).

In the case of Beck, Copp, and Bazeley v. the United Kingdom, dated 22.10.2012, the applicants were dismissed from service in the armed forces on account of homosexuality. The court found that the measures applied against the applicants had constituted a particularly serious interference with private and family life and had not been justified by "valid and compelling reasons". A violation of Article 8 (right to respect for private life) was found. There was also a violation of Articles 13, 14 (right to an effective remedy, prohibition of discrimination), and no violation of Article 3 (prohibition of inhuman or degrading treatment) (Judgment of the European Court…, 2012).

In the case of Emel Boyraz v. Turkey dated 02.12.2014, the subject of the application was dismissal from work in a state-owned energy company – due to gender. The applicant worked as a security officer for almost three years before being dismissed in March 2004 as she was not a man and had not served in the army. The domestic courts had justified the employers' actions and had not qualified the dismissal as gender discrimination. The applicant also complained about the length and unfairness of the administrative proceedings for her release. The ECHR found that there was a violation of Article 14 (prohibition of discrimination) in connection with Article 8 (right to respect for private and family life) of the Convention. In the court's view, the mere fact that a security worker had to work night shifts in rural areas and use firearms and physical force, which in certain circumstances did not justify any difference in the treatment of men and women. Moreover, the reason for the applicant's dismissal was not her inability to assume risk or responsibility, as there was no indication that she was failing to comply with her obligations, but a biased decision by the Turkish adminis-

trative courts. The court also found that the administrative courts had justified the requirement that only the men of the branch of the state-owned energy company could be used as security officers. In this case, the court also found that there was a violation of Article 6 §1 (right to a fair trial within a reasonable time) of the Convention (Judgment of the European Court…, 2012).

The right to freedom of expression and belief in the context of the right to work

The issue of expressing one's own opinions and views in the course of work has long been a cornerstone for employees and employers, since criticism of employees in relation to employers or disclosure of information that the employer wants to hide from the public encourages dismissal and violation of the legitimate functioning of labour relations. Only a court decision determines the limits and nature of interference that are necessary in a democratic society and are not contrary to public and national interests.

In the case of Guja v. Moldova dated 12.02.2008, the applicant, who served as head of the press Department of the Prosecutor General's office of Moldova, was dismissed for publishing two documents that exposed the leading politician's interference in the criminal proceedings. The court found that there had been a violation of Article 10 (freedom of expression) of the Convention. Given the importance of the right to freedom of expression on matters of public interest, the right of civil servants and other employees to report unlawful acts and offences in the workplace, the obligations and responsibilities of employees to employers, and the right of employers to manage their employees, and having weighed up other interests in the case, the court concluded that the interference with the applicant's right to freedom of expression in his right to impart information was not "necessary in a democratic society" (§97 of the judgment) (Press release issued…, 2008).

In the case of Palomo Sánczes and others v. Spain, dated 12.05.2011, the applicants alleged that they had been fired after an offensive and humiliating publication – an animated picture on the cover depicting employees of a company providing sexual services to the head of human resources. The statement stated that the employer company had disregarded their right to freedom of expression and that the real reason for their dismissal was trade union activities, where there had been a violation of their right to freedom of assembly and association. The court found that there had been only a violation of Article 10 (freedom of expression) of the Convention, and also noted that the applicants' release had been manifestly disproportionate or excessive sanction, which would have required the state to provide redress by lifting it or replacing it with a lighter measure (Judgment of the European Court…, 2011).

Notably, the protection of the analysed types of labour rights of citizens by the European Court of Human Rights influenced the decisions of national courts in this area. Unfortunately, there were no significant legislative changes in the national legislation of the states against which decisions were made, but national courts increasingly began to pay attention to the jurisprudence of the ECHR when deciding similar cases. The implementation of ECHR decisions is a complex process due to the nature of the decisions themselves. In addition to taking individual measures to implement a specific decision of the ECHR, actions are needed to eliminate the root cause of the violation. General measures for the enforcement of court decisions may include the need to amend the law, and the need to change the practice of its application. They can relate to different bodies and institutions operating at different levels (local or central), with different levels of public authority. Due to the lack of authority, this creates additional difficulties in coordination and decision-making.

The implementation of ECHR decisions can be difficult due to the large involvement of the political element in the decision-making process. In such a situation, much depends on the pressure of international authorities, national control institutions, non-governmental organisations and the media on the authorities of a particular country in order to implement a specific decision of the ECHR. The national and international perspective is important here. Without internal pressure and public interest, the level of social legitimacy of ECHR decisions decreases, and therefore, the pressure on the correct implementation of ECHR decisions decreases. For these reasons, it is important to create an appropriate institutional framework for the implementation of ECHR decisions. Their existence leaves much less room for the political process. At the same time, institutional mechanisms for balancing power are being created, which give a chance for greater political responsibility for non-compliance with the sentence.

Conclusions

Analysing the above-mentioned cases of the ECHR in the field of labour relations, the Convention protects only those rights that are related to the articles of the Convention, namely: the right to free expression of views and beliefs in the performance of work, the right to privacy in the workplace, the right to protection from discrimination in the implementation of labour relations, the right to a fair trial from illegal dismissal. It is the relevance of the articles of the Convention that is the main criterion for ensuring that the labour rights of citizens are protected, and employers in general and the state in particular draw appropriate conclusions and make changes to national legislation and employment agreements, considering the subject matter of the complaint and legal precedents arising from the decisions of the European Court of Human Rights in this area.

The presence of a considerable number of complaints in the field of labour relations makes states parties think about the reasons for this. Many states parties to the Convention (Great Britain, the Netherlands, Spain, etc.) consider the decisions of the European Court of Human Rights consistent and necessary and take measures to pay fair satisfaction, but occasionally take effective steps to correct the situation to avoid further receipt of such complaints to the ECHR. However, if the impact on state employers is quite possible, since laws and regulations work better in state institutions, then it is extremely difficult to do this in relation to the private sphere of relations and private employers. That is why more abuses among private employers are observed, and it is also necessary to consider the existence of legal conflicts in the national legislation of the states parties to the Convention. These problems indicate that the current norms of the Convention, the national legislation of the states parties to the Convention, and the reformation transformations that states introduce into labour legislation on the basis of decisions of the ECHR are only in the process of development and

require constant improvement. There is a constant need for future studies of more cases of the ECHR concerning the violation of not only certain types of labour rights, but also information, copyright, etc., which would allow expanding the scope of legal relations between the state and citizens in the context of their interaction.

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Захист окремих видів трудових прав у рішеннях Європейського суду з прав людини

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Анотація. Тема захисту окремих видів трудових прав громадян у рішеннях Європейського суду з прав людини актуальна у зв'язку із численними випадками дискримінації працівників з боку роботодавців, що зумовлює потребу протистояти правопорушенням у сфері праці. Мета статті – з'ясування зміст та сутність трудових прав загалом і визначити місце та роль окремих видів прав, які підлягають захисту. Теоретико-методологічною основою дослідження є формально-юридичний метод, який дав змогу проаналізувати чинні рішення Європейського суду з прав людини. Застосування методів аналізу та синтезу дало змогу зіставити основні норми Конвенції про захист прав людини і основоположних свобод та механізми, які застосовуються для захисту окремих видів трудових прав. За допомогою структурно-функціонального методу визначено основні види трудових прав, які захищає Конвенція. Використання формально-логічного методу надало змогу дослідити здобутки науковців у сфері захисту прав людини. Зазначено, що серед переліку статей Конвенції відсутні норми, які прямо передбачають захист трудових прав громадян, однак виникає численна кількість порушень, які випливають з реалізації трудових відносин. Такі порушення пов'язані із захистом прав, визначених Конвенцією, а саме: дискримінація за багатьма ознаками, порушення права на свободу слова, права на приватність, на справедливий судовий розгляд та інші права. Більшість з них стосується визначення меж приватності під час виконання трудових обов'язків; як працедавець враховує прояв ініціативності працівника; дотримання норм трудового договору, адміністративної політики підприємства. Виокремлено основні види трудових прав, які захищає Конвенція з прав людини і основоположних свобод. Теоретичні напрацювання, висновки та пропозиції можуть бути використані в науковій діяльності для подальших наукових досліджень проблемних питань у сфері захисту окремих видів трудових прав у рішеннях Європейського суду з прав людини

Ключові слова: право на працю, роботодавець, працівник, трудовий договір, дискримінація, свобода вираження поглядів, свобода релігії

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Regulatory and legal support of inclusive education: Ukrainian trends and international practice

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Abstract. The relevance of the research is explained by the fact that inclusive education in Ukraine requires improvement of the regulatory framework to regulate both the physical presence of a child with special needs at school and changes in the school itself, school infrastructure, and the relationship between students and teachers and between teachers and medical professionals: psychologists, psychiatrists, defectologists, etc. The purpose of the research is to explore the current state of legal regulation of inclusive education and prospects for its further development in Ukraine. One of the main methodological techniques of the study is a comparative approach. The comparative legal approach analyses the legislation of different countries of the world that regulates inclusive education. The author identifies the correlation between the provisions of international law and Ukrainian legislation on the implementation of the international principles of inclusive education enshrined in international legal instruments into the legal system of Ukraine, including the education system. The practice and shortcomings of regulatory and legal regulation of inclusion at the state level are explored. The author analyses the content of the concept of "special learning conditions". Particular attention is devoted to the development of inclusive vocational education and training in different countries. The specific features of inclusive education in Ukraine and the world are identified. It is noted that inclusive education is based on the value idea "all children are equal". It is emphasised that in Ukraine, inclusive education can be assessed as an advanced system of education for children with special educational needs, based on the joint education of healthy children and children with disabilities. The practical significance of the study is that the conclusions and proposals presented in the research will contribute to improving the mechanism for protecting the rights of children with special needs as one of the most vulnerable categories of the population. The generalisation of the results of the work is designed to improve the legislation of Ukraine in the field of inclusive education and to implement foreign provisions and standards for the protection of the rights of children with special needs in Ukrainian educational practice

Keywords: children's rights, inclusion, inclusive approach, a child with special educational needs, a child with disabilities, accessibility of education

Introduction

"Ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all" is the main idea of the UN Sustainable Development Strategy until 2030, which is being implemented, in particular, by Ukraine (Decree of the President of Ukraine No. 722/2019…, 2019). Eventually, the principle of accessible education for all children, including children with disabilities and children with special educational needs, is one of the fundamental principles of establishing a single global educational space. Inclusive education (French: inclusive, Latin: include) provides equal access to quality education for all children without exception, regardless of their psychophysical development, and establishes conditions for the productive inclusion of each child in the educational process together with their habitually developing peers to adapt to the conditions of society and further optimal socialisation (Kozulia, 2020).

Inclusive education is based on the value idea – "all children are equal". Therewith, notably, inclusion is not just about the physical presence of a child with special needs at school. It is a change in the school itself in its understanding, a change in the school infrastructure. It is a change in the relationship between students, teachers, and between teachers and medical professionals (psychologists, psychiatrists, defectologists, etc.). Spending most of their time in a group of their peers, a child with special educational needs loses the chance to adapt to life in a normal social environment.

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In the future, such children face problems in acquiring social experience, have disorders in social relationships, withdraw into themselves and subsequently "drop out" of society.

Scientists have long and repeatedly emphasised the necessity of an education in which a child with a disability is not rejected from society of children with normal development (Lysianska, 2016). Thus, inclusive education encompasses education based on the idea that all children, regardless of their physical, intellectual, or other disabilities, should be included in the general education system and study together with their peers in a regular general education school that considers their special educational needs.

The idea of inclusiveness in education is reflected in many international regulations, including the Salamanca Declaration on principles, policies and practices in the field of education of persons with special educational needs (Salamanca Declaration..., 1994). The concept of inclusive education in this declaration is quite broad, covering the education of people with special needs, and other categories of people in need of social integration and adaptation, including the disadvantaged, refugees, people belonging to ethnic minorities, etc.

Ukraine's ratification (March 6, 2010) of the 2006 UN Convention on the Rights of Persons with Disabilities necessitated the establishment of all conditions in our country for the realisation of their rights in all spheres of life, including education. Article 24 of the Convention imposes an obligation on States Parties to ensure inclusive education at all levels (United Nations, 2007; Baida & Krasiukova-Enns, 2012). Accordingly, the Government of Ukraine approved the State Target Program "National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities" for the period up to 2025 (Resolution of the Cabinet of Ministers of Ukraine No. 285-r..., 2021).

Leading scholars, such as D. Bondarenko, D. Kolupaieva, and D. Tandchuk, have explored the problems of integrated learning and inclusive education: D. Bondarenko, A. Kolupaieva, O. Lys, I. Talanchuk, V. Kozulia, E. Kryvoruchko, M. Shevchenko. Their scientific works became the foundation for further research on the issues of education of persons with special educational needs and persons with disabilities, and on the specifics of implementing inclusive education in Ukraine based on generalisations of foreign practice in this area. In particular, the work of A. Kolupaieva (2016) deserves particular attention, as she has developed algorithms for implementing inclusive education in secondary schools, considering the regional specifics of special schools and inclusive resource centres. O. Lys (2021) and I. Talanchuk (2021) in their scientific works have substantiated that ensuring proper conditions for the realisation of the right of children with special educational needs to education depends largely on the proper training of teachers themselves, thus, it is important that they improve their competence, master new technologies of teaching and interaction with such children. A definitional analysis of the concept of "inclusion" was thoroughly conducted in his scientific work by V. Kozulia (2020). Scholars such as E. Kryvoruchko and M. Shevchenko (2021) focused on the problems of administrative and legal regulation of inclusive education in preschool and complete secondary education in Ukraine. D. Bondarenko (2018) presented his thoughts on the establishment of inclusive education in the EU, and the consequences of implementation and methods of integration in Ukraine in his scientific researches. Researcher H. Davydenko (2015) focused on models of inclusive education in the EU and their implementation in Ukrainian legislation. In addition, the scientist explored the principles and methods of organising inclusive education and establishing an inclusive environment in Ukraine based on positive foreign experiences. The achievements of these scholars were enabled by an in-depth analysis of international law and its impact on the Ukrainian education system. Considering this, the main problems in the field of inclusion in Ukraine have been resolved to date. Among them is the active development of research programmes on the problems of educational and rehabilitation processes (methodological substantiation of methods of psychological, pedagogical and socio-medical rehabilitation of persons with special educational needs; ensuring the university's participation in major international and Ukrainian scientific and educational projects on improving the effectiveness of social adaptation and integration of persons with disabilities into the modern social environment; development of proposals for the introduction of new psychological, pedagogical and information technologies in the educational process, etc.

The purpose of the research is to explore the current state of regulation of inclusive education at the legislative level and to bring the experience of other countries into Ukrainian practice.

The objectives of the work are to explore the approaches to understanding inclusive education that has developed in the world practice; to analyse the historical background of the transformation of the idea of universal access to education to inclusiveness as a key principle of the education system, which is reflected in international regulations and national legislation; to explore the Ukrainian practice of regulating the education of persons with special educational needs at the state level.

Adapting the Ukrainian educational system to the needs of children: Model, concept, objectives

The main objective of inclusive education is to establish a friendly and accessible environment that allows students to acquire knowledge and maximise their capabilities in achieving their life purposes. Currently, the Ukrainian educational space is dominated by an integrative model of education for children with special educational needs, based on the concept of student adaptation to the educational system. However, ideally, it is not learner who should be integrated into the educational process, but the educational process should be modified depending on the individual educational needs of each child. It is the foundation of the inclusive education model, which is widespread in developed countries, as it ensures that the educational system adapts to the educational needs of the child (United Nations, 2019). Thus, all participants in the educational process must be able to establish conditions for their learning.

This practice is quite common abroad. In the United Kingdom, according to the "Special Educational Needs and Disabilities Act" (2001) and the "Children and Families Act" (2014), children with special educational needs are educated in regular schools, provided that the interests of other children are not disadvantaged. In addition, with the adoption of the "Children and Families Act", the conditions for educating children with special needs in schools other than general education (including those established at medical institutions, etc.) have slightly changed. For example, the

organisation of inclusive education requires a parental application and the consent of the local education authority, which must check whether there are opportunities for such a child to explore in a general education school together with children receiving special education (Lys, 2021). In this regard, the position of the Ukrainian legislator varies from the rules in British law.

An analysis of the educational legislation of foreign countries has allowed the conclusion that inclusive education seeks to use a pedagogical approach to education that would be suitable for all children who want to receive an education. In inclusive schools, children learn about their rights as full citizens, which results in less discrimination. As law enforcement practice demonstrates, if children are together all the time, studying, communicating, and making friends, they adapt faster and realise that everyone is different, everyone has their own needs and characteristics.

Inclusive education in Ukraine has its historical roots in the adoption of the Concept of Integrated Education for Persons with Disabilities (Special Educational Needs), which was developed based on the "Inclusion Index" (Resource Center for Inclusive Education Support, n.d.). The Inclusion Index was developed by British scientists Mel Ainscow and Tony Booth, who conducted their research with the participation of scientists, teachers, parents, representatives of public organisations of people with disabilities and education departments (Ukrainian-Canadian project..., 2011). Subsequently, there was published two versions of the Inclusion Index: the first in March 2000 (Centre for Studies on Inclusive Education, UK), and the second version of the manual was republished in September 2002. The manual is used in many countries, as its translations are already available in more than 30 languages. In addition, the UNESCO International Commission intends to design a manual for developing countries.

In Ukraine, the reform of inclusive education was launched in 2016, and the following year, in 2017, the government approved the Regulation on the Inclusive Resource Center. In addition, draft new versions of the Laws of Ukraine "On Preschool Education" (2001) and "On Higher Education" (2014) were approved. It is significant that on September 5, 2017, the new Law of Ukraine "On Education" (2017) was adopted. However, unfortunately, we have to admit that inclusive education is only beginning to truly enter our lives, facing both material and technical problems and certain moral prejudices of Ukrainian society regarding the possibility of full and effective education of people with special educational needs together with students who do not have health problems. Establishing an inclusive model of education requires real changes in the thinking and culture of education and a change in the paradigm of inclusive education itself. The foundations for such inclusion are established in Ukrainian legislation, but they require consistent development, considering the objectively existing needs in line with established international provisions and using best foreign practices (Ministry of Education and Science of Ukraine, n.d.).

Such practices should become the foundation of the educational policy of the Ukrainian state, including the one that is the foundation of the "Accessible Ukraine" project (Driuma, 2013) and the national strategy-initiative "New Ukrainian School" (Ministry of Education and Science of Ukraine, 2016), which focuses on ensuring the successful adaptation of children with special needs to the educational process.

The establishment of the New Ukrainian School is a special achievement of Ukraine in the field of inclusion and for Ukrainian education in general. However, it is a rather difficult test for Ukrainian society. Although there is a legislative foundation, modern society is not yet quite ready, both mentally and technically, to accept inclusion as a priority in the educational process. In society, there is a clear rejection of people with special needs by the general public, a shortage of qualified specialists, and no particular prospects in terms of the architectural and planning environment. To overcome the above-mentioned barriers to high-quality global implementation of inclusive education, the author of this publication believes that the following tasks should be addressed: systematic promotion of inclusion in society as a form of universal education for all categories of children; provision of educational institutions with the necessary set of technical means (computer systems and acoustic systems, teaching aids and special furniture, developmental simulators and interactive devices, etc); implementation of training programmes for competent specialists in this field. Considering this, the author of the research agrees with scholars who emphasise that the introduction of inclusive education in Ukraine can be considered an education reform in general, which requires, among other things, new administrative decisions, and proper legal regulation, and allows checking how ready the Ukrainian education system is for change (Kryvoruchko & Shevchenko, 2021).

Therewith, it should be recognised that the specifics of the development of inclusive education in a particular country depend, among other things, on socioeconomic conditions, traditions, etc. Nevertheless, the entire civilized world is now paying considerable attention to the implementation of inclusive education for children with special educational needs. According to statistics, 75% of countries officially acknowledge inclusive education as a special education area. And there are hopes that the remaining 25% will join this concept in the coming years (although Finland has not yet joined this system) (Ministry of Education and Science of Ukraine, n.d.).

As it is known, every person is different. In global practice and Ukraine in particular, inclusive education is based on principles that prevent stereotyping of people with disabilities. First of all, the following principles are involved:

– every person, regardless of whether they have any abilities or achievements, is valuable in itself;

– each of us needs support and understanding from our peers;

– everyone wants to be heard and has the right to be heard;

– full-fledged education can only be implemented in the context of real relationships;

– training helps people achieve their purposes;

– diversity has a positive impact on human life (Bondarenko, 2018).

The basic principle of inclusive education should be that the administration of an educational institution, the staff and the teaching community accept all children for education within the framework of state educational standards, without considering their physical, emotional, intellectual and social status as a criterion for any selection. Educational institutions should strive to establish conditions for education and upbringing that are comfortable for everyone.

The main object of education is the child with special educational needs, as this category of children requires

special programmes, methods and standards of education; the state solves this problem by establishing that such students find it more difficult to learn the curriculum material of the regular programme due to physical, mental and other disabilities. Therefore, state educational standards should be adapted to all participants in the educational process.

International experience in organising and implementing inclusive education

The role of the family as an assistant in the adaptation of a child with special educational needs to the educational process in an educational organisation of any level and type is essential. The family is the child's closest environment; it performs the functions of education, protection, transfer of new knowledge and experience, security, love, emotional support, and assistance in restoring spiritual and physical strength. Parents and relatives are the people with whom a child spends the most time and play a huge role in their lives. In a family with a child with special educational needs, parents have additional caregiving functions: rehabilitation, corrective development, adaptation, and integrative functions. Parents are the ones who are most responsible for the child's education and development; the purpose of other institutions of society, including the state through its competent authorities, is to provide comprehensive support in solving all kinds of life difficulties and problems of the child.

In this aspect, the experience of foreign countries in organising and implementing inclusive education is interesting. First of all, it should be noted that in Europe, inclusive education has three areas: the first area is the inclusion of all children in general education institutions, which demonstrates the wide opportunities and resources of the mainstream school (Spain, Greece, Italy, Portugal, Sweden, Iceland and Norway); the second area is the provision of a wide range of services from two educational systems: regular and special (Denmark, France, Luxembourg, Austria, Finland, etc.); the third area is the functioning of two independent educational systems, regulated by separate legislation for general education and special education (Belgium, Switzerland, Germany, the Netherlands).

Currently, among the countries with developed legislation and experience in the field of inclusive education, the role of leader can be given to Italy, Spain, Great Britain and Northern Ireland, the United States, Denmark, and others (Bondarenko, 2018).

In the United States, inclusive education began with the adoption of the Education for All Handicapped Children Act (EHA), which emphasised the joint education of children with disabilities and their peers in general education institutions (Jeynes, 2007). Notably, at the end of the nineteenth century, schools in large American cities began to establish so-called ungraded classes. They teach students with mild mental retardation, problematic behaviour, and children of immigrants who do not speak English. Frequently, such children were expelled from school, and the problem of special needs children disappeared (Winzer, 2009).

In addition, Italy has been supporting inclusive education at the legislative level since the 1970s. In 1977, the first regulations governing inclusive education were adopted. The education of children with special educational needs has become seen as one of the conditions for education. In Italy, more than 90% of children with disabilities study in regular schools. In the UK, there are still specialised schools and classes (Havrylova *et al.*, 2020). It was in the UK that the concept of "special educational needs" first appeared (Davydenko, 2015). In the United Kingdom and Northern Ireland, inclusive education became part of the national curriculum in 1978. In Spain, the history of inclusive education goes back more than 40 years, since the establishment of an independent institution, the National Institute of Special Education, in 1978. There is research in the Constitution that refers to "special attention and protection of the disabled" to allow for the implementation of their rights (Bondarenko, 2018).

These and other countries have accumulated a wealth of experience in researching, implementing, and developing inclusive education. However, there is the opposite experience. For example, considering China, it can be stated that children with disabilities frequently experience some isolation or even segregation in education. According to researchers, it is explained by the fact that there is limited parental involvement in the educational process (Bondarenko, 2019). Unfortunately, this unstructured vision and limited parental involvement in this process demonstrate the understanding of the status of children with disabilities in China. This model sees children with disabilities as fundamentally altered by their disabilities and therefore unable to learn; they are treated as mere subjects of charitable activities rather than as equal citizens who can and should participate in public life (Deng & Poon-McBrayer, 2004).

This inhumane approach points to deficiencies in approaches to understanding the concept of a child with a disability, namely that they are considered "incapable" or "unproductive". This shortcoming should be corrected at the level of state social security systems. Take the example of Malaysia. Here, inclusive education is seen as part of the principle of education, not as a right for all children. It means that national policy is limited in its ability to reach all children at risk of exclusion from the education system. Special schools continue to represent the dominant approach to educating children with special educational needs when compared to inclusive schools (Van Bueren, 2006).

In Australia, parents of children with special educational needs are convinced that the mere presence of children in the classroom is not enough – students need to feel confident and comfortable and feel that they belong to the educational organisation. The social and emotional outcomes of inclusion are very important, as without positive experiences of participation, children with special education needs are at risk of increased absenteeism, lower self-esteem, and lower academic performance in adolescence (Van Bueren, 2006).

Problems of inclusive education development in Ukraine at the present stage

In Ukraine, the first inclusive educational institutions emerged at the turn of the last decades of the 20th century. The state has set a purpose for educational institutions to establish conditions for the development and social adaptation of children with special educational needs. However, many teachers and even psychologists are not ready to work with children with special educational needs as they are afraid of the unknown, in particular, due to the impact on healthy children and the educational process in general, on the microclimate in the classroom and school. In other words, adverse attitudes and prejudices, and professional uncertainty of adults frequently contribute to this.

Another barrier is the lack of motivation, including financial motivation. Currently, the work with "special" children in schools is conducted by defectologists. However, the unwillingness to take on the additional workload and the lack of material incentives are a deterrent to working with such children.

Another barrier is that sometimes parents do not want their healthy child to study in an inclusive environment, saying it is harmful to them. And here the problem of the humanity of adult education arises, which, admittedly, affects the younger generation.

Working with "special" children requires appropriate psychological, moral and ethical training. There is an urgent necessity to understand and solve the problems of children with disabilities, to learn to understand their desires, to respect their rights, including the right to education, to help them "join" social groups (both children and adults), and to accept them as they are. Evidently, special education, which includes students with special needs, requires changes (Shcheglova *et al.*, 2017).

Another problem with inclusive education in Ukraine is the so-called "punctuation" approach to its research. Most scientific researches deal with the education of children with special educational needs in the context of an educational school. Thus, having analysed the existing positive experience of implementing inclusive education in Ukraine in recent years, it can be argued that to properly establish the conditions for organising inclusive education in an educational institution, all participants in the educational process need to have:

1) medical support (an important component is a clear organisation of meals and, if necessary, medical support);

2) financial support (availability of a staff of employees who will accompany children and teach them);

3) information support (provision of material resources and new distance e-learning technologies);

4) material conditions, which include: special tables (desks) that can change the angle of inclination, where the height is adjustable, etc.; appropriate sanitary and hygienic conditions (lighting, water supply); devices for motor activity; computer equipment (computer, touch boards, projectors); information stands with supporting materials (diagrams, rules of conduct);

5) sanitary conditions (wardrobe, bathroom);

6) pedagogical support (establishing an individual educational trajectory; comfort and emotional calm in the classroom, considering friendly relations and a positive atmosphere in the classroom; involving children with special educational needs in activities that promote the unleashing of students' creative potential);

7) psychological support when it is necessary to emphasise additional classes for children with disabilities and special educational needs with psychological specialists; psychological and pedagogical support; regular examination of students, assistance in learning and development of individualised curricula for them;

8) staffing: continuous improvement of the professional skills of teachers of educational institutions in the field of correctional pedagogy and psychology, clinical psychology; availability of pedagogical and psychological specialists who can understand and meet the needs of children with special educational needs.

Conclusions

The study explored the history of inclusive education in Ukraine and the world and found that the history of inclusive education in the world is different, depending on specific political and socio-economic changes in each country. The author explores the meaning of the concept of "inclusive education" and establishes that its essence lies primarily in the following principle: by learning together, children learn to live side by side, and thus the boundaries between people with disabilities and healthy people are blurred. A comparison of the experience of inclusion in different countries has demonstrated that Western countries such as Italy, Spain, the United Kingdom and Northern Ireland, the United States, and Denmark are among the leaders in this area, in particular, due to the high level of relevant regulation. An analysis of Ukrainian legislation has demonstrated that the state regulates various aspects of integrative education quite appropriately with relevant documentation, but not everything can be successfully implemented in practice, as, on the one hand, there is insufficient psychological and moral readiness of society to provide appropriate conditions for children with special educational needs, and on the other hand, the material and technical base of educational institutions is far from fully complying with international standards. Therefore, to improve the situation, it would be advisable to use the practice of foreign countries, which can be gradually implemented in Ukraine.

The study concluded the following: 1) the development of inclusive education in Ukraine is conducted primarily through the establishment of special learning conditions for children with special educational needs; 2) the Ukrainian educational space is dominated by an integrative model of education for children with special educational needs, based on the concept of adaptation of the child to the educational system; 3) to establish a truly inclusive model of education in Ukraine, real changes in thinking and learning culture are required; a paradigm shift in inclusive education is required, etc.

Thus, inclusive education in Ukraine is under the control of the state and the general public, and it is designed to maximise the achievement of educational purposes in the context of the digitalisation of all spheres of public life and the education system in particular. However, the process of developing inclusive education is undoubtedly complex, and its purpose is to establish an inclusive society that recognises each person as an individual, and thus each person will feel like a full member of society. Therefore, among the prospects for the research discourse on this issue is the development of proposals for the implementation of the most effective foreign provisions, regulations and standards into Ukrainian legislation, and algorithms for their successful implementation.

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Нормативно-правове забезпечення інклюзивної освіти: українські тенденції та світова практика

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Анотація. Актуальність статті зумовлено тим, що інклюзивна освіта в Україні потребує потребує вдоконалення нормативно-правової бази, аби вона регламентувала не лише фізичне перебування дитини з особливими потребами в школі, але й зміну самої школи, шкільної інфраструктури, взаємовідносин між учнями та педагогами, між педагогами та медичними спеціалістами: психологами, психіатрами, дефектологами тощо. Мета статті – вивчити сучасний стан нормативно-правового регулювання інклюзивної освіти та перспективи її розвитку в Україні. Один з основних методологічних прийомів дослідження – компаративний підхід. У порівняльно-правовому напрямі аналізується законодавство різних країн світу, яке регулює питання інклюзивної освіти. Виявлено співвідношення норм міжнародного права та законодавства України щодо імплементації міжнародних засад інклюзивної освіти, закріплених у міжнародно-правових актах, у правову систему України, зокрема систему освіти. Досліджено практику та виявлено недоліки нормативно-правового регулювання інклюзії на державному рівні. Розглянуто змістовне наповнення поняття «спеціальні умови навчання». Особливу увагу приділено розвитку інклюзивної професійної освіти та професійного навчання в різних країнах. Визначено особливості інклюзивної освіти в Україні та світі. Зазначено, що в основу інклюзивної освіти закладено ціннісну ідею «всі діти рівні». Підкреслено, що в Україні інклюзивну освіту можна оцінювати як передову систему навчання дітей з особливими освітніми потребами, засновану на спільному навчанні здорових дітей та дітей з інвалідністю. Практичне значення дослідження полягає в тому, що сформульовані в науковій статті висновки і пропозиції сприятимуть покращенню механізму захисту прав дітей з особливими потребами як однієї з найбільш вразливих категорій населення. Узагальнення результатів роботи спроєктовано на удосконалення законодавства України у сфері інклюзивної освіти, а також на імплементацію в українську освітню практику зарубіжних норм і стандартів щодо захисту прав дітей з особливими потребами

Ключові слова: права дитини, інклюзія, інклюзивний підхід, дитина з особливими освітніми потребами, дитина з інвалідністю, доступність освіти

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Problems of regulating liability for criminal offences against the life and health of a person committed in the sphere of healthcare

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Abstract. The Criminal Code of Ukraine provides for several special provisions on liability for violations against human life and health committed in the healthcare sphere, the application of which gives rise to many difficulties and law enforcement errors. However, the lack of consistency of such provisions establishes risks of non-compliance with the principle of fairness in bringing a person to criminal liability and imposing punishment. The purpose of the research is to identify the most optimal solution to the problem of legislative regulation of liability for causing harm or establishing a threat of harm in the healthcare sphere. The key research method is a logical and legal study of the Ukrainian criminal law provisions related to liability for healthcare offences. Based on the results of the study, it is proposed to construct Articles 134, 139, 140, 142 and 143 of the Criminal Code of Ukraine according to the same scheme: in the third part of Article 134 and the first parts of the rest of these provisions, criminal liability for the acts provided for therein should be linked to the establishment of a danger to the patient's life or the threat of causing serious bodily harm; in the following parts of these provisions, to provide for the rules on qualified criminal offences under the scheme "the same act if it caused moderate or serious bodily harm", and the rules on particularly qualified criminal offences under the scheme "the same act if it caused the death of the patient". Based on the current sanctions of these provisions, and the sanctions of the general provisions on criminal liability for negligent infliction of bodily harm, the author proposes typical penalty limits for the proposed provisions. The author substantiates the expediency of excluding Articles 132, 141 and 145 of the Criminal Code of Ukraine. The conclusions drawn within the framework of this research can be used in lawmaking activities to develop amendments to the Criminal Code of Ukraine, and in law enforcement activities to qualify criminal offences committed in the healthcare sphere

Keywords: failure to perform duties, violations by medical professionals, violation of patient rights, transplantation procedure, disclosure of medical secrets, bodily harm, causing death

Introduction

The Criminal Code of Ukraine (hereinafter – the CC of Ukraine) contains several special provisions that provide for liability for various violations in the healthcare sphere that cause harm or endanger the life or health of a person (Criminal Code of Ukraine, 2001). In general, this approach is approved in academic circles, not only in Ukraine (Gafurova, 2020). However, its implementation in the Criminal Code of Ukraine has established many law-making and law-enforcement problems. In recent years, several substantial works on this subject have appeared, in particular, the dissertations by I. Fil (2018) and E. Chernikov (2020) on liability for non-performance or improper performance of professional duties by a medical or pharmaceutical worker, the dissertation by Y. Shopina (2020) "Criminal liability of a medical or pharmaceutical worker for committing a crime related to the performance of professional duties"; scientific research article by S. Lykhova, I. Ustinova, O. Husar and I. Tolkachova (2019) on the issue of criminal liability of medical and pharmaceutical workers, a scientific research article by N. Antoniuk (2020), which considers the issues of differentiation of liability of medical workers, etc. Therewith, these issues are far from being fully resolved. This research emphasises three issues that still require scientific discussion.

The first one is related to the regulation of criminal liability for non-performance or improper performance of duties by medical or pharmaceutical professionals, which is implemented in Articles 139 and 140 of the CC of Ukraine. Despite the difficulties in establishing the fact of non-performance or improper performance of duties noted in the scientific literature (Chernikov, 2020), there are issues of legislative regulation. According to Article 139 of the CC of Ukraine, liability for failure to provide care to a patient without valid reasons occurs regardless of the consequences, provided that the perpetrator was aware of the possibility of serious consequences for the victim. Instead, failure to perform or improper performance of other duties (Article 140 of the CC of Ukraine) entails criminal liability only in case of serious consequences. There is still no consensus on the content of the concept of "serious consequences". Y.G. Lyzogub (2005) considers serious consequences in Article 140 of the CC of Ukraine to be a human health disorder that: requires long and painful treatment; poses a danger to life; results in

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the development of an incurable or difficult-to-treat disease; causes severe adverse reactions on the part of the victim against themselves. As an example, the author cites the infliction of grievous or moderate bodily harm, suicide, and serious illnesses described by the above signs (Lyzogub, 2005). Causing death, in his opinion, should be qualified additionally under Article 119 of the CC of Ukraine, considering that the repressive power of this provision is much greater than Article 140 of the CC of Ukraine (Lyzogub, 2005). The same opinion is expressed by L.P. Brych (2013), who believes that serious consequences and the death of a person in such criminal offences are not common features. In turn, O.O. Dudorov believes that death is covered by the concept of "serious consequences", however, the author does not include the infliction of moderate bodily harm to its scope (Melnyk & Khavroniuk, 2018). Such a different interpretation of this concept among respected authors indicates the seriousness of the problem.

The second problem concerns criminal liability for violation of special rules and procedures for conducting specific activities in the medical and pharmaceutical sphere (Articles 134, 141-143 of the CC of Ukraine). Despite the similarity of the respective corpus delicti of criminal offences in terms of the essence of the actions (as a violation of certain rules), the consequences as a mandatory feature of the corpus delicti and a condition of criminal liability are regulated differently: illegal abortion (Part 3 of Article 134 of the CC of Ukraine) is criminalised if it causes long-term health disorders, infertility or death of the victim; conducting clinical trials of medicinal products without the written consent of the patient or their legal representative, or concerning a minor or incapacitated person (Article 141 of the CC of Ukraine) entails criminal liability in case of causing the patient's death or other serious consequences; illegal conduct of biomedical, psychological or other experiments on humans (Part 1 of Article 142 of the CC of Ukraine) can be incriminated to a person in case of endangering life or health; and the condition of criminal liability for intentional violation of the procedure established by law for using transplantation of human anatomical materials (Part 1 of Article 143 of the CC of Ukraine) is causing significant harm to the victim's health. In addition, in some cases, liability is differentiated depending on the severity of the consequences (Article 142 of the CC of Ukraine), while in others it is not (Articles 134, 141, and 143 of the CC of Ukraine). In addition, the inconsistency of sanctions in these legal provisions is evident.

The third problem is related to different approaches to the regulation of criminal liability for the disclosure of confidential information about a person in the healthcare sphere. If Article 145 of the CC of Ukraine "Illegal Disclosure of Medical Secrets" provides for liability only in case of grave consequences, Article 132 of the CC of Ukraine "Disclosure of Information on Medical Examination for Detection of Infection with Human Immunodeficiency Virus or Other Incurable Infectious Disease" regulates the formal elements of the criminal offence. The sanction of the second article is even more severe. In addition, the very need for the existence of both genders is doubtful.

The problems described above impede fair sentencing and sometimes raise doubts about the existence of criminal liability for particular actions.

The purpose of this research is to find a scientific solution to these problems and to develop proposals for improving the relevant legal provisions.

Regarding the provisions on the improper performance of duties by medical or pharmaceutical professionals

Some authors' positions on the content of the concept of grave consequences are based on the ratio of the severity of sanctions. On the one hand, such a ratio should in no way affect the meaning of the concept. Since the provision that the elements of a criminal offence should be determined exclusively by the disposition can be considered generally accepted. A systematic analysis of the provisions of the CC of Ukraine demonstrates that death is unambiguously defined as serious consequences. It is evidenced by the frequently used phrases "loss of life or other serious consequences" and "death or other serious consequences". This type of wording is present in Part 2 of Article 139 of the CC of Ukraine. In particular articles (for example, Article 258 of the CC of Ukraine), serious consequences and the death of a person are provided for in separate parts of the article (as signs of specifically qualified corpus delicti of criminal offences). However, this technique does not mean that they do not include each other. Finally, the so-called especially qualifying features are frequently encompassed by the scope of the qualifying features (e.g., a particularly large size is covered by the concept of large size and is a specification of it).

On the other hand, it is illogical to have a much more lenient liability for negligent death by medical or pharmaceutical professionals as a result of failure to perform or improper performance of professional duties, since it is the preservation of human life and health that is the main purpose of their activities (while Article 140 of the CC of Ukraine provides for the possibility of applying such penalties as deprivation of the right to hold specific positions or engage in specific activities, correctional labour, restriction of liberty and imprisonment for a defined period, the latter – for a period not exceeding two years, Article 119 of the CC of Ukraine defines only the latter two, with imprisonment possible for up to five years, and in case of causing death to two or more persons – up to eight years). In particular, the scientific literature notes that the presence of special education and professional duty increases public danger (Antoniuk, 2020). Evidently, understanding this caused scholars to justify the need for additional qualification of causing death under Article 119 of the CC of Ukraine. However, legislative mistakes should be corrected through amendments to the relevant regulations rather than through using some other, atypical approaches to the interpretation of criminal law provisions. In addition, the qualification of causing death as a result of non-performance or improper performance of professional duties as a set of criminal offences (under Articles 140 and 119 of the CC of Ukraine) contradicts the principle of the inadmissibility of double incrimination. It should be emphasised that failure to perform or improper performance of duties by a medical or pharmaceutical worker entails criminal liability only in case of serious physical harm to the victim. Thus, such damage is the factor that determines the seriousness (social danger) of the relevant actions and, thus, the limits of punishment. The same factor, to Article 119 of the CC of Ukraine, is the consequence in the form of death. By charging both provisions at once, two sanctions are intended to be applied at once, covering the severity of both consequences – grave consequences and death – when only one consequence is caused. Therefore, such an aggregate would be artificial and unjustified and would undoubtedly

contradict the above principle.

Scholars' studies of case law under Article 140 of the CC of Ukraine demonstrates that courts when qualifying the failure to perform or improper performance of professional duties by medical and pharmaceutical workers, cover the relevant corpus delicti of causing death (Chernikov, 2020). Therewith, according to the results of the research by I.M. Fil (2018), 95.5% of the verdicts delivered under Article 140 of the CC of Ukraine are about cases causing death.

Considering the above, the limits of punishment outlined in Article 140 of the CC of Ukraine require urgent adjustment to align them with the sanction of Article 119 of the CC of Ukraine. The same applies to the sanction of Part 2 of Article 139 of the CC of Ukraine, which, by its content, defines a special rule on liability for failure to perform professional duties by a medical or pharmaceutical worker.

The question of whether the concept of serious consequences of causing moderate bodily harm is encompassed by the concept of serious consequences is resolved differently for different types of criminal offences. For example, in the scientific and practical commentary of the Criminal Code of Ukraine edited by M.I. Melnyk and M.I. Khavroniuk (2018), when describing serious consequences in Articles 133, 135, 139, 140, 146, 147, 151, 152, 161, 194, 258, 260, 265, 271, 297, 321-1, 347, 371, 402 of the CC of Ukraine, they only indicate the infliction of serious bodily harm. Instead, Articles 137, 240, 321-2, 347-1 refer to the infliction of bodily harm of moderate severity to one or at least two persons. The analysis of court practice under Article 140 of the CC of Ukraine demonstrates that most of the cases considered by the court concern cases of causing death or serious bodily harm. Therewith, there are some cases where the consequences are bodily injuries of moderate severity, for example, the decision of the Konotop City District Court of Sumy Region in case No. 577/3411/20 (2020).

Can the concept of "serious consequences" have different meanings within the CC of Ukraine? Hypothetically, yes. This concept is evaluative, and therefore its scope can depend on the seriousness of the criminal offence itself. If a criminal offence is a serious or especially serious crime even without such consequences, then more harmful consequences should be considered serious, while in the case of a criminal offence or a minor crime, a wider range of consequences, including less harmful ones, can be considered serious. Thus, it is true that in some cases only death can be considered, in others – death and serious bodily harm, and in others – moderate bodily harm.

This conclusion is confirmed by the provisions of Articles 36 and 38 of the CC of Ukraine. Part 3 of Article 36 of the CC of Ukraine states that "exceeding the limits of necessary defence is considered to be the intentional infliction of serious harm to the attacker that does not correspond to the danger of the attack or the situation of defence. Exceeding the limits of necessary defence entails criminal liability only in cases specifically provided for in Articles 118 and 124 of this Code." Considering that these provisions provide for liability for causing death and serious bodily harm, the quoted wording allows stating that less serious harm, which may include moderate bodily harm, can be considered serious harm.

In addition to the above, the coverage of the consequence of causing moderate bodily harm by Articles 139 and 140 of the CC of Ukraine is advisable due to the necessity to ensure the consistency of criminal legislation. However, the negligent infliction of such consequences is criminalised under the general provisions of Section II of the Special Part of the CC of Ukraine (Article 128 of the CC of Ukraine). The doctrine justified the necessity of coordinating the ways of differentiating criminal liability for criminal offences provided for by the so-called general and special rules (Marmura, 2019).

Based on the above, to ensure uniform application of the relevant criminal law provisions, it can be concluded that it is necessary to enshrine in Articles 139 and 140 of the CC of Ukraine, instead of the concept of serious consequences, a specific list of harmful consequences. Such consequences should include death, serious and moderate bodily harm. As already noted, scientists include the development of serious diseases in the concept of "serious consequences". Therewith, there are difficulties in the criminal law classification of diseases. In turn, harm to human health in the CC of Ukraine is most frequently defined through the concept of bodily injury, and the latter is interpreted more broadly – as a violation of the anatomical integrity of organs and tissues, and as a violation of their functions while maintaining their integrity. Thus, causing any disease can be considered as causing bodily harm of one kind or another.

In addition, considering the specifics of medical and pharmaceutical activities, the main task of which is to preserve the life and health of a person, it is advisable to link liability to the establishment of a real threat of death or serious bodily harm (the danger of establishing a threat of moderate bodily harm by failure to perform or improper performance of professional duties seems insufficient for criminalisation). Otherwise, there is no point in developing special rules at all, since liability for causing bodily harm is provided for in other provisions, and, if necessary, it can be differentiated using a qualified criminal offence. As already noted, Article 139 of the CC of Ukraine implements such a proposal, however, not quite successful. The indication that the person must be aware of the possibility of serious consequences for the victim significantly complicates the process of proof and ignores cases where the subject, due to improper professional level, did not foresee the relevant consequences, although they should and could have foreseen them.

Considering the significant difference in the degree of harmfulness of these consequences and the existing concept of the CC of Ukraine, liability for non-performance or improper performance of professional duties by a medical or pharmaceutical worker should be differentiated using the so-called qualifying (especially qualifying) features. Such proposals have been repeatedly expressed in the scientific literature (Paramonova, 2011; Brych, 2013). Evidently, the opinions of those scholars who support the need to separate the consequences of causing death into a separate qualified composition and a separate part of Articles 139 and 140 of the Criminal Code of Ukraine should be agreed. This conclusion is consistent with the results of specific studies on the European experience of regulating criminal liability for similar actions (Gutorova *et al.*, 2019). Instead, the regulation in Part 2 of Article 140 of the CC of Ukraine of a qualified criminal offence on the grounds of harm to a minor presents a bad decision. Modern scientific publications frequently mention the necessity of strengthening the criminal legal protection of minors by constructing an appropriately qualified corpus delicti of criminal offences (Yevteyeva, 2018). Therewith, notably, such differentiation is most frequently justified about intentional criminal offences. For example,

M.I. Panov and V.V. Galtsova (2013) propose to provide for the relevant feature in Articles 121, 122, 125, 126, 127, 129 and 143 of the CC of Ukraine, Section II of the Special Part, which establishes liability for intentional criminal offences but leave out Articles 131, 133, 134, 139 of the CC of Ukraine, which deals with negligent infliction of harm to health. Evidently, recklessly causing harm to the life or health of a minor does not significantly affect the social danger of the act, compared to intentional assault, where the perpetrator is aware of the lower risks of resistance from the victim, understanding the greater traumatic impact on the psyche of minor victims of violence, and, finally, gross disregard for the moral provisions accepted in society, etc.

Therewith, the situation is different in cases of harm to two or more persons rather than one, as the severity of the harm is at least doubled. Qualifying such cases as a combination of criminal offences would violate the principle of non-double jeopardy. However, it will be difficult to differentiate liability depending on the seriousness of the damage to health, and even depending on the number of victims, in one article. Thus, the plurality of victims should be left to be considered when individualising punishment by determining an appropriate sanction.

Regarding the rules on violation of special rules and procedures for specific types of activities in the medical and pharmaceutical sector

First of all, consider the expediency of indicating in Articles 134, 141-143 of the CC of Ukraine various consequences as a condition of criminal liability (a mandatory feature of the main body of a criminal offence). Admittedly, the potential danger of violations committed in the course of conducting specific types of medical (pharmaceutical) activities is somewhat different. But the degree of such danger can vary within a particular type of activity (for example, transplantation of anatomical materials). In any case, these fluctuations do not seem to be that significant. Therewith, the author believes that the main factor determining the severity of these violations is their consequences in the form of causing some harm to the victim's health or establishing a real threat of such harm. Considering this, the same consequences should be a condition for criminal liability for violation of these rules. Such consequences, as in Articles 139 and 140 of the CC of Ukraine, should be the death of a person, or serious and moderate bodily injuries. As in Article 140 of the CC of Ukraine (referring to the same arguments), liability for the analysed criminal offences should be conditioned upon the establishment of a real threat of death or serious bodily injury.

From the standpoint of consequences, the study raised doubts as to the expediency of regulating in the CC of Ukraine the liability for conducting clinical trials of medicines without the written consent of the patient or their legal representative, or to a minor or incapacitated person. In Article 141 of the CC of Ukraine, the legislator linked criminal liability to causing the death of a patient or other serious consequences. It is difficult to imagine a situation where the required causal link between the violation of the relevant requirements or prohibitions and the consequences would exist; if consequences do occur, they will not be caused by the failure to obtain written consent or the violation of the prohibition on researching specific categories of people. Therefore, if the legislator does not consider it appropriate to bring to criminal liability for the mere fact of conducting clinical trials of medicines without the written consent of the patient or their legal representative, or to a minor or incapacitated person, Article 141 of the CC of Ukraine should be excluded. The inappropriateness of criminal liability for such acts is justified in the scientific literature (Vallejo-Jiménez & Nanclares-Márquez, 2019).

Similarly to Articles 139 and 140 of the CC of Ukraine, it is advisable to differentiate liability in the analysed articles depending on the consequence is to provide for separate corpus delicti of criminal offences in cases of establishing a threat of death or serious bodily injury; causing serious or moderate bodily injury; causing death.

The limits of punishability of the analysed criminal offences should be determined based on the limits of punishability set by general rules. Considering the additional public danger posed by violation of the rules and procedures for specific types of medical and pharmaceutical activities, at least the minimum penalty for the relevant criminal offences should be higher than the general rules provided for in Articles 119 and 128 of the CC of Ukraine. In addition, it should be provided for the possibility of applying a fine in minor cases within a sufficiently wide range, as a punishment that has proven to be effective and is widely used in the legislation of European countries. Considering this, the author of this research proposes the following typical penalties: in case of endangering the patient's life or threatening to cause serious bodily harm, a fine of up to three thousand tax-free minimum incomes, community service and correctional labour; in case of causing moderate or serious bodily harm, a fine of more than three thousand tax-free minimum incomes, restriction of liberty and imprisonment within the scope of a minor crime (up to five years); in the event of the victim's death, imprisonment with a maximum term of at least eight years. It is advisable to provide for an additional penalty in all of the above cases in the form of deprivation of the right to hold specific positions or engage in specific activities for up to three years.

Regarding the rules on liability for disclosure of confidential information about a person in the medical field

The CC of Ukraine provides for two similar articles: "Unlawful disclosure of medical secrets" (Article 145) and "Disclosure of information on medical examination to detect infection with human immunodeficiency virus or other incurable infectious diseases" (Article 132). Article 40 of the Fundamentals of Legislation of Ukraine on Health Care states that medical secrecy is "information about an illness, medical examination or inspection and their results, and information about the intimate and family life of a person obtained in the course of professional or official duties by medical professionals or other persons" (Law of Ukraine No. 2801-XII…, 1992). It has been noted in academic circles (Shevchuk *et al.*, 2020; Tereshko, 2020; Slipchenko, 2021). Thus, information about the fact or results of a medical examination to detect infection with the human immunodeficiency virus, other incurable infectious diseases, or AIDS is a medical secret.

At first glance, the decision of the legislator to differentiate criminal liability for disclosure of such type of medical secret as information about medical examination for detection of infection with human immunodeficiency virus or other incurable infectious diseases can be reasonable, as it can result in serious social consequences for the victim.

However, a deeper logical analysis indicates the opposite. For example, disclosing the fact of a venereal disease test can cause no less harm to the victim than disclosing data on a test for human immunodeficiency virus, an incurable infectious disease, in particular, as suggested by some researchers of COVID-19 (Zabuga & Mykhailichenko, 2020). However, in the absence of grave consequences, in the first case, the actions are not criminalised, and in the second case, they entail criminal liability. This situation does not comply with the principle of justice.

In addition, the mere fact of disclosure of medical secrets of any content does not reach the public danger that a criminal offence should have. In turn, the database of the Unified State Register of Court Decisions contains only one verdict under Article 132 of the CC of Ukraine and none under Article 145 of the CC of Ukraine. Although such offences do occur, society does not attach much importance to them, which indicates that there is no social justification for criminal liability for them. Evidently, administrative and disciplinary liability for disclosure of such information would be quite sufficient.

Conclusions

As a result of the research, its purpose was accomplished. The author of the research substantiates the expediency of such amendments and additions to the CC of Ukraine:

1) the dispositions of part 3 of Article 134, part 1 of Article 139, part 1 of Article 140, part 1 of Article 142, and part 1 of Article 143 of the CC of Ukraine should be defined concerning the establishment of danger to the patient's life or the threat of causing serious bodily harm;

2) in the following parts of these articles, to provide for provisions on the qualified elements of criminal offences under the scheme "the same act if it caused moderate or serious bodily harm", and provisions on the specially qualified elements of criminal offences under the scheme "the same act if it caused the death of a patient";

3) for endangering a patient's life or threatening to cause serious bodily harm, provide for basic penalties in the form of a fine of up to three thousand tax-free minimum income, community service and correctional labour; in case of moderate or serious bodily harm, establish such penalties as a fine of more than three thousand tax-free minimum incomes, restriction of liberty and imprisonment within the scope of a minor crime; in the event of the victim's death, to provide for a penalty of imprisonment with a maximum term of at least eight years; in all cases, to provide for an additional penalty of deprivation of the right to hold certain positions or engage in certain activities for up to three years;

4) to exclude Articles 132, 141 and 145 of the CC of Ukraine.

Therewith, the proposed limits of punishment are typical. To specify them, it is desirable to conduct a separate special study based on determining the limits of gravity of each of the analysed criminal offences. A promising area for further research on this subject is the search for ways to unify criminal liability for violations in the healthcare sphere.

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Проблеми регламентації відповідальності за кримінальні правопорушення проти життя та здоров'я особи, учинені у сфері охорони здоров'я

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Анотація. У Кримінальному кодексі України передбачено низку спеціальних норм про відповідальність за порушення проти життя та здоров'я особи, учинені у сфері охорони здоров'я, застосування яких породжує чимало труднощів та правозастосовних помилок. Однак асистемність таких норм створює ризики недотримання принципу справедливості в притягненні особи до кримінальної відповідальності та призначення покарання. Мета статті – знайти найоптимальніше вирішення проблеми законодавчої регламентації відповідальності за заподіяння шкоди або створення загрози заподіяння шкоди у сфері охорони здоров'я. Ключовий метод дослідження – логіко-юридичне вивчення статей українського кримінального законодавства, пов'язаних з відповідальністю за правопорушення у сфері охорони здоров'я. За результатами дослідження запропоновано сконструювати статті 134, 139, 140, 142 та 143 Кримінального кодексу України за однаковою схемою: у третій частині ст. 134 та перших частинах решти вказаних статей, кримінальну відповідальність за передбачені там діяння пов'язати зі створенням небезпеки для життя пацієнта чи загрози заподіяння йому тяжкого тілесного ушкодження; в наступних частинах цих статей передбачити норми про кваліфікований склад кримінальних правопорушень за схемою «Те саме діяння, якщо воно спричинило середньої тяжкості чи тяжкі тілесні ушкодження», а також норми про особливо кваліфікований склад кримінальних правопорушень за схемою «Те саме діяння, якщо воно спричинило смерть хворого». Базуючись на чинних санкціях зазначених статей, а також санкціях загальних норм про кримінальну відповідальність за необережне заподіяння тілесних ушкоджень, запропоновано типові межі покарань для запропонованих норм. Обґрунтовано доцільність виключення статей 132, 141 та 145 Кримінального кодексу України. Висновки, зроблені в межах цієї статті, можуть бути використані в законотворчій діяльності для розробки змін до Кримінального кодексу України, а також у правозастосовній діяльності для кваліфікації кримінальних правопорушень, учинених у сфері охорони здоров'я

Ключові слова: невиконання обов'язків, порушення медичних працівників, порушення прав пацієнта, порядок трансплантації, розголошення лікарської таємниці, тілесні ушкодження, заподіяння смерті

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Analysis of the most unusual court decisions in the world practice in terms of the right to justice

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Abstract. The relevance of the research is to identify ineffective methods of administration of justice in the world judicial practice to ensure the effectiveness of the judicial system in Ukraine. The purpose of the research is to identify and analyse the most unusual court cases in different countries from the Middle Ages to the present day to determine the level of public access to justice as a guarantee of the protection of human rights and ensure the rule of law and equality of all before the law and the court. The methods used to explore the subject include: the dialectical method, formalisation method, cognitive method, Aristotelian method, hermeneutical method, logical and legal method, systemic method, structural and functional method, axiomatic method, methods of induction and deduction, methods of analysis and synthesis. The research establishes how accessible justice and law were to people in different eras. The specific features of court proceedings in the Middle Ages are determined. The most unusual cases that have become known in many countries of the world, including the "Stella Case" and the "Cuckoo Case", are examined; the essence of the "Stella Award" phenomenon is covered; some curious cases in Ukraine and other countries of the world are explored. The author analyses several court cases of ancient times and cases that have been considered in modern court practice. The most unusual curious court cases where the accused were not at all human, and animals and objects are explored and described. The author examines unusual court cases in Ukraine. The provisions enshrined in this work are of practical value primarily for judicial officers and persons seeking judicial protection

Keywords: court, plaintiff, defendant, access to court, unusual cases, verdict

Introduction

For many centuries, the court has always been described as a place of justice and law. Fates were decided there, history was made, and rights were protected. Each era has its specifics of judicial proceedings, but they are united by one thing – effective protection of human rights. Thus, the Roman Empire already had fully functioning judicial bodies that resolved various disputes on various issues (Vodiannikov, 2020). The judiciary is a guarantee of legality and justice in every country.

Judicial protection and proper access to justice are the guarantees of effective human rights protection. The jurisdiction of judges extends to any dispute, and the rights and interests of every person should be protected regardless of the subject of the dispute and the seriousness of the crime committed (Vaughn *et al.*, 2015). Considering the above, it is necessary to cover the essence of the right to access justice and analyse the place and role of the court thousands of years ago and nowadays.

Researching court cases and analysing them allows for establishing the level of judicial protection and justice in different periods. Comparing the level of justice in different centuries allows for tracing the development and improvement of the judiciary and its emergence as an independent and impartial body whose main purpose is to protect rights as effectively as possible.

Everyone has access to justice and a fair trial (Luzhanskyi, 2010). It implies that a person can go to court if their rights are violated, and their case must be considered – this is what guarantees effective and legitimate justice. The court should be the guarantor of human rights protection. As noted by S. Chorna (2020), "the functioning of effective mechanisms for the protection of human rights is one of the signs of a state governed by the rule of law".

Sometimes the subject of a court hearing has a different form from the usual model of justice. There are cases in court when cases involving the protection of the rights of animals or statues are considered, and the defendants can be objects or the dead. In addition, quite unusual decisions can be made in courtrooms that demonstrate the incompetence of specific judicial bodies.

Innovations in any field have always caused different reactions among the people they affect. The field of legal regulation and judicial proceedings is a fundamental area of public life, thus, it is not surprising that unconventional claims or approaches to the conduct of judicial proceedings evoke a strong reaction from the public. Unusual for the conventional opinion court practices are still emerging today. For example, a study by D. Eichert (2021) demonstrates that using Twitter as a tool for digital diplomacy and communication by the International Criminal Court has both advantages and disadvantages. Among the positive aspects of this innovation, the author considers the entry of legal proceedings into a modern platform. The disadvantage of the

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International Criminal Court's posting on Twitter is the limited jurisdiction of the institution due to the restriction on the volume of messages on the social network. In addition, using a web resource for diplomacy could indicate a gradual loss of the Court's impartiality and objectivity.

Binder *et al.* (2018) compare the Eighth Amendment to the United States Constitution, which prohibits the death penalty for capital murder, with jurisdictions that have executed nearly five hundred people in the United States since 1973. The researchers argue that the death penalty is unconstitutional if the murder was unintentional. For example, if there was a case of the death of a homeowner robbed by a criminal, but the death was caused by fright or severe stress and not by the intentional actions of the thief, the criminal cannot be convicted of murder but rather of theft, as this would be a violation of constitutional law in the United States. Thus, despite the validity of such amendments as the Eighth Amendment to the US Constitution, in some cases, the death penalty is still imposed on criminals, which is not standard judicial practice in a democratic country of the 21st century.

The purpose of the research is to analyse some of the most unusual cases that have been considered by the court in different countries and different periods. The study of unusual cases is intended to demonstrate how the principles of the rule of law and equality of all before the court are ensured. Unusual court cases in this research are defined as those that have elements that vary from the standard model of court cases (e.g., an animal rather than a human as the defendant, etc).

The main objectives of the research were: to describe the "right of access to court" and "protection of fundamental rights"; to explore unusual cases that were decided in ancient Rome and Greece; to conduct an analysis of the most unusual court cases in the world; to explore unusual cases that were considered in Ukraine.

The research is relevant as the courts receive a large number of lawsuits that must be classified according to their importance and expediency. The study of unusual trials conducted in different historical eras will identify a methodology for making rational decisions in ambiguous court cases. Such an analysis will be useful for saving the time and material resources of both litigants and judicial officers in Ukraine. The work is of scientific value as it highlights the ways to ensure the human right to fair justice through the prism of unusual trials.

Materials and Methods

One of the most important methods used in this study is the dialectical method, which was used to analyse the most unusual cases as a confirmation and guarantee of the right to access justice and to clarify the content of the right to access court and the right to a fair trial. The logical method of scientific cognition was used to identify and distinguish the specific features of the right to access to court and the protection of fundamental human rights. Using the methods of synthesis and theoretical analysis, the most unusual cases in the world and Ukraine were explored.

The Aristotelian method of research was used to analyse the specific features of court proceedings in different periods. Using the systematic method, it was established that the court has considered and is considering cases in which only people can be parties to the court, and animals and even objects. The logical-semantic method is used to deepen and analyse some unusual and curious cases from ancient times to the present and to characterise the activities of judges. By using historical and comparative legal methods of scientific research, the author clarifies the specific features of the judicial system of the Middle Ages and compares them with the realities of today.

The hermeneutic method is used to identify the essence of the right to a fair trial and the protection of human rights. The comparative legal method was used to compare the resolution of cases before and after the Middle Ages. The synthetic method was used to explore various court cases that have been considered worldwide and in Ukraine in particular.

The effective methods of the research were the axiomatic method, the task of which was to identify the reasons behind the absurdity of some court cases, and the construction of a scientific theory, in which some statements (axioms) are accepted without evidence and then used to obtain the rest of the knowledge according to specific logical rules. The method of formalisation, which reflects knowledge in a known sign and symbolic content; methods of system analysis, theoretical generalisation, induction and deduction were used to develop conclusions based on the results of this research.

Results and Discussion

Non-trivial court cases from the Middle Ages as an example of the rule of law

Every person in the world has the right to access court and a fair trial. At the national and international levels, several different regulations guarantee the above rights to varying degrees. At the national level of each country, some regulations establish the procedure for access to justice and the consideration and resolution of cases, and international regulations that are adopted and ratified by several countries and are binding on them. The main international acts that regulate and guarantee access to justice include the following: The Universal Declaration of Human Rights (1948), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Political Rights (1966), etc.

The above international regulations guarantee equal and impartial access to justice for the protection of their rights and interests of all persons, as Ukrainian legislation is no exception, as the Constitution of Ukraine (1996) guarantees and ensures the right of access to court and fair trial to every person.

The right of access to court is a guaranteed and enforced right of people to apply to the judiciary without hindrance to protect their rights and interests (Godzimirska *et al.*, 2022; Katić *et al.*, 2018). In turn, the right to a fair trial is a human right, which is enshrined in several regulations, to a public hearing by an independent and impartial court (Carvacho *et al.*, 2022).

Occasionally, quite unusual issues are resolved during court hearings. Such cases are being considered nowadays, and examples are dating back to the Middle Ages. The Middle Ages were unpredictable and occasionally strange with their laws and traditions, and with their judicial system and order (Bubalo, & Čerkić, 2022). Thus, in 1386, in the city of Falaise, located in France, a case of the murder of a three-month-old child was considered, where the accused was a pig (Evans, 1906). All the time during the investigation and the trial, the pig was in jail and even had its lawyer. All stages of the trial were conducted: witnesses were interrogated, case

materials were collected – all relevant procedures were followed. The court sentenced the pig to death, put on human clothes and took it to the scaffold. On the square where the execution occurred, they gathered both people and pigs, arguing that it would set an example for other animals. The person who executed the sentence hung the pig, pulling a human mask over its face. Bringing the pig to justice was justified primarily by the fact that animals are morally responsible and therefore should be fully accountable for their actions. After this case, there were about 60 more similar cases in history.

In Rome in 897, there was a case in which the accused was Pope Formosus himself, although he was dead (Chamberlin, 2003). This case was known as the "Corpse Synod" and it is believed that the trial of this case marked the beginning of a corrupt era in the history of the papacy (Bilal & Tubbs, 2016). To understand the absurdity of this case, it is necessary to begin the research with the life of Formosus himself and the reign of Pope John VIII. To understand the absurdity of this case, it is necessary to begin the research with the life of Formosus himself and the reign of Pope John VIII. Pope John VIII turned against Formosus and accused him of violating a law that prohibited bishops from ruling several places at once-a law that was supposed to prevent bishops from developing their domains (Collins, 2009). In 891, Formosus was elected pope and his reign lasted 5 years. During the court hearing, the accused was asked several questions, but the deacon answered these questions. The prosecution demanded that the papacy of the Formosus and all decisions made by him in the course of his duties be invalidated, as they considered him a supporter and protégé of the famous Italian clans. Thus, according to the decision, the pope was convicted and ordered to cut off the fingers with which he made the sign of the cross, and he has dragged down the street, with his clothes off, and buried in a grave where foreigners were buried.

When exploring the above case, it is advisable to determine the specific features of the judicial system of the Middle Ages. The Middle Ages are defined by the establishment and development of such modern countries as France, England, Germany, Italy, etc. For the proper functioning of these countries, the development of their economies and socio-political life, it was necessary to establish effective mechanisms for the protection of various spheres of life and human rights, in which the judiciary played a significant role. In England, for example, the common law and the adversarial principle dominated, with the parties to the case initiating the judicial resolution of the dispute. Another significant characteristic of the trial in England at that time was that the defendant was not obliged to prove his innocence, as the prosecutor had to prove his guilt. In addition, the Middle Ages in England were distinguished by the development of procedural law and, in this regard, more effective judicial protection of human rights (Slinko, 2019). France and Germany in the Middle Ages are defined by the emergence of common law and the development of the inquisitorial form of justice, which replaced the accusatory adversarial process (Slinko, 2018; Hamilton, 2022). In addition, procedural law is being developed, and the powers of judges are being expanded. The court in the Middle Ages gradually became a class-based court (Coretti, 2019). It meant that there were separate courts for the clergy, nobility, and citizens. The courts of the Middle Ages can be described as being in their infancy, as they were mostly at the disposal of higher authorities, nobles or kings. It is clear that the judicial system of the Middle Ages was far from perfect and required significant development and improvement.

Bringing animals to justice and punishing them was not unusual in the Middle Ages, as it was quite common for the legal, legislative, and judicial systems to hold animals accountable as humans. In addition, animal trials included investigation, interrogation, witness testimony, provision of a lawyer, and other procedures, and torture could be used against them. Even nowadays, there are animal prisons, mostly for monkeys that pose a danger to humans.

One of the most illustrative cases in which animals were accused is the case of the conviction of rats, and the lawyer who defended the animals became world famous. According to this case, rats were tried before a church court for destroying a barley crop (Evans, 1906). It caused a disaster in the province of Burgundy, as the loss of crops meant famine for the inhabitants. Therefore, the population of the province turned to the authorities and clergy, organising rallies to take action to stop the destruction of the crops and punish the perpetrators. In 1522, a trial was held against the rats, where they were accused of spoiling and stealing the barley crop, and the bishop's vicar asked to excommunicate and anathematise them. The animals would have been convicted if their defence lawyer had not been Barthelemy de Chassaigneau, one of the most successful lawyers of the 16th century, who, due to his intelligence and legal skills, was able to save the rats from punishment. The modern structure of the judiciary and the nature of the cases to be heard are undoubtedly different from the Middle Ages when the consideration of unusual cases was a common practice.

Unusual lawsuits in the history of modern legal proceedings

The history of medieval case law is distinguished both by unusual cases and by the number of such cases in modern history and case law. Occasionally, absurd lawsuits are brought by judges themselves. In the capital of the United States, Washington, D.C., a case was heard on a judge's lawsuit against dry-cleaners who had ruined his favourite pants. He estimated the material damage and non-pecuniary damage he suffered at $65 million. However, the judge who heard the case proved to be more competent and refused to rule in the plaintiff's favour. The judge filed a similar lawsuit several more times, but the positive decision he expected was never made (Court Opinion of the District Court of Appeal of Colombia..., 2020).

There was a similar dispute in Ukraine. Thus, in the Dnipropetrovsk region, a woman filed a lawsuit for compensation for damage to her property. According to the circumstances of the case, she agreed with a dry cleaner to whom she handed over several items. When she arrived to get her belongings, she noticed that a woman's cashmere coat, the colour "coffee with milk" by Nero, had been damaged during dry cleaning (Decision of the Zhovtnevyi District Court of Dnipropetrovsk…, 2019). In turn, representatives of the dry cleaners noted that the coat had already been handed over to them with defects, which was confirmed in the contract receipt. The expert later concluded that there were no grounds to believe that the chemical cleaning of the product had been performed in violation of the technological process and cleaning regimes. As a result of the case, the court ruled in favour of the dry cleaning company and dismissed all of the plaintiff's claims.

However, history knows unusual cases that have become known throughout the world. One such case is "Stella v. McDonald's" (Gerlin, 1994). The case became one of the most unusual cases in the United States and later in the world. There is even a "Stella Award" presented for the most ridiculous lawsuits. The incident that became the crux of Stella's case occurred in 1994 when Stella Liebeck and her grandson stopped by a "McDonald's" fast food restaurant to order coffee. After receiving her coffee, sitting in the passenger seat, Stella opened the coffee, pulled the lid sharply and spilt the coffee on herself, resulting in third-degree burns of 6% of her skin and less severe burns of 16% of her skin. The victim was 79 years old at the time of the incident.

During the treatment, which lasted eight days, Stella underwent several surgeries that totaled $10,000. The victim's family asked "McDonald's" to pay them $20,000 for treatment, but "McDonald's" offered only $800. After several unsuccessful lawsuits, Stella Liebeck hired a lawyer who had already won several successful cases where "McDonald's" was the defendant. Previously, he won two lawsuits against "McDonald's", where his clients suffered burns, although in one case the negligence was on the part of a waiter who spilt coffee on a woman. The fast-food chain "McDonald's" was frequently a defendant in cases of custody of clients, and before Stella's case was heard, about 700 similar cases were considered.

When bringing the case to court, Stella Liebeck's lawyer, Reed Morgan, argued that the coffee spilt by the victim was too hot, approximately 80 degrees (which ultimately resulted in the case is won), and Morgan referred to previous cases that were almost identical and which he had successfully won. Before the trial, the victim's lawyer offered "McDonald's" $90,000 in compensation, and later increased it to $300,000, but "McDonald's" categorically refused to pay such an amount. During the trial, due to his skill, Morgan managed to convince the jury that "McDonald's" should pay the victim the world's income for two days of work. The jury agreed with the defence and the defendant had to pay the victim her income for two days of work, namely $2.7 million and $200,000 in compensation for medical treatment. The amount of $2.7 million is mentioned in many versions of the case, but the final amount to which the parties jointly agreed was $600,000 (Cain, 2007).

Thus, the victory was based on the convincing position of the lawyer, who proved that the coffee served at "McDonald's", according to the instructions, was 82-84°C, and should be less – at least 70°C, since the temperature of coffee at 80°C is simply impossible to drink and is considered life-threatening. In addition, the defence counsel referred to the fact that this was not the only case in the activities of "McDonald's" in which customers were harmed. In each case, "McDonald's" settled for a small compensation, and in Stella's case, they hoped for this. Another important argument was that the company had done nothing to protect its customers after all these incidents. In court, defending the company's position, the "McDonald's" lawyer referred to the fact that they care about their customers not drinking "cold coffee" and he claimed that the cup said "Beware, hot coffee!" (Gerlin, 1994). However, such arguments did not convince the jury and the judge, and they issued a decision finding "McDonald's" guilty and awarding Stella Liebeck compensation.

Unusual lawsuits involving well-known individuals and companies

In addition, the case where the defendant was the illusionist David Copperfield was quite unusual (Report and recommendation of the United States District Court..., 2007). According to the case file, illusionist Christopher Roller filed a lawsuit for patent infringement. In substantiating his claim, he noted that the defendant, David Copperfield, was using his "divine powers" without permission, which he had allegedly patented. As it emerged in the course of the case, the plaintiff did not apply for a patent and, accordingly, did not receive one. David Copperfield filed a counter-motion, arguing that the claim should be dismissed as the patent claimed by the plaintiff does not exist. Upon this motion, the plaintiff filed an amended complaint. It claimed that Copperfield, in collusion with other people, intended to kill him. The court dismissed the plaintiff's claim and prohibited him from bringing similar claims in the future, as Christopher Roller did not provide any evidence or facts to support his claim.

Unusual things happen in everyday life, and in various areas of life, such as fashion or culture. For example, Christian Louboutin sued the Dutch company "vanHaren", which violated intellectual property rights, namely trademark rights (Judgment of the Court..., 2018). The year 1992 was marked by the development of the world-famous "red sole" by designer Christian Louboutin. He used his assistant's red nail polish to paint the soles of his black shoes red, which to this day remains a classic worn all over the world, from ordinary people to the first ladies of the world.

The history of the lawsuit dates back to 2012, when "vanHaren", together with Halle Berry, presented the Fifth Avenue shoe collection. The collection included black pumps that had a specific feature, namely a red sole. In this regard, Christian Louboutin filed a lawsuit for the illegal use of the trademark that it invented. After the trial, the Hague District Court issued a ruling in which it temporarily banned the sale of shoes with red soles by "vanHaren". However, the company disagreed with the court's decision and filed an appeal, which was considered by the European Court of Justice. During the trial, the company's lawyers and representatives argued that Louboutin could not have rights to the "red sole" as under the laws of the European Union (EU), "the shape of the product that gives it the significant value" is not considered an element of a trademark in the EU.

After substantiating the positions of both parties and considering the case, the Court ruled in favour of Christian Louboutin, noting that the designer was not trying to protect the shoes themselves but the idea of using the colour applied to the soles of the shoes. After the decision was made, the designer himself spoke on this issue and said: "The protection of the red sole as a Christian Louboutin trademark has been confirmed by the European Court of Justice. The red colour applied to the soles of high-heeled shoes is a distinctive feature that Christian Louboutin has been using for many years" (Judgment of the Court..., 2018).

Comparison of the results of research by other scholars with the analysis of unusual court cases

Although the cases under consideration departed in many ways from conventional processes, it is difficult to accuse the judges of being unprofessional. If unusual lawsuits were heard in a courtroom and received a specific verdict, the

plaintiffs' right to fair justice was implemented. Comparing the level of guarantees for access to justice in judicial institutions in the past and today, it can be said that there are some problems in this area currently.

Unimpeded access to fair and impartial justice is regularly explored by scholars from different countries. Yu. Matat (2017) in one of his works lists the main problematic areas of judicial practice in providing access to justice. Among the main obstacles to the exercise of this right, the author identifies the low level of legal capacity of the applicant to file a civil action, appeal in criminal proceedings or obtain a court decision; access barriers, including time limits and court costs; inability to provide sufficient legal aid; and lack of jurisdiction of defendants in civil cases. Drawing a parallel between these statements and the cases analysed in this study, it can be concluded that similar problems with access to justice have been present before. For example, the "Corpse Synod" case lasted several years, which indicates that the trial was delayed and the court decision was postponed. In the case of Stella Liebeck, jurisdiction was avoided only by engaging a lawyer with experience in similar cases.

The work of Y. Sopyan (2021) examines the process of struggle for the provision of basic human rights to children of migrant workers in Malaysia. Along with the difficulties in providing the right to justice to vulnerable groups in society, the Malaysian state of Sarawak has a very acute problem of providing basic rights to children of illegal labour migrants. According to the researcher, the main problem in ensuring the right of access to court for such children is that they must first be granted citizenship. The research states that more than 43,000 stateless children live in the state, which significantly complicates the fight for any rights. The example of this work demonstrates the similarity between the problem of access to court due to the lack of legal regulations and the problem of unusual court hearings in the past centuries. But while in the case of the unusual cases of the Middle Ages, one can explain such trials by the lack of a legal framework for the administration of justice, in the case of Malaysian children, the problem lies in the too-slow consideration of the issue of granting citizenship to specific groups of the labour population.

In some countries, even if citizens have access to fair justice, there are issues with its provision due to innovations. Thus, in the work of researcher D.Q. Anderson (2020) notes that in Singapore, in the course of mediation development, doubts have arisen about the reliability of involving a third party in the trial. The originality is perceived by the judiciary as unreliable, which can result in a lack of transparency in court verdicts. It can be observed that both the absence or restriction of the right of access to court and obstacles in the judicial system to grant such a right can become significant problems in guaranteeing the right to justice.

Based on the analysis of court cases, it can be concluded that unusual court cases have gained significant publicity mainly due to the lack of a legal foundation for settling such claims. However, notably, in all of the cases listed and explored, the rule of law and equality of participants before the law were observed. It demonstrates the necessity to make significant efforts to empower citizens in different countries (and guarantee the rights of stateless persons) and to improve existing legal documents to ensure unimpeded access to the courts.

Conclusions

To summarise, the right of access to court is a guarantee for every person to receive a fair court decision on the issue at hand without hindrance. In general terms, this right existed in the Middle Ages, when the first judicial bodies were just beginning to be established. The legal, legislative and judicial system has evolved over a long period to effectively protect human rights. A considerable number of legal provisions have been adopted at both the national and international levels, which have enshrined the right of everyone to access justice. And the consideration of unusual cases only confirms that everyone can apply for the protection of their rights, and the court, in turn, as the guarantor of justice, will ensure that this right is implemented. The purpose of the work was achieved through a comprehensive analysis of both unusual cases in the history of the world and Ukrainian legal proceedings and a look at the problem of the right to justice through the prism of human rights guarantees.

To maximise the protection of their rights, everyone is guaranteed the right to a fair and impartial trial. It is confirmed by the example of the cases reviewed within the framework of the study. The analysed court cases indicate that the judicial system has developed gradually until it has reached the features of effective human rights protection, as the court is becoming more and more independent and autonomous in the administration of justice every year. However, even at the current stage of development of public access to a fair trial, there are obstacles in the form of limited rights and awareness of citizens, long duration and high cost of participation in court proceedings, new political discourses that contradict the established principles of the judiciary, etc. To guarantee equal access to judicial institutions, it can be effective to review and improve existing legislation in countries that guarantees the provision of basic human rights to all segments of the population.

The practical significance of this research is to track the evolution of the provision and implementation of the right to justice to improve the Ukrainian judicial system for the effective operation of courts. A study of the level of efficiency of the judicial system in the post-war years in different countries could have a positive impact on the development of the subject of fair justice. In the future, the following issues should be explored: how accessible Ukrainian courts are to every citizen; what criteria should be used to determine the appropriateness of a lawsuit; and how the justice system should proceed in cases where a case is determined to be not appropriate, to avoid violating the human right to access to the court.

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Аналіз найбільш незвичайних судових рішень у світовій практиці з огляду на реалізацію права на правосуддя

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Анотація. Актуальність дослідження полягає в потребі виокремити недієві методи здійснення правосуддя у світовій судовій практиці задля забезпечення ефективності судової системи в Україні. Мета статті – встановити та проаналізувати найбільш незвичайні судові справи в різних країнах починаючи з часів Середньовіччя та закінчуючи сьогоденням для з'ясування рівня доступу населення до правосуддя як гарантії захисту належних людині прав та забезпечення принципу верховенства права і рівності всіх перед законом та судом. Серед методів, за допомогою яких здійснюється дослідження теми, можна виділити: діалектичний метод, метод формалізації, правопізнавальний метод, формально-юридичний метод, герменевтичний метод, логіко-юридичний метод, системний метод, структурно-функціональний метод, аксіоматичний метод, методи індукції та дедукції, методи аналізу та синтезу. У статті з'ясовано, наскільки були доступними для людей правосуддя та право в різні епохи. Установлено особливості розгляду судових справ у Середньовіччі. Досліджено найбільш незвичайні справи, які стали відомими в багатьох країнах світу, серед яких «Справа Стелли» та «Справа про кукурікання півня»; розкрито суть явища «Премії Стелли»; вивчено окремі курйозні справи в Україні та в інших країнах світу. Проведено аналіз кількох судових справ давніх часів та справ, які розглядалися в сучасній судовій практиці. Досліджено та схарактеризовано найбільш незвичайні курйозні судові справи, де обвинуваченими були не тільки люди, але й тварини та предмети. Проаналізовано незвичайні судові справи на території України. Положення, які закріплено в цій роботі, становлять практичну цінність насамперед для працівників судових органів, а також для осіб, які звертаються за судовим захистом

Ключові слова: суд, позивач, обвинувачений, доступ до суду, незвичайні справи, вирок

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Biopsychosocial factors of the prosecutor's professional activity

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Abstract. The research subject is relevant to legal professionals, as Ukrainian society is increasingly emphasising the factors that determine the professionalism of all participants in legal practice, including judicial proceedings. Particular attention is devoted to non-standard approaches, one of which is proposed in the research. The purpose of the study is to examine the professional activity of the prosecutor in the biological, psychological and social context; based on this, to identify and describe the factors of internal and external influence on it. The key research methods include observation and monitoring of prosecutorial activity. The research presents a triune (biopsychosocial) foundation of human essence, in which philosophy is a methodology for structuring the three main sciences of human behaviour. The specific features of this behaviour are identified depending on the elements of the subject matter (for example, instincts in biology, conscious and subconscious in psychology, adaptation to the team in sociology), and the holistic subject of study is a person. Based on various descriptions of "professional formulas" and "profesiograms", the research schematically presents a model of the prosecutor's professional activity, considering the subject of work – a person and sign systems; working conditions with increased moral responsibility; functional and automated working conditions, and the gnostic and transformational purpose of work. Without diminishing the importance and influence of each of the factors of professional activity, the dominance of social factors is determined. This dominance is explained by the rapid rise of the role of information and information technology, increased concern for human life and the preservation of the gene pool, non-standard working conditions, crises and pandemic challenges, military conditions, and other related issues. After all, all of this has a specific impact on professional activities in various fields, including the protection of human rights and freedoms, where the prosecutor's office occupies an important niche. The research reflects the author's position and innovative approach considering the importance of the research area, disclosure of the grounds and factors of developing the prosecutor's worldview and determining their professional orientation in the modern world. The practical value of the study is that it identifies the factors that influence the professional activity of prosecutors, knowledge of which will allow learning how to neutralise those that have an adverse impact and enhance the effect of positive ones

Keywords: biological factor, psychological factor, social factor, verbal behaviourism, professionalism, professional environment

Introduction

A professional activity implies that a specific person performs specific duties and tasks within a particular field, applying specific knowledge and skills previously specifically acquired through training and/or experience. Therewith, professional activity is intended to perform several different functions: first, to produce a specific result through the work performed; second, to provide for the specific needs of the employee through payment for the work performed; third, to enable the employee to implement their desires and ambitions (ideally, to do what they like and are good at). Professional activity to a certain extent represents the employee's personality (life values, personal interests, social choice, and thus moral and psychological, social and regulatory, qualification and competence characteristics). Considering this, the professional activity of the prosecutor involves the performance of specific functions enshrined in Article 131-1 of the Constitution of Ukraine (1996) and specified in Article 2 of the Law of Ukraine "On the Prosecutor's Office" (2014) in the field of justice with using special knowledge and skills in the field of law.

The judiciary, still in the process of reform, is increasingly attracting public attention to the professionalism of lawyers. Almost everything that affects the development and implementation of professional competencies of representatives of the judiciary is considered meticulously and scrupulously. After all, the new challenges of modern times (the legal regime of martial law) and the urgent need for impartial justice significantly actualise the necessity to explore what exactly has the strongest impact on the professional activities of all components of the system of protection of human and civil rights and freedoms, including prosecutors as subjects of public prosecution in court).

This issue is tangentially addressed by several scientific studies that demonstrate the impact of biological and physiological factors on the professional actions of law enforcement and human rights agencies and units (Balynska, 2007; Malakhov, 2002); describe the psychology of personality, in particular, of a civil servant (Katolyk & Kalka, 2022; Psychological types of professions..., n.d.; Shydelko, 2016);

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demonstrates the personality in the context of ethical provisions and the conditions of social adaptation (Malakhov, 2009; Mikheiev, 2001); highlights the characteristics of social modelling and the signature features of social conformism (Dembitskyi, 2019; Liubyva, 2014); describes the signs of the influence of society and the sociological features of the response of professional environments (Kozyriev, 2013; Otreshko, 2014; Otreshko, 2022).

Particularly interesting, considering the professional specifics of the prosecutor's service, are researches in the field of neuropsychology as one of the potentially "auxiliary" areas of prosecutors' professionalisation. O. Balynska *et al.* (2019) in their review research presented a broad critical review of the relevant literature and analysed neurolaw as an interdisciplinary, intersectoral discipline, the essence of which is the implementation of medical achievements (anatomy, neurology and biochemistry) in legal practice. According to the researchers, this new area of medical law is an additional source of evidence, but since neurolaw is still underdeveloped, it should be treated with caution to prevent it from becoming a way for criminals to avoid proper punishment.

M. Lenca (2021) noted that, since the methodological apparatus of neurolaw is not yet sufficiently developed, confusion and ambiguity in academic terminology are possible, which can cause both difficulties in conducting scientific discussion and adverse consequences in practice. Thus, in his research, the scientist conducted a comprehensive regulatory, ethical, historical, and conceptual analysis of neuro rights. In particular, he attempted to reconstruct the history of neuro rights and assess their place in the history of ideas in general; outlined a systematic conceptual taxonomy of neuro rights; summarised existing policy initiatives in this area; proposed solutions to certain ethical and legal problems; and outlined priorities for further research and policy work in this area. M. Lenca emphasised that today the protection of neuro rights is a fundamental task of international human rights law, as it can contribute to the expansion of the protection of other rights and freedoms.

R. Sapolsky (2021) explored the various factors that influence the behaviour of individuals, groups of people, and even entire states: genetic, social, psychological, and evolutionary. The scientist sees these motives as motives for violence, aggression, and competition. It is the work of different parts of the brain and hormonal processes that affect both the short-term behaviour of a person and programme actions for decades to come. Thus, Sapolsky's work prompts an interesting and crucial discussion, particularly in the legal field, on whether free will exists and to what extent a person is responsible for aggression and violence.

However, a comprehensive (biopsychosocial) approach to the study of factors influencing the professional activity of a prosecutor has not been applied.

The purpose of the research is to identify and describe the factors of external and internal influence on the professional activity of a specialist, adapting them to the professional environment of the prosecutor's office, which involves consideration of the subject studied in the biological, psychological and social context.

Materials and Methods

Appropriate methods were chosen to structure the research material. Among the empirical methods, *observation* and *monitoring* were the leading ones (the study is based on the author's experience of professional practice as a prosecutor: in particular, empirical material from service in the military prosecutor's office, the department for supporting public prosecution and supervising the execution of court decisions in criminal cases, the department for organising prosecutors' participation in court and supervising the execution of court decisions in criminal proceedings, for supervising the observance of laws in the military sphere, and the department for procedural guidance of troops was used). Among the theoretical methods used are *analysis* (for exploring professional activity by mentally dividing it into its constituent elements, highlighting their features, properties, and relations, and for considering each of the selected elements separately, but within a single unit); *synthesis* (for exploring the prosecutor's professional activity in its integrity, in a single and mutual relationship of its parts); *comparison* (for comparing the properties of the factors influencing the prosecutor's professional activity and establishing common and distinctive features between them); *analogy* (to establish equivalence, correspondence and similarity between the theoretical concepts under consideration and the real manifestations of the prosecutor's professional behavior); *classification* (to conduct the research considering the main types of professional activities based on the types of relations between a person and the environment – nature, society, technology, etc.) and *modelling* (to reproduce the most important links between the key elements of the prosecutor's office as a professional environment with forecasting its further development). It allowed abstracting various factors of influence on the professional activity of a prosecutor from the general public relations, grouping them into groups based on the subject of influence and by analogy with those already described in the works of previous researchers, classifying them by areas of influence, and then modelling the professional actions of a prosecutor as probable and expected results of the influence of various biopsychosocial factors.

In addition, since the reference books name several tens of thousands of types of professions, to organise them, a multifactorial (multivariate) principle was applied and five main types of professional activities were introduced, organised by types of relationships: "man – nature", "man – man", "man – technology", "man – sign systems", "man – artistic image" (Psychological types of professions..., n.d.).

Results and Discussion

The main criteria for identifying the factors of the prosecutor's professional activity

According to the above classification, the prosecutor's profession is of the "person-to-person" type, as the main object with which they work is a person (accused, investigator, lawyer, judge, etc.).

Considering this, it is believed that the main factors of the prosecutor's professional activity are conditioned upon the need for immediate communication: to establish psychological contact, maintain communication, understand the characteristics of different psycho-types of people and be able to verbally influence them, be observant – i.e., have knowledge both in the field of law and in psychology, sociology, neurolinguistics, etc. Therewith, they must know and strictly comply with the requirements for their behaviour, emotional state, good memory, etc.

According to O. Balynska, a Lviv researcher of legal communication issues (and the professional activity of a prosecutor is one of the options for demonstrating this process),

"intersubjective behaviour belongs to those phenomena of existence that are the main causal models of social actors' activities and their interaction with the environment. Therewith, behaviour is a subject of research in many sciences, primarily philosophy, psychology and sociology" (Balynska, 2007). In general, supporting this position, it can only be partially clarified: since philosophy explores generalised but very important features, properties, and fundamental principles of reality and its comprehension, human life, its relations with the world around them, perception of nature, society, and spirituality in all its manifestations (Blikhar *et al.*, 2021), it is quite justified to consider it an integrative basic science and to add biology as a science of life in all its manifestations to psychology and sociology as doctrinal dominants in the study of human behaviour. Then the absolute triune (biopsychosocial) foundation of the essence of man is quite clearly manifested, where philosophy is a methodology for structuring these three sciences of human behaviour (depending on the side of the multifaceted subject of research), for highlighting the features and specifics of behaviour (for example, instincts in biology, conscious, unconscious and subconscious in psychology, adaptation to the collective in sociology), and for mutual coordination based on a single subject of study – man.

From a biological perspective, then, human behaviour should be understood as a "generic concept that encompasses various reactions of a living organism and involves physiological and neurological processes" (Malakhov, 2002). From the psychological standpoint, it is "a purposeful activity of a living organism that serves to contact the world around it to meet individual needs" (Katolyk & Kalka, 2022). Therewith, it should be noted that it is psychologists who emphasise using signs and symbols in human behaviour, including language, to regulate and manage it. And in sociology, behaviour is considered as an interaction that "has a clearly defined two-vector character: first, the environment about a person is the cause, the impetus for an activity or verbal behaviour; second, human behaviour is designed to adapt to this environment, and to change it" (Kozyriev, 2013). A generalised (philosophical) view of human behaviour evaluates it as "the ability to act in the material, intellectual, and social spheres of life" that "never reaches a stage where development stops" and is "combined influenced by natural and environmental factors" (Blikhar *et al.*, 2021).

Biological factors of the prosecutor's professional activity

At first glance, it can seem that biological factors in any professional activity (i.e., in the process of producing a certain socially significant result and staying in a professional environment, or professional community) are limited to life-saving and physiological needs or emotional reactions. But the latest research in the field of behavioural biology is opening the veil to the eternal problems of human relationships. "Why do people save and kill, forgive and take revenge, love and hate? How to explain the passive aggression of the 'cut-off' driver? Why do children 'lose their minds' in adolescence and run away from home or get involved in dubious companies? Why do we get sick from spoiled food, and from events? How could one person's manifestation of rage turn into a 20-million-strong protest, the Arab Spring?" It and other things in human behaviour are comprehensively explained by American neuroendocrinologist, professor of biology and neurosurgery R. Sapolsky (Sapolsky, 2021).

The fact is that a person controls their behaviour based on knowledge and learned rules, and neurophysiological stimuli influence them (with no less force). The first high-profile example of this (in 1978) is the case of American T. Harrington, who was sentenced to life imprisonment for murder, and 23 years later provided the results of an electroencephalogram (EEG), a record of bioelectrical activity of the brain, as proof of his innocence. According to the research, the brain automatically reacts to a person's visual perception of familiar images, and when the prisoner was presented with footage from the scene, his brain did not react but instead reacted to footage from a concert he said he was at when the murder occurred. Harrington was acquitted and released (Tkach, 2017).

A year later, in 2003, neuroscientist Elizabeth Sowell published her research on brain maturation (Sowell *et al.*, 2003), which resulted in the U.S. Supreme Court's ban on the execution of minors a few years later. But there is a downside: her experimental evidence that humans are capable of bad deeds both of their free will and due to the features of their brains have been used to exonerate real criminals.

Thus, since the 1990s, researchers in the United States, and later around the world, have begun to consider the specifics of human gyrus as a new aspect of legal phenomena. For this purpose, a special term "neurolaw" was coined, which means an interdisciplinary field of knowledge that is developed in the interaction of neuroscience and legal practice. Proponents of neuro practice insist that as much information about the brain as possible should be considered in court (Blanco-Suarez, 2020; Luterbacher, 2021; Lenca, 2021).

However, it is crucial to find a balance between brain characteristics (since human behaviour, especially when it demonstrates abnormalities, can sometimes be explained only by the data of anatomy, biochemistry and physiology of the nervous system) and liability issues (based on the application of research results in the field of medicine, in particular, neurology, in law). Currently, "neurolaw, as a theoretical construct and a practical phenomenon, is under study and requires detailed and thorough research so that its implementation in the justice system does not threaten to violate the basic legal principles of equality and justice" (Balynska *et al.*, 2019).

This knowledge is necessary for the prosecutor for two reasons: first, to understand the neuro bases of their behaviour and, therefore, to develop skills to manage it; second, to distinguish between lawful and unlawful behaviour of suspects/accused.

Psychological factors of the prosecutor's professional activity

The second group of factors that influence the professional behaviour of a prosecutor is psychological. The main areas of psychology that explore behaviour and that can be useful in the field of professional activity of a prosecutor are behaviourism (which explains human behaviour by mechanical, reflective acts in response to external stimuli) and verbal behaviourism (which puts the influence of speech into the previous context). Considering this, the developed "matrix" for identifying lawful/unlawful behaviour as a causal manifestation, which was proposed by O. Balynska in her study, which is thematically closest to the prosecutor's field of activity, "Verbal Behaviorism in the Activities of Internal Affairs: Philosophical and Legal Aspect" (Balynska, 2007),

should be used. The researcher writes: "Based on the various causal objects in the analysis of the level of awareness of an individual's behavioural manifestations, among the theories of identifying lawful and unlawful behaviour, considering the verbal behaviourist aspect, the following are distinguished: environmental theory (1), theory of adaptation (2), theory of external manifestation (3), theory of choice (4), theory of free will (5), theory of dualism (6), theory of materialistic monism (7), theory of alienation (8), theory of sublimation (9), theory of structural anthropology (10), theory of ethics (11) and sociological theory (12)" (Balynska, 2007). All of the above theories can be grouped into psychological, sociological, and boundary theories (on the borderline between them) according to the fields of knowledge used. The psychological theories include the theories of choice, free will and sublimation (they will be adapted to the analysis of psychological factors of the prosecutor's professional activity); the theories of adaptation, environment, external manifestation, ethics and the sociological theory will be considered in the context of sociological factors; the remaining theories – dualism, materialistic monism, alienation and structural anthropology – should be considered as containing characteristics of both psychology and sociology, thus, they can be considered as boundary (psychosocial).

Thus, the psychological factor of choice, which affects the success, self-realisation and further fate of a person, is equally important for a prosecutor in their professional activities. Therewith, different contexts of choice are important at different stages of a prosecutor's development:

1) the choice at the pre-professional stage is to understand the feasibility of choosing the profession itself, it is here that professional guidelines and expectations should be set to avoid disappointment and unwanted coercion to perform the assigned functions;

2) the choice at the stage of entering the profession can relate to several aspects: the field of activity ("regular", military, specialised anti-corruption prosecutor's office), the desire to develop a career (local, regional, "general" level), the desire for development (advanced training, participation in research projects, conducting own research, preparing analytical studies, etc), professional decision-making (pleading guilty and prosecution).

In almost every context, the opportunity (or need) to make a choice contributes to the development of analytical skills, the awakening of the evaluative dominant, and the development of predictive skills in the prosecutor. Therewith, notably, the possibility (i.e., freedom) of choice exists at both stages of the prosecutor's professional activity, while the need for choice appears only at the second (actual professional) stage, and not everyone has the need to choose the prosecutor's profession at the pre-professional stage. The choice made by the prosecutor can be considered their self-determination, which, in turn, is manifested in their behaviour through the resolution of each situation. Prosecutors seeking self-determination in their professional activities must, first of all, understand that they are determined to become the person they chose to become and that they are a kind of legislator of their private behaviour and life. Therewith, the prosecutor must always remain free to make their own choices and exercise their own free will.

The psychological factor of free will balances the ability to do what you want and a sense of duty. The fact that a person has free will distinguishes them from other living organisms in society. The will is one of the functions of the human psyche, which consists primarily of the ability to control oneself, manage one's emotions and actions, and consciously regulate one's behaviour. On the one hand, free will is unlimited (as it is an a priori feature of a person from birth), and on the other hand, it is manifested within the framework of human self-control. It is free will that makes a prosecutor responsible for everything they allow themselves and others to do to themselves and others.

Therewith, the concept of "will" is opposed to "duty" – something that must be unconditionally observed, that must be performed without fail according to the requirements of society or based on one's conscience. Thus, "the will becomes one of the means of observing and performing a duty. The will can be considered a set of emotions that are purposefully oriented toward a conscious willingness to act" (Balynska, 2007). Thus, in the professional activity of a prosecutor, the main importance of volitional acts belongs to legal consciousness, which, in turn, ensures the development of professional needs and "suggests" a choice in deciding on a legal situation. For a prosecutor to perform professional activities, they must be resistant to unlawful motives and have a stable lawful orientation; in other words, "it is necessary to form conscious control over direct behaviour through the assimilation of specific rules of lawfulness. Only under the condition of a strong law-oriented emotional construct does the will acquire the characteristic of 'freedom'. Free will enables a person to make a free legal choice; lawful free will facilitates the choice of a lawful type of behaviour" (Balynska, 2007).

The psychological factor of sublimation (according to Sigmund Freud) in the professional activity of a prosecutor should be understood as one of the mechanisms of psychological protection of an adult, which consists in overcoming internal tension by redirecting energy to socially acceptable purposes. S. Freud believed that sublimation is a sign of maturity and civility, which allows people to function properly in a culturally acceptable way. He defined sublimation as the process of redirecting sexual instincts into acts of higher social value, which are "a special feature of cultural development; it is what enables higher forms of mental activity, such as scientific, artistic, or ideological, to play such an important role in civilized life" (Freud, 1961). To prevent sexual needs from becoming an impetus for the development of neurotic disorders (as discussed earlier in the context of biological factors), a prosecutor must consciously abstract, distract, and shift attention to another object – professional activity (in other words, "immerse himself in work"). Therefore, it is very important in the process of professional development and professional socialisation of a prosecutor to develop "frustration tolerance", i.e. resilience to adverse emotions that can occur in a situation that a person perceives as "an imminent threat to the achievement of a significant purpose or task" (Katolyk & Kalka, 2022). To prevent even the slightest manifestation of unlawful behaviour, a prosecutor must develop "stable forms of emotional response to life's difficulties, the ability to foresee a favourable way out of a frustrating situation. ... If certain aspirations cannot be implemented due to various objective or subjective reasons, they (aspirations) are pushed into the sphere of the unconscious, and their access to consciousness is possible only in a symbolic form, in particular in the form of neurotic symptoms or reservations. A seemingly mistaken word or

phrase can serve as an impetus to identify the true cause of unlawful behaviour" (Balynska, 2007). It is this method of applying the knowledge of the psychology of speech behaviour (verbal behaviourism) that should be tested in interrogation or the analysis of testimony in court.

Limiting factors of the prosecutor's professional activity

It is no coincidence that the factor of dualism was chosen first to analyse the boundary factors of the prosecutor's professional activity, since the name itself contains a dual approach and recognition of two fundamentals – psychology and sociology, defined not by opposition, as in the encyclopedic definition of dualism (Lisovyi, 2008), but by combination. The professional activity of the prosecutor occurs simultaneously in the natural and socio-cultural space, manifests its vitality and sociality, and is guided by moral and legal provisions (natural and positive law). Therefore, it is the factor of human dualism that can become the main cause of legal and tort conflicts in the activities of the prosecutor. The legitimacy of behaviour depends on whether the social subject "is capable of coping with its internal contradictions, finding optimal, socially approved ways, means and methods of resolving them" (Balynska, 2007).

Man, according to Durkheim, – *homo duplex*, a dual creature in which two beings live, interact, and struggle: social, moral, intellectual (altruist) and individual, selfish, and natural (egoist) (Durkheim, 2005). Hence the two sources of behaviour development (including professional behaviour): "the nature of the body forces a person to implement their aspirations and desires, even by restricting the desires and aspirations of another person (illegal behaviour); the intelligence of the soul, which is essentially developed in society, under the influence of its morality, law, etc., controls behaviour and corrects it according to the simplest moral and legal provision "do unto others as you would like them to do unto you" (lawful behaviour under natural law), and according to the legal provisions accepted in society and established by law (lawful behaviour under positive law)" (Balynska, 2007). There is no sharp and absolute distinction between the influence of the "body" and the "soul" as regulators of behaviour. Instead, uniting the psychosocial (or socio-psychological, depending on the factor emphasised) essence of a person will contribute to overcoming unlawful aspirations in favour of lawfulness.

The factor of materialistic monism in the analysis of the prosecutor's professional activity is borrowed from the relevant theory of B. Spinoza, which interprets the essence of man as "bodily and spiritual integrity and thinking (activity of the mind, intellect) and movement (bodily activity, externally manifested behavioural reflections) as an attribute of one substance" (Balynska, 2007). The combination of the doctrines of materialism and idealism within a single psychophysical (psychosocial) essence of a person in the context of any legal practice demonstrates the unity of perception and assimilation of legal information (both positive law and natural law, moral and ethical requirements), which contributes to the development of legal consciousness and legal outlook as internal regulators of a person's behaviour, especially of a lawyer, in society. And in the context of the professional activity of a prosecutor, this theory presents the mental and social aspects of human nature as authentically equal factors in the holistic process of a specialist's behaviour. If any of these factors begin to dominate, psychosocial balance is disrupted and priorities shift either toward "privacy" or "professionalism". If private interests prevail, professional activity will take a back seat and the performance of professional tasks will be of poor quality. In the second case, excessive standardisation of conduct contributes, in the words of the American sociologist P. Sorokin, to the transformation of specialists into "organised, automated individuals" (Uebersax, 2021). A prosecutor needs to maintain this psychosocial balance.

Another limiting factor of the prosecutor's professional activity is alienation. It is "a philosophical, sociological, and socio-psychological category that means the relationship between a subject and a certain function of the subject that arises as a result of the loss of their initial unity; the process of breaking the initial unity of subject and object; a characteristic of the life situation of an individual or social group caused by the transformation of the life process into an independent force that is above the person" (Hrabovska & Hrabovskyi, 2005). Accordingly, relations of alienation in the professional environment of the prosecutor's office would mean the loss of connection between the prosecutor and his professional functions, i.e. the levelling of his social purpose, and his professional essence. There can be many reasons for this state of affairs: for example, a feeling of uselessness, professional unsuitability, inability to change anything for the better, dependence on external circumstances (war, inflation, rising prices against the background of decreasing wages, etc.), a feeling of the absurdity of any initiatives, failure to achieve expected results, destruction of individual, corporate, social, national values, a feeling of loneliness or self-isolation, emotional burnout, loss of one's self, etc. It should be avoided, and if it does happen, it is necessary to help eliminate such feelings to preserve the professional fitness of the prosecutor.

There are many reasons for alienation and ways to overcome it. For example, K. Jaspers saw ways to overcome alienation in the development of communication, in individual and collective communication, in self-education of the ability to discuss, in confronting manifestations of bigotry (Jaspers, 2009) (excessive professional dedication of a prosecutor bordering on self-denial is considered alienation). J.-P. Sartre argued that alienation is generated by unlimited human freedom and the conflict of interpersonal relations, and impersonal, inert social existence (Sartre, 2016) (therefore, by resorting to coordination and harmonisation of subject-subject relations, professional alienation of prosecutors can be avoided). M. Heidegger interpreted alienation as a form of human existence in the impersonal world of everyday life, which is manifested in the performance of social roles by an individual, in submission to social behavioural, thinking, and speaking provisions (Heidegger, 2007) (considering this, the prosecutor should be a person with a clear social status, which is respected in society and properly financially assessed by the state). They were opposed by G. Marcuse, who developed the concept of a "one-dimensional person" who is not capable of critical comprehension of reality and struggles for its transformation (Marcuse, 1996) (the ability to critically evaluate, appropriately compare and analyse in detail can ensure that the prosecutor avoids alienation or overcomes it). Proponents of alternative sociology and ideology note that humanistic culture is being replaced by its ersatz forms – mass and elite culture, ideological clichés and stereotypes of thinking are being established through

the media, and a cult of false spiritual values is being imposed, conformism is flourishing (Hrabovska & Hrabovskyi, 2005) (thus, it is crucial to develop a positive attitude of Ukrainian civil society towards the prosecution as a professional environment that represents the interests of the state in court and an individual prosecutor who performs these functions).

The theory of structural anthropology proposed by J. Lévi-Strauss reflects the relationship between the psychological and the social. This approach in the context of the prosecutor's professional activity is manifested through the emphasis on the mandatory presence of "formal institutions" in legal relations, which, according to Lévi-Strauss, are governed by traditions and myths that "model the structure of social institutions" (Yosypenko, 2000). This theory is based on the "principle of authentic human communication". In the process of communication (legal relations), communicants (subjects of legal relations) develop a certain method of thinking ("resettlement technique"), i.e., there is a mutual influence of the participants of communication and certain stereotypes of moral and legal provisions of coexistence (establishment of positive law based on natural law) are developed, which, in turn, determine a certain type of lawful behaviour and require its observance. Thus, "the principles of truly human communication – the cultivation of compassion for another person and living creatures in general, selfless comprehension of other people through identification with them" (Yosypenko, 2000) should be considered indisputably necessary for cognition of legal reality and conscious entry into it (provided that the behaviour is lawful). It can be said that these are the general principles of intersubjective legal communication, where no one is subject to manipulation and all participants are equal in importance. Such a position contributes to the development of a clear algorithm of legal behaviour that excludes invariant connections of elements of legal relations with a categorical focus on legality.

Social factors of the prosecutor's professional activity

The most socially oriented factor in human activity is the environment. According to I. Tenet's theory, a specialist always depends on the mental, spiritual, cultural, and social environment (Blikhar *et al.*, 2021). In addition to acknowledging that humans are deeply dependent on the world around them, environmental theory exempts them from any moral responsibility due to this. According to this theory, the prosecutor, being involved in the sphere of legal relations, is completely dependent on external influence in the development of their behaviour, and, therefore, should not be accused of unlawful actions (if any) or inaction.

On the one hand, it cannot be categorically denied that the professional activity of a prosecutor is developed in the context of the environment (they acquire skills of a certain type of behaviour under the influence of the psychological climate in the family, school, at work, at home, etc., spiritual and cultural heritage, socio-economic conditions, and moral and legal principles on which legal relations in a particular society are based). On the other hand, a prosecutor, being part of a professional community, loses their individuality to a certain extent and acquires similar feelings, instincts, aspirations, and volitional motives. This "mass" approach to the prosecutor's behaviour reduces the mechanism of interaction with the subjects of the professional environment to purely mechanical functions, and the environment itself (mental, spiritual, cultural, social, including legal) to certain functional processes and connections. In this case, it can be assumed that each prosecutor does not have their autonomous power of influence and the ability to independently shape and produce their behaviour. A prosecutor is a kind of filter through which cases pass, leaving their mark (through experience) on their behaviour. And the main "sieve" that can distinguish between lawfulness and unlawfulness is the phenomenon of their consciousness, including legal consciousness, which makes the prosecutor dependent on the environment and able to adapt to a particular environment.

The factor of social adjustment (adaptation) in the professional activity of a prosecutor implies that the prosecutor has mastered "certain provisions of the environment, social stereotypes and attitudes, acceptable forms of behaviour in this environment, including communication, life options, etc." (Shydelko, 2016). Interestingly, the concept of "adaptation" originated in biology and was introduced to the social sciences by scholars who tried to reduce psychological and social phenomena to biological ones. In essence, social adaptation is closely related to the process of socialisation, internalisation of provisions and values of the social environment, ways of subject activity, and forms of social interaction (Mikheiev, 2001).

Generally agreeing with the opinion of O. Balynska that "personal adaptive potential is closely related to the effectiveness of lawful behaviour: intelligence as the highest form of adaptation is the key to choosing the most lawful option of externally manifested actions and deeds" (Balynska, 2007), more attention should be paid to the prosecutor's professional adaptation, which is facilitated by proper professional training for the performance of their work, professional aptitude for it, and responsibility, intelligence, independence, and assistance from seniors and colleagues. The professional adaptation of a prosecutor should be designed to achieve a balance between the professional interests and capabilities of a person and the needs of society in this type of professional activity, which are constantly being improved, integrated and changed accordingly. It is believed that, ideally, professional adaptation lasts throughout the entire career, from the first job to retirement, and sometimes it continues into the retirement phase of a person's life. However, one should not forget about the specifics of the prosecutor's professional environment, which to some extent limits the "interference" of the external environment and even in some cases categorically prohibits it.

Professional adaptation is usually facilitated by the following qualities of a person: "independence, creative initiative, professional mobility, high personal responsibility for the results of one's work, for the quality of work performed, for one's destiny and well-being; competitiveness, psychological readiness for business rivalry, and victories and possible defeats; desire for continuous self-improvement, self-education, mastering new technologies, improving professional skills, learning during one's working life; communication skills, tolerance, intolerance of violence, arbitrariness and, therewith, tolerance and respect for people who have different opinions and styles of individual behaviour; respect for the interests of other people, ability to reach consensus in professional interaction" (Mikheiev, 2001).

The social factor of external manifestation within the framework of the prosecutor's professional activity openly demonstrates the prosecutor's legal experience, intentions

and aspirations through external behavioural responses. According to O. Balynska, "the theory of external manifestation is connected with the methodology of behaviourism as a field that explores the externally manifested behavioural reactions of the body to influence (stimulation). The essence of the theory of external manifestation is that it is impossible to detect lawful or unlawful behaviour through self-observation: a social subject (even a highly conscious one) cannot be authoritative in determining the legitimacy of their thinking or behaviour. Nevertheless, the assessment of legitimacy is based solely on established and described behaviour without penetrating the internal mental processes behind it. Being behaviourist, the theory of external manifestation advocates the position of the necessity to derive a categorisation of legality according to the conditions of certain legal situations and, based on it, to develop rules of conduct for social actors in the legal field" (Balynska, 2007). The methodology of behaviourism in developing the desired reaction of a social actor is advocated by many researchers, in particular as the psychology of targeted influence (Moskalenko, 2008), as a scientific foundation for the philosophy of political activity (Tolstoukhov, 2002) or specifically for the electoral behaviour of social actors (Vladlenova & Smolyaga, 2022). The behaviour of a prosecutor cannot be the same under different conditions, in different situations, as each legal situation forces them to look for solutions and make appropriate decisions.

The social factor of ethics, borrowed from the theory of ethics of the development of lawful behaviour of a social subject (Balynska, 2007), in the professional activity of a prosecutor should include judicial ethics – "a set of provisions of the behaviour of professional participants in legal proceedings; the doctrine of moral principles, norms of professional activity of judges, prosecutors, investigators, lawyers, which explores the moral foundations of procedural rules, and moral ways of their application in investigation and trial. Procedural law determines the form and content of the proceedings, while judicial ethics is the moral foundation for the activities and behaviour of judges, prosecutors, investigators, and lawyers. These principles are interrelated. Clarification of the moral meaning of procedural rules contributes to their correct application" (Malakhov, 2009).

The ethics factor requires the prosecutor to strictly adhere to the established rules and principles, many of which have a pronounced moral aspect that enhances their effect. Strict adherence to moral provisions ensures the realisation of the principle of justice in the prosecutor's activity, which is necessary for the efficiency of procedural activities and the maintenance of the high authority of the prosecution authorities. This explains the establishment of various rules and codes of professional conduct, including the Code of Professional Ethics and Conduct for Prosecutors.

P. Sorokin's theory of sociology reflects "the ethics of regulating legal relations, thinking and behaviour of society members". According to it, only society is capable of producing "meanings, provisions and values" that are reflected in the legal worldview of society's members (Uebersax, 2021). Therewith, in the context of professional activity, it is rather necessary to talk about several other social factors, such as:

– social modelling, which is the reproduction of the most important relationships between the key elements of the social community being studied, such as the prosecutor's office, to explain its current functioning and predict its further development (Dembitskyi, 2019);

– social trust, which implies the development of confidence in the reliability of the prosecutor, demonstrates a clear understanding or provides comprehensive knowledge of their social purpose, is based on the synthesis of personal and group experiences of perception of prosecutors and is associated with specific expectations of them (Ursulenko, 2008);

– social conformism – uncritical perception and imitation of opinions, standards, stereotypes, traditions, authorities, principles, and attitudes prevailing in society or a group; especially manifested during the period of adaptation to the service, when a young prosecutor tries to develop a type of behaviour that corresponds to the provisions of the professional environment, but can frequently result in lack of initiative, indifference, and adaptability; it is important to maintain tolerance and solidarity, but not to let oneself be absorbed by the team (Liubyva, 2014);

– social control is the maintenance of social/corporate order through institutional influence on the behaviour of individuals; thus, the collective/corporation tries to control the behaviour of the prosecutor through normatively fixed directives, orders, instructions, etc., and compliance with these provisions is encouraged by positive incentives: recognition, reward, authority, prestige, and the choice of other ways of behaviour is limited through certain sanctions: from informal prohibitions to explicit coercion and pressure (Otreshko, 2014);

– social expectations – a set of social attitudes, stereotypes of behaviour, assessments of social processes and significant phenomena that support and develop members of the professional environment and society in general; due to the awareness of social expectations, the prosecutor is prepared to perceive the consequences of various social events and can perceive social reality, becomes emotionally prepared for future events and can adapt their behaviour to new conditions; but on the other hand, social expectations are closely related to informal social/corporate control, the requirements imposed on the prosecutor by the environment regarding their actions, thoughts and feelings in a particular situation (Otreshko, 2022).

Such a selection of social factors is not accidental, as they are all reasons that demonstrate the nature of the prosecutor's professional actions depending on different conditions, circumstances, situations, etc.

Thus, it can be assumed that these (biological, psychological, and social) factors influence behaviour and activities in general, including professional ones. It is appropriate to analyse the professional activity of the prosecutor from these perspectives, considering the context of the branch of law in which it is implemented.

Considering the various descriptions of "professional formulas" and "professiograms", the model of the prosecutor's professional activity can be schematically reproduced as follows:

– the subject of work – a person (the prosecutor works primarily with people, communicates with them and analyses their testimony, implements their main purpose by assisting in finding the perpetrator of an offence), and sign systems (the prosecutor reads, studies and analyses documents, compares real events with the described provisions of laws, relies on statistical data as the most generalised and systematised information);

– working conditions – increased moral responsibility (for human life and honour) and, therewith, domestic disorder (irregular working hours, work with criminogenic objects, etc.);

– means of labour – functional (developed intelligence, style of speech, manner of behaviour) and automated (gadgets and professional office equipment);

– the purpose of the work – gnostic (to determine the cause of the offence, determine the type of legal situation, and find a legal analogue of this situation to determine the level of responsibility) and transformational (to turn things into evidence, choose the most appropriate way to present information, restructure social relations – by restoring justice, change the status of the offender – by applying responsibility).

Conclusions

The study outlines various groups of factors and their interaction in developing a prosecutor's personality. As a result of the analysis of biological factors, the author substantiates the importance of being aware of the neuro bases of one's behaviour, which will allow, on the one hand, developing skills to manage it, and, on the other hand, learning to understand the behaviour of suspects and accused persons. The key psychological factor is the necessity to maintain a balance between free will and a sense of duty. The social factors of the prosecutor's professional actions are defined as dependence on various conditions, circumstances, situations, etc.

It is proved that all three main groups of factors of influence that mostly affect each person: biological, psychological and social – were not chosen by chance, but with consideration of the verbal behaviourist (speech and behavioural) priority of the prosecutor's professional activity; they demonstrate their biopsychosocial predetermination as a physically healthy person, a mentally appropriate social subject and a socially adapted specialist.

Without diminishing the importance and influence of other factors of professional activity, including those previously analysed, it is necessary to acknowledge the dominance of social factors, considering the constant dynamic development of humanity. To some extent, it is explained by the rapid rise of the role of information and information technology, increased concern about the problems of human life and the preservation of the gene pool, non-standard working conditions, crises and pandemic challenges, military conditions and all related problems. After all, all of this has a certain impact on professional activities in all areas, including the protection of human rights and freedoms, where the prosecutor's office occupies an important niche.

Further investigation of this subject involves a detailed study of the prosecutor's office as a professional environment with its specific features, institutional and legal guarantees, and personal and moral mechanisms for implementing the functional purpose of the prosecutor in Ukraine.

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Біопсихосоціальні чинники професійної діяльності прокурора

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Анотація. Досліджувана тема варта уваги правників, адже українське суспільство дедалі частіше зважає на чинники, що формують професіоналізм усіх учасників юридичної практики, зокрема судочинства. Особливу актуальними стають нестандартні підходи, один з яких запропоновано в статті. Мета дослідження – розглянути професійну діяльність прокурора в біологічному, психологічному й соціальному контексті; на основі цього визначити й описати чинники внутрішнього та зовнішнього впливу на неї. Серед ключових методів дослідження – спостереження та моніторинг прокурорської діяльності. У статті відтворено триєдину (біопсихосоціальну) основу сутності людини, у якій філософія виступає методологією структуризації трьох основних наук про людську поведінку. Виокремлено особливості цієї поведінки залежно від елементів предмета вивчення (наприклад, інстинктів – у біології, свідомого і підсвідомого – у психології, адаптації до колективу – у соціології), а також цілісного предмета вивчення – людини. На основі різних описів «професійних формул» і «професіограм» у статті схематично відтворено модель професійної діяльності прокурора з огляду на предмет праці – людину та знакові системи; умови праці з підвищеною моральною відповідальністю; функціональні й автоматизовані умови праці, а також гностичну і трансформаційну мету праці. Не применшуючи важливості та впливовості кожного із чинників професійної діяльності, визначено домінування саме соціальних чинників. Таке домінування пояснено стрімким піднесенням ролі інформації та інформаційних технологій, підвищеною стурбованістю проблемами життєдіяльності людини та збереженням генофонду, нестандартними умовами праці, кризами та викликами пандемій, воєнними умовами та іншими супутніми проблемами. Адже все це певним чином впливає на професійну діяльність у різних сферах, зокрема у сфері захисту прав і свобод людини, де важливу нішу займає прокуратура. Стаття відображає авторську позицію і новаторський підхід з огляду на важливість сфери дослідження, розкриття підстав і чинників формування світогляду прокурора та визначення його професійної орієнтації в сучасному світі. Практична цінність дослідження полягає в тому, що воно розкриває чинники пливу на професійну діяльність прокурорів, знання про які допоможе навчитися нівелювати ті з них, які мають негативний вплив, і посилювати дію позитивних

Ключові слова: біологічний чинник, психологічний чинник, соціальний чинник, вербальний біхевіоризм, професіоналізм, професійне середовище

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The psychological ability to perceive the world in conditions of danger

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Abstract. The relevance of the study is determined by the stage of active changes in the modern world in the context of the global coronavirus pandemic in recent years, and for Ukrainian society, the introduction of martial law due to the aggression of a neighbouring country, as a result of which Ukrainians experience a sense of danger and an uncertain future, financial instability in difficult-to-control life circumstances that affect personal development. Therefore, the purpose of this research work is to determine and identify the psychological ability of a person to use personal resources to overcome difficulties in conditions of danger, to adapt, and to develop positive attitudes and skills during stressful and crises. The theoretical and methodological foundation of the study is conditioned upon the generalisation of many years of experience in exploring human psychological states, namely, the frustration of the individual in conditions of danger and the possibilities of adaptation to current living conditions. An important tool for exploring the subject was a survey conducted among internally displaced persons and people who did not leave their homes during the war. The research presents results that reflect partial apperception due to the isolation of people in previous years due to the pandemic and, as a result, the successful constructive experience of overcoming the new crisis, the individual's adaptability and desire to overcome circumstances and generating conscious behaviour in times of danger. The results obtained can be used in further scientific research on the issue of a person's psychological ability to perceive the world in conditions of danger, and for practical purposes for social organisations that help to overcome the consequences of destructive mental states in conditions of danger

Keywords: personal resources of a person, life skills, psychological conditions of danger perception, frustration, development of positive moods, social adaptation in conditions of danger

Introduction

Crisis circumstances that significantly affect a human personal development and pose a threat to their vital activity can result in irreparable mental or physical harm, where unforeseen situations require a specific level of development of a person's psychological resources. It is through living with, understanding, and dealing with difficult and uncontrollable life circumstances that a mature personality is developed, becoming integrated and psychologically appropriate.

The implementation of any activity, including the psychological ability to perceive the world in conditions of danger, requires an individual to master specific means and be ready to successfully perform them through the acquired knowledge and skills. The level of development of these knowledge and skills largely depends on a person's conscious attitude to their development (Christie, 2021). Considering the individual characteristics of a person is the main condition in the process of designing the necessary mental developments, where a person can act accurately, quickly and rationally, considering their abilities, theoretical knowledge and previous experience.

The life supports that a person has at their disposal and that allow providing basic needs for survival, physical comfort, security, respect and involvement in society, and self-realisation in society can be defined as human resources, where the role of psychological resources is the ability to maintain one's mental balance in stressful life circumstances. Thus, in the works of A.A. Derkach (2006), the field of exploring human resources, which are described as mental states, abilities and personal qualities that can ensure the optimisation and efficiency of their activities, is traced. The researcher defined such phenomena as a psycho-technology of self-regulation and self-management of a person's activities. Exploring the problem of the personal and professional potential of management personnel, V.N. Markov (2004) defines resources as an integral system constantly developing and updating. Thus, the development of a person's psychological resources is an integral part of their worldview, habits and skills, which are developed in specific circumstances and implemented based on the experience gained and which are updated to overcome crises and solve specific problems.

A person's perception of the world occurs when all sensations are synthesised, establishing the integrity of the environment, which includes the experience gained, and the comprehension of the perceived is based on emotions and feelings (Tindle & Moustafa, 2021). One of the most important features of perception is apperception, which determines the dependence of orientation and content through human experience, i.e. the more knowledge a person has about a

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specific object, the more accurate and complete their perception of that object is.

Modern people increasingly find themselves in unpredictable life circumstances, and their behaviour in some situations reflects their inner nature, and aggression does not always find a constructive solution. Frustration is one of the leading causes of aggressive behaviour, and each person experiences it differently (Krahe, 2020). Aggression can be self-regulated through self-psychology, but this practice is frequently criticised by scientists (Hellinger & Carr, 2021). Anxiety – one of the emotional reactions of a person to a threat to their life or activities. It manifests itself as uncertainty in one's actions, helplessness, and powerlessness in the face of external factors. Awareness of danger can cause a feeling of fear or panic, or, on the contrary, a person becomes more cautious and careful (Surzykiewicz *et al.*, 2022). The development of post-traumatic stress disorder is not an isolated phenomenon among victims of armed conflict (El Baba & Colucci, 2018). A person's resistance to environmental conditions, and the level of adaptation to these conditions, is determined by a set of personality traits and indicates the individual's psychological adaptation. It is associated with changes in a person's life and social environment and is continuous. Social adaptation reflects the adaptation of a person or a particular social group to the social environment based on the value orientations of the individual and the community, the assimilation of provisions, customs, traditions, etc. Social attention plays an important role in the process of social adaptation, and the human brain has a special "detector" to identify it (Ji *et al.*, 2020).

After analysing the research of modern scholars, it was established that this problem has been widely studied in recent years, but there is no model for a quick and systematic approach to determining the adverse mental consequences of traumatic events that have caused social and psychological frustration. It complicates the search for effective methods of further targeted development of positive attitudes and social adaptation of the individual in conditions of danger.

The main purpose of the research is to disclose the phenomenon of a person's psychological ability to use personal resources to overcome difficulties in conditions of danger. The scientific originality of the research is to explore adaptive techniques that can be applied in situations of real risk, such as a global pandemic or a full-scale war. In the period of current realities for Ukrainian society, the subject of the development of human psychological resources in crises reflects the relevance of scientific research and provides for the further use of the obtained results in social work with the population.

Materials and Methods

The foundation of the methodological approach in this research is a qualitative combination of methods of systematic analysis of the development of human psychological resources, generalisation of previous experience in exploring the state of frustration and synthesis of the adaptive capabilities of the individual within the framework of the established psychological perception. The research on the issue of the human ability to adapt, positive behaviour and overcome the difficulties of everyday life in adverse situations involves the search for a generalised understanding of the development of the necessary psychological skills of a person to determine effective ways to overcome the consequences of destructive mental neoplasms that arise in conditions of danger. The planning and conduct of the research were based on a systematic theoretical framework, which became a qualitative foundation for the subsequent experiment.

The theoretical analysis of the sources on the subject of the research work allowed reviewing the long-term experience of researchers to explore the problematic issues related to the development of psychological skills of the individual, their perception of the world, and the possibility of psychological and social adaptation in times of crisis.

The research work, conditioned upon the purpose, was performed in three stages. In the first stage, the theoretical foundation of the study was identified and analysed – psychological literature on the subject of the research. The method of analysis is used here to substantiate the main issues and basic concepts of the research problem and to develop the scientific framework of empirical research.

The second stage of the research on the psychological skill of perceiving the world in conditions of danger was designed to find and identify appropriate research tools and methods, form a sample, and analyse the results. The experimental study was based on the theoretical data obtained and designed to determine the mental states of an individual during traumatic events, to identify their coping strategies during stressful everyday life, and to determine the level of self-efficacy.

This stage resulted in the development of a hypothesis based on the probable assumption that people who have become internally displaced persons (IDPs) in Ukraine since the introduction of martial law experience deeper frustration and are slower to adapt to new conditions than people who have remained in their permanent place of residence and are not going to leave it. The hypothesis resulted in the development of two samples. The study involved 268 respondents aged 18 to 65, including 134 women and 134 men. The symptoms of post-traumatic stress disorder are the same for both genders, but women experience them more deeply than men. People of absolutely different ages can get PTSD, thus, age characteristics did not affect the final result. They were offered the same conditions for the experiment, based on an online survey with subsequent analysis of the results. The participants of the survey were internally displaced persons (IDPs) in the number of 143 respondents who moved to Pyriatyn, Poltava region, from different cities in Ukraine. The sample for the second group consisted of residents of Kyiv, namely teachers and students of the National University of Life and Environmental Sciences of Ukraine (NULES) who had remained in the city since the introduction of martial law.

The survey consisted of three stages:

– identification of anxiety, frustration, aggression, and rigidity due to the circumstances that have arisen in recent months in Ukraine (Ilin & Kovalev, 2004);

– determining the dominant coping strategy of the individual (Amirkhan, 1990);

– identification of respondents' self-efficacy, which is manifested in feelings, thoughts, and actions (Rotter, 1966).

In addition, an analytical comparison of the survey results with the conclusions of other scholars on the research problem is made.

The third stage of the research allowed defining the final results of the theoretical study and the experiment. The conclusions of the research work can be used in further

scientific studies of the psychological ability of the individual to perceive the world in conditions of danger, and for practical purposes for social organisations supporting the overcoming of the consequences of destructive mental neoplasms in conditions of danger.

Results

The problem of the psychological ability to perceive the world in conditions of danger has been widely explored for many years, but the lack of a model for a quick and systematic approach to identifying adverse mental consequences due to traumatic events that caused social frustration and are associated with the inability to influence their course has necessitated the definition of aggregate methods for exploring the components of this phenomenon, which involves the further purposeful development of positive attitudes and social adaptation of the individual in conditions of danger.

An important aspect of scientific research is to determine the mental states of an individual, their inherent coping strategies, and the level of their self-efficacy in conditions of danger, as if a person has a high level of frustration for a long time, this results in a disorganised emotional state and general mental depression. Stressful events and troubles in a person's life affect their psyche and trigger the corresponding processes of receiving, interacting, and processing information, which is reflected in the person's perception, thinking, memory, and emotions. Due to the experience gained, specific mental states are developed that affect human behaviour, both in everyday life and conditions of danger (Benuto *et al.*, 2022).

Crisis experiences do not allow for planning one's future, and difficult life situations cause it to narrow, perspective to be lost, and anxiety to develop, which results in aggression and adverse consequences that affect a person's ability to work, and their well-being, and disrupt relationships with others. Very strong feelings can provoke a sense of rejection, and adverse factors can not be perceived constructively. And while stress is primarily tension, the state of frustration begins as anxiety and can further manifest itself through irritation, hostility, anger, or, on the contrary, a person becomes passive, lethargic, and apathetic.

Considering the current circumstances in Ukraine, where a large number of people have been forced to leave their homes, and based on research conducted in recent years, it has been suggested that internally displaced people experience deeper frustration and are slower to adapt to new conditions than people who have remained in their permanent place of residence.

To identify the psychological ability of a person to use personal resources in overcoming difficulties in conditions of danger, and the ability to adapt to new conditions in stressful situations, a psychodiagnostic toolkit was developed, which provided for the determination of mental states of a person in times of danger, the disclosure of coping strategies of their behaviour during stressful everyday life and the determination of the level of self-efficacy of an individual, which affects positive social consequences.

The analysis of the results of the first stage of the survey (regarding anxiety, frustration, aggression, and rigidity) demonstrates that most respondents in both groups have an average level of anxiety, which indicates that they experience emotional discomfort associated with an internal sense of threat or danger to a person.

An important indicator is the level of frustration. This indicator is higher in the IDP group, with 50% of respondents having a high level. The average level of frustration prevails among the respondents of the NULES group (56%). These results indicate that for the IDP group, mental conditions associated with adverse experiences are more pronounced (Fig. 1).

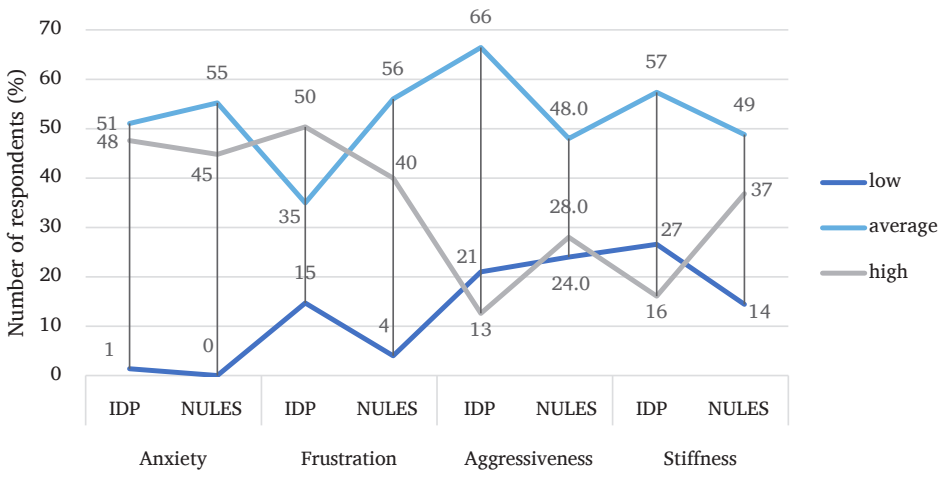

Figure 1. Analysis of the results of the study "Self-assessment of mental states"

The study demonstrates that aggression among the participants of the experiment is expressed at an average level, but some participants with a high level find it difficult to work with people, their aggression is manifested in demonstrating superiority over others, which results in destructive consequences of interaction in society. According to the stiffness scale, the IDP group is more flexible to change, with only 16% having high levels of stiffness. For the NULES group, this figure reaches 37% and indicates difficulty in changing planned activities, and unwillingness to change their views and beliefs.

Human behavioural strategies are developed throughout life, and since the modern personality has been in adverse conditions and crises in recent years, it is necessary

to understand that stress management is an integral part of an individual's activity designed to maintain and support a specific balance between the requirements of society and the resources that correspond to these requirements (Strauss *et. al.*, 2019). Knowledge of the patterns of mental functioning and one's individual and psychological characteristics is an important condition for preventing the adverse effects of stress, dangers and threats in social interaction. The psychological ability to perceive the world in conditions of danger reflects the need for a person to think quickly and make the right decisions in crises and in times of uncertainty. For some, it is an opportunity to demonstrate their creative leadership position, while for others it is additional stress that complicates the decision-making process.

The analysis of the results of the second stage of the questionnaire (study of coping strategies) identified a pronounced active behavioral strategy of problem solving among the IDP sample (49%), which involves using all personal resources to find ways and means to solve stressful situations and problems (Fig. 2).

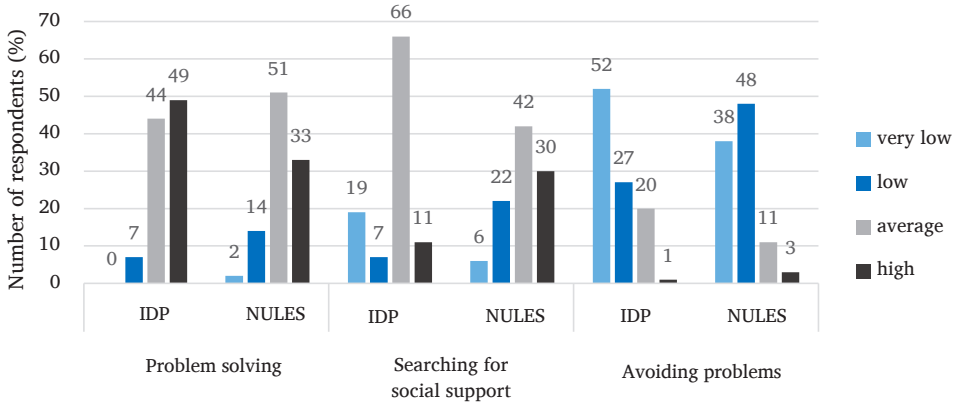

Figure 2. Analysis of the results of the survey "Coping Strategies Indicator", CSI (Amirkhan, 1990)

The strategy of seeking social support involves effective problem-solving through the support and assistance of society or family, friends, and loved ones. The survey demonstrates that 30% of respondents in the NULES group use this strategy to overcome difficult life situations, while only 11% of IDPs use this strategy. In addition, the analysis of the results of the study demonstrated that the two groups of subjects do not use the avoidance strategy in crises. The respondents do not try to avoid solving problems and seek to find a way out of difficult life circumstances and not develop a maladaptive and pseudo-authoritarian state in their behaviour. However, it is more effective to use all three copying strategies depending on the situation. It allows an individual to overcome difficulties on their own, receive support from society, and avoid facing a traumatic situation by predicting its adverse consequences.

At the last stage of the survey, it was identified that a low level of self-efficacy brings a person closer to feelings of helplessness, anxiety, and depression, while a high level facilitates decision-making and determines their skills and abilities on the way to achieving a purpose. In difficult life situations, self-efficacy can increase or decrease motivation to solve problems (Zlyvkov *et al.*, 2016). The analysis of the survey results presented that the majority of respondents in the IDP group (57%) and the NULES group (56%) have a level of self-efficacy above the average.

The greatest impact on a person's self-efficacy is success in solving specific objectives. A high level of self-efficacy contributes to positive social outcomes and is associated with a person's mental and somatic health, successful social integration, and high achievement. Such a level is typical for 28% of the IDP group and 20% of the NULES group (Figure 3).

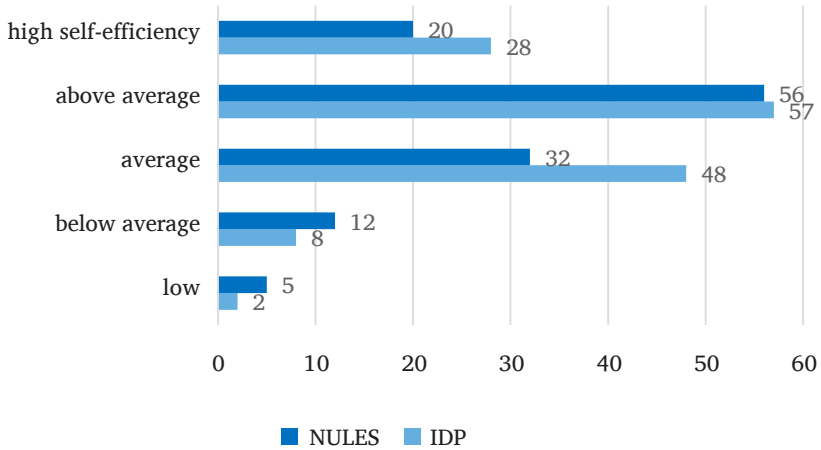

Figure 3. Analysis of the results of the "General Self-Efficacy Scale" survey

The perception of emotional and affective processes can affect a person's self-efficacy positively (elation, desire for action) and adversely (anxiety, fear, constraint). People with high self-efficacy set higher purposes and achieve them.

The results obtained demonstrate that a person's psychological resources are determined by their qualities, contribute to the achievement of significant purposes, are updated as required, and help to overcome difficult life situations. The experimental research stage involved testing the hypothesis, which was partially confirmed. Since the introduction of martial law, internally displaced persons have been experiencing deeper frustration and anxiety, which are resolved by using a constructive coping strategy through active problem-solving behaviour. According to the survey results, the IDP group has higher self-efficacy scores and greater plasticity in terms of the necessity to accept changes in their lives (behavioural changes, search for ways to solve problems), and thus their adaptive capacity, compared to respondents who remained in their permanent place of residence, is greater, which refutes the assumption that the IDP group is slow to adapt to new conditions.

Discussion

Ukrainian society is going through a difficult time due to the violation of the country's integrity, large-scale hostilities, and the inability to continue working and living a peaceful life. Many people are forced to leave their stable lives and adapt to new realities. A significant part of the population experiences fear and anxiety for their own lives and the lives of their loved ones; traumatic circumstances exacerbate mental stress on the nervous system, and there is an increase in frustration and maladjustment, both psychological and social. The body's protective response to external stimuli is stress, which manifests itself on the physical, mental and emotional levels and allows adaptation to the necessary changes. One of the signs that allow surviving traumatic circumstances is psychological resilience, which determines the ability of the psyche to recover from tragedies, problematic situations, and stress. Awareness of one's own needs and emotions allows a person to be psychologically resilient and develop conscious behaviour and appropriate responses to traumatic events.

Comparing the results of the study with those conducted in early April 2022 by the Sociological Group "Rating" (2022) demonstrates that anxiety and frustration among Ukrainians have not decreased, but adaptive capabilities have increased. The necessary external resources were designed to support society and develop social ties for citizens, and internal resources were accumulated to enrich a person's potential, skills, and ability to perceive the world in a dangerous environment.

The search for ways to overcome difficult and adverse life circumstances involves using specific coping strategies. Coping, as an individual way of dealing with a particular situation, is an attempt to overcome internal and external demands that a person experiences as stress or tension, and that exceed their adaptive resources (Voitsekhovska & Zakalyk, 2016). An analysis of psychological research has demonstrated that there are several classifications of coping strategies. Ya.Ye. Liashyn (2017) divide coping strategies into two types, based on the emotionally oriented and problem-oriented approach, where the first one covers certain actions and thoughts of a person designed to reduce the impact of a stressful situation on the psyche of an individual, and the second one is designed to try to improve ties with society. In addition, coping strategies can be considered general behavioural and socially oriented (Vagni *et al.*, 2022). Coping strategies are divided into three groups, which include an active-cognitive strategy, where a person assesses the situation in general, an active-behavioural strategy designed to solve the immediate problem situation, and an avoidance strategy which involves avoiding confrontation with a crisis. The review of scientific works confirms that coping is a lever of a person's behaviour, emotions, and life orientation in conditions of danger. Behavioural strategies are dynamic and can change depending on different situations, and the combination of all coping strategies in one's behaviour allows a person to effectively overcome difficulties, predict consequences, and maintain connections in society. Coping strategies are almost a conscious effort to constructively cope with a traumatic situation (Liashyn, 2017).

The ability of a person to withstand difficult life circumstances and problematic situations is ensured by resilience, which is based on a system of beliefs and attitudes that are designed and developed throughout life. Therewith, this ability reflects a person's resources, both as qualities and attitudes, and as a state and a means to achieve a purpose, as an individual's inner power, which is necessary for constructive problem-solving. The scientific works of A.A. Derkach (2006) trace the course of exploring human resources, which are characterised as mental states, abilities and personal qualities that can ensure the optimisation and efficiency of their activities. The researcher defined such phenomena as a psycho-technology of self-regulation and self-management of one's activities as a person. I. Rybkin (2005) refers to personal resources as emotional balance, leadership, high self-esteem, responsibility, psychological flexibility, purposefulness, and adaptability. V.N. Markov (2004) defines resources as an integral system that is constantly evolving and updating. Psychological resources can be divided into external resources that provide social support, specific statuses and roles in society, and internal resources that are characterised by the individual's potential, skills, and nature, i.e. those qualities helping a person from within. However, psychological resources are closely related, and when some external resources are destroyed, internal resources are gradually lost, i.e., stable external resources provide reliable support for internal resources, provided that internal resources have already been developed.

For Ukrainian society, the present reflects the impossibility of continuing a sustainable life, and more and more frequently, modern people are in unpredictable life circumstances. The behaviour of people in some situations reflects their inner nature when aggression can become destructive. Frustration is one of the leading causes of aggressive behaviour, and each person experiences frustrating events differently. Internal sources of frustration are related to feelings of disappointment, contradictory purposes of the individual, and feelings of self-doubt and fear of different types of social situations. External sources of frustration are associated with physical obstacles to achieving purposes and a sense of wasting time (Hasanova, 2022). An analysis of psychological literature has identified that the behaviour of a frustrated person eventually becomes apathetic and irritable, and the person feels the need for protection and personal safety. Frustration is a severe emotionally negative and tense mental state of a person, which is preceded by the inability

to satisfy important personal needs due to the lack of means of influencing external factors. The state of frustration can be a particular incentive to change or improve one's lifestyle (Krahe, 2020). Adverse changes in personality and behaviour can occur due to prolonged exposure to frustration, therefore, it is important to develop emotional resilience.

Psychological resilience determines a person's ability to cope with crisis circumstances, trauma, tragedies, and sources of stress. The more resilient a person's psyche is, the better they overcome difficulties and recover faster from adverse situations. Under the influence of unfavourable factors, changes occur in the human body (on the physical, emotional, and psychological levels), where the mental state of an individual is an extremely sensitive indicator of change. Human stress resilience in the social and psychological context is considered as an individual's ability to adapt to society, maintain relationships, performance, and health, and achieve purposes (Benuto *et al.*, 2022). Increasing a person's stress resistance or preserving it is associated with the search for resources helping to overcome the adverse effects of stressful situations (Carroll, 1992).

Social and psychosocial support plays an important role in stress resilience, acting as a buffer between immediate stress and its adverse effects. Stress as a physiological reaction of a person mobilises the body's reserves and prepares a person for struggle, escape or other physical activity. Psychological signs of stress include slower mental operations, weakened memory, decreased attention and sensitivity, and inhibited decision-making (Strauss *et al.*, 2019). The adverse effects of long-term stress, or due to the lack of necessary personal resources, can be various mental disorders, such as depression, panic disorder, social and other phobias, eating disorders, obsessive-compulsive disorder, and generalised anxiety disorder and post-traumatic stress disorder (Burda, 2019). It is extremely important to understand and know the patterns of your psyche and individual characteristics, which helps you cope with traumatic situations and if you cannot help yourself, to consult a psychotherapist in time. Every day, the number of people in Ukraine who need psychological help is growing, and the issue of timely access to and receipt of substantial support from a psychologist is becoming more and more important, especially for those categories of people who have been in situations of acute stress over the past few months since the introduction of martial law. A person who has been in dangerous situations that threatened their life or the lives of their family, friends, or acquaintances can develop feelings of guilt, sleep disorders, nightmares, and flashbacks of traumatic circumstances. If attempts to cope with these symptoms on their own are futile, this can increase conflict, exacerbate or lead to psychosomatic disorders, alcoholism, and in extreme episodes, even suicide (Ota *et al.*, 2020). The empirical study demonstrates that among the participants in the experiment, most respondents in both samples have an average level of aggression, but for 53 participants with a high level of aggression, it can be destructive in social interaction, indicate a deeply frustrating event, and interfere with adaptation, both psychologically and socially.

Resilience to environmental conditions, and the level and result of adaptation to them are the aggregate properties of human psychological adaptation. Acceptance of responsibility and confidence in one's ability to influence events are significant factors in overcoming difficulties (Horswill & Carleton, 2021). W. Frankl (2020) notes that when a person understands the purposes and meaning of life, resilience to the impact of traumatic circumstances increases.

The military conflict on the territory of Ukraine is forcing citizens to continuously adapt to social changes, look for new approaches to adaptation in the face of danger, and adjust to the consequences of traumatic events. Adaptability is manifested in emotional states, balance, mental and emotional stability, lack of a sense of threat and confidence in one's actions, appropriate self-esteem, responsibility, and the ability to overcome obstacles. The effectiveness of a person's adaptation depends on the individual's perception of themselves and their social connections. Psychological adaptation is a continuous process characterised by the interaction between the individual and the environment.

Socio-psychological adaptation is a complex process that unites a person and their environment in a new system that involves mutual bilateral changes. Social adaptation for an individual is associated with the process of socialisation (cultural provisions, values, behavioural provisions), and for society, it is reflected in the regulation of social relations and their institutionalisation of suicide (Ota *et al.*, 2020). The real potential for effective adaptation is established by human resources, which help individuals to overcome adverse external factors and adapt to them using psychological and life resilience, self-efficacy, mutual assistance, social support, and mobility.

Self-efficacy plays an important role in solving problems, and it develops throughout a person's life along with the experience gained, new skills and knowledge. Emotional states, body reactions, and high levels of stress affect a person's sense of their abilities. However, professional psychological assistance to victims of war should be available in any case (Barbui *et al.*, 2022).

The pilot research is limited to two territorial communities. The prospect of further experimental studies throughout the country will provide a broader understanding of the problem of a person's psychological ability to perceive the world in conditions of danger and will contribute to finding ways to effectively overcome the consequences of destructive mental disorders that have emerged as a result of traumatic events.

Conclusions

The conducted scientific research on the problem demonstrates that the implementation of any activity requires a person to master specific means and readiness for their successful use through the acquired life experience, specific skills and abilities that depend on the conscious desire of a person to establish and develop them.

The experimental research stage involved testing the hypothesis, which was partially confirmed. The results of the experiment confirm that respondents in the IDP group experience deeper frustration and anxiety. However, this group proved to be more flexible in accepting changes in their lives. Participants use a constructive coping strategy through active problem-solving behaviour, and their self-efficacy scores are higher compared to the NULES group, which means that their adaptive capacity resources are greater, refuting the assumption that the IDP group is slow to adapt to new conditions.

The prospect of further careful research into the psychological ability of an individual to perceive the world in conditions of danger will contribute to the search for ways to effectively overcome the consequences of mental disorders that have emerged during difficult life circumstances.

Surveying within the framework of this problem, which will include most of the society in the country and abroad, will allow for a more precise understanding of the processes of development of a person's psychological ability to use personal resources to overcome difficulties in conditions of danger, and skills of adaptation and adaptation to new living conditions.

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Психологічне вміння сприймати світ в умовах небезпеки

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Анотація. Актуальність дослідження визначена етапом активних змін сучасного світу в умовах всесвітньої пандемії коронавірусу в останні роки, а для українського суспільства, введення воєнного стану через агресію сусідньої країни, унаслідок якої українці переживають відчуття небезпеки та невизначеного майбутнього, фінансову нестабільність у важко контрольованих життєвих обставинах, що впливають на особистісний розвиток людини. У зв'язку з цим мета даної науково-дослідної роботи полягає у визначенні та розкритті психологічного вміння людини задіяти особистісні ресурси в подоланні труднощів в умовах небезпеки, адаптуватися, формувати позитивні настрої та навички під час стресових та кризових ситуацій. Теоретико-методологічна основа дослідження зумовлена узагальненням багаторічного досвіду вивчення психологічних станів людини, а саме фрустрації особистості в умовах небезпеки та можливостей адаптації до сьогоднішніх умов життя. Важливим інтрументом вивчення теми стало опитування, проведене серед внутрішньо переміщених осіб та людей, які не залишили своїх домівок в умовах війни. У статті представлено результати, які відображають часткову апперцепцію у зв'язку з ізольованістю людей у попередні роки через пандемію і, як наслідок, вдалий конструктивний досвід виходу з нової кризи, пристосованість індивіда та прагнення перемагати обставини й генерувати свідому поведінку в період небезпеки. Отримані результати можна використати в подальших наукових дослідженнях проблеми психологічного вміння особистості сприймати світ в умовах небезпеки, а також в практичних цілях для соціальних організацій, що допомагають долати наслідки деструктивних психічних станів в умовах небезпеки

Ключові слова: особистісні ресурси людини, життєві навички, психологічні умови сприйняття небезпеки, фрустрація, формування позитивних настроїв, соціальна адаптація в умовах небезпеки

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Economic and psychological aspect of legal support of probation

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Abstract. The relevance of the study is conditioned upon the necessity of wider implementation of sentences alternative to imprisonment. It is largely connected to the international commitments that Ukraine has made in the process of European integration. The purpose of the study is to determine the economic and psychological conditions for the functioning of the legal institution of probation. The research uses dialectical, comparative legal, systemic, Aristotelian, structural and functional methods. The research defines the concept of probation as a system of supervisory and social and educational measures for convicts who have been sentenced to a non-custodial criminal sentence. The author presents the stages of implementation of the probation institute in Ukraine and explains the essence of probation, its types and functions. The author identifies the socio-psychological advantages of such an institution and substantiates the economic feasibility of probation supervision as compared to other punishments. It is established that the introduction of this institution provides several benefits for the State, society and the offender. The author outlines the benefits for the state in terms of reducing the number of prisoners; reducing the crime rate; compliance with international standards; and economic benefits. The benefits to society are identified, which include the fair administration of justice and the protection of the community from recidivism. In addition, attention is devoted to the benefits for the offender, namely, the opportunity to change without being imprisoned, preservation of human relations, housing and work. It is substantiated that in the current circumstances, the introduction of probation supervision is a necessity conditioned upon economic expediency and the possibility of administering justice more humanely. The results of the research can be used for implementation in the area of regulation, and for writing monographs, scientific researches, dissertations, drafting abstracts, and preparing reports at scientific conferences

Keywords: correction, punishment, alternative punishment, humane justice, proceedings

Introduction

The birth of the institution of probation in the 19th century was caused by social and cultural prerequisites based on the ideas of humanism. The ground for this was the thesis that prisons are unable to release criminals as full-fledged members of society from penitentiary institutions. The ground for this were the theses that prisons are unable to release criminals as full-fledged members of society from penitentiary institutions.

The term "probation" is not new in the legal field (translated from Latin, – "to put under supervision" or "to test"). However, as a scientific concept, the treatment of criminals is a relatively new phenomenon.

Most countries in the world nowadays are moving from a well-established list of sanctions to a set of measures to influence the offender. These are by no means included in the concept of "punishment", but rather a system of specific penalties, restrictions, conditions, obligations and duties. It is a transitional process from "execution of punishment" to "management (governance) of the application of punishment".

Probation is a system of social, educational and supervisory measures implemented by a court decision and according to the law on the application of specific types of non-custodial criminal penalties to convicted persons (Law of Ukraine "On Probation", 2015). The purpose of probation

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can be defined as the correction of convicts, prevention of recidivism of criminal offences by offenders, and provision of the court with characteristics of persons accused of criminal offences to determine a specific measure of responsibility for each person. It, in turn, establishes the conditions for the safety and security of society.

The relevance of the study is the necessity of scientific analysis of the legal foundation for probation in reforming the public administration system and increasing the effectiveness of combating crime. In Ukraine, the wider use of probation is caused by difficult economic conditions, which are particularly acute during the period of military operations.

Several scholars have devoted their works to the development of the criminal-executive and administrative-legal principles of probation, and political and economic support of the activities of public authorities. I.G. Bogatyrev (2005) was one of the first in Ukraine to substantiate the essence of the concept of "criminal punishments not involving deprivation of liberty", proposed periodisation and classification of such punishments in Ukraine, analysed current problems in this area and suggested ways to solve them. V.M. Dremin (2007) reviewed the foreign and international experience of the probation institute, focusing in particular on the specific features of the functioning of the Inner London probation service, and suggested adopting the successful practice of Western countries to improve the Ukrainian criminal justice system. S.F. Denisov (2010) raised the problem of probation in connection with the practice of preventing youth crime. The researcher examined the key areas of prevention of youth criminogenic behaviour in the European Union and suggested ways to use foreign experience in Ukraine. I.S. Alekseev (2015) analysed the main provisions of the Law of Ukraine "On Probation" (2015), in particular, noted the importance of such an innovation as an independent social study of the accused, which is designed to determine the risk of re-committing a crime and the possibility of correction without imprisonment.

The issue of probation is considered in detail in the works of Ukrainian researcher D.V. Yagunov (2007; 2011), in particular, in his work "Probation service: Concept, principles of activity, organisational structure" the principles of the probation service are considered. V.O. Merkulova and O.A. Gritenko (2019) defined the concept of the category "probation". S.V. Siomin (2014) analysed the issues of the State Penitentiary Service of Ukraine and considered the European Probation Rules in the context of the modernisation of the Ukrainian penitentiary system; S.I. Simakova and O.H. Melnyk (2019) explored probation as a mechanism of international experience in working with offenders; R. Basenko *et al.* (2021) devoted the research to the coverage of theoretical and practical aspects of the development of the probation institute in the Ukrainian and European legal and socio-cultural space; N. Perepichka (2019) identified areas for improving the legislation governing the probation institution in Ukraine.

However, although some problems of the probation institute have already been the subject of scientific research, there has been no comprehensive study of the economic and psychological aspects of legal support for probation.

The purpose of the research is to determine the economic and psychological aspects of legal support for probation. According to the defined purpose, the following tasks have been set: to determine the stages of implementation of the probation institute in Ukraine; to identify the essence of probation, its types and functions; to identify the social and psychological benefits of this institute; to substantiate the economic feasibility of probation in comparison with other punishments.

Materials and Methods

The methodological foundation of the research was general scientific and special methods.

The dialectical method of cognition is the methodological foundation of the research. Through it, the problems of probation are analysed in their interconnection and interdependence, integrity, dynamics and comprehensiveness. Using the comparative legal method was determined by the nature and scope of the subject of the research. It was used to compare the analysis of Ukraine's previous and current experience in the functioning and organisation of the probation institution. The systematic method was used to explore the components of probation, and to identify the mutual influences and interrelationships of the types of probation procedures on the offender. The author uses historical and legal methods to analyse the evolution of the probation institution and trends in legal regulation. The author uses the Aristotelian method to define the main concepts in this area of relations (probation, pre-trial probation, post-trial probation, and probation programme). The structural-functional method was used to determine the role and place of the probation service in the mechanism of bringing offenders to justice.

Results and Discussion

The emergence of probation in the 19th century was caused by specific social and cultural preconditions of historical development. During this period, European states began to introduce quite new institutions for the 19th century, such as suspended sentences and supervised release (O'Brien, 1998). At the beginning of the 20th century, two main forms of probation were established in the legislation: Anglo-American and Franco-Belgian. The common and distinctive features of these forms of probation were determined by the types of the historical development of the national law of the state. Currently, probation is introduced in the legislation of the vast majority of countries around the world that are interested in reintegrating convicts into society (Albrecht & van Kalmthout, 2002). As research by foreign scholars demonstrates, the criminogenic impact of prisons on the financial and social side raises doubts about using prisons as a means of rehabilitation (Wodahl *et al.*, 2015).

Reforms in the penitentiary sector began to be based on the ideas of humanism. It was based on the thesis that prisons are unable to release criminals as full-fledged members of society from penitentiary institutions. The ground for this were the theses that prisons are unable to release criminals as full-fledged members of society from penitentiary institutions. Due to the inability to solve the main task of criminal punishment, which is the correction and social rehabilitation of offenders, and the general increase in the number of prisoners, criminal policy has been heavily criticised by international institutions.

An important incentive for the introduction of probation was the approximation of Ukrainian justice to international standards, and the introduction of a new system of criminal law measures inherent in a democratic society.

Thus, when deciding on the application of the probation procedure, Polish legislators obliged judges to adhere

to the principle of proportionality, which involves consideration of the circumstances of the offence, and the characteristics of the perpetrator. This individualises the probation programme (Pietryka & Ploszka, 2015). The probation programme in the Republic of Latvia is implemented in specific target groups. However, there are exceptional cases of applying for the programme on an individual basis (Latvian Valsts probācijas dienesta..., 2020).

Probation is a system of supervision and social and educational measures. Such measures should be applied according to the law. The ground for such application is a court decision. For convicts sentenced to a non-custodial criminal sentence, approximation to international standards of Ukrainian justice was a prerequisite for the establishment of the probation institution. It, in turn, resulted in the introduction of a new democratic system of criminal law measures.

The probation service has become the institution that implements alternative non-custodial sentences and implements probation supervision (Driomin, 2007). Such supervision involves behavioural control and the implementation of a social and individual psychological assistance plan. The probation service applies educational and preventive measures based on an assessment of the offender's requirements and the risk of reoffending. In addition, the probation officer conducts preventive and educational work.

The functional purpose of the probation service is to support the execution of non-custodial sentences, apply educational measures to convicts, and assist in the social rehabilitation of persons serving these sentences and those released on parole or under an act of pardon or amnesty.

The initial stage of reforming the penal system in Ukraine was the introduction of alternative sentences to imprisonment. In addition, the adoption of the Law of Ukraine "On Probation" on February 5, 2015, was crucial. The purpose of this law is to regulate activities related to the application of probation in Ukraine as a system of social, educational and supervisory measures for persons who are brought to criminal responsibility and those who are already serving a criminal sentence by a court decision (Law of Ukraine "On Probation", 2015). This law provided for the establishment of a probation service with all effective functions.

The introduction of probation bodies occurred through the reorganisation of the Criminal Executive Inspectorate, which ensured the execution of non-custodial sentences within the State Penitentiary Service of Ukraine. It allowed for a significant reduction in the cost of establishing the probation body, as the staff and material resources of the criminal executive inspection were available. In countries such as Canada, Sweden, Georgia, Norway, and Denmark, probation agencies, like in Ukraine, are part of the penitentiary service, while retaining a specific autonomy (Denisov, 2010).

According to the adopted law, the list of powers of the probation service was significantly expanded compared to the functions performed by the criminal executive inspection. Thus, according to the Law of Ukraine "On Probation", probation should perform the following functions: to execute punishment in the form of deprivation of the right to engage in specific activities or hold relevant positions, correctional and community service; to monitor the behaviour of persons released from serving a sentence with probation; to monitor the behaviour of women with children under the age of three and pregnant women released from serving a sentence; to prepare a pre-trial report on the accused; to execute some punishments not related to deprivation of liberty; to perform social and educational work with convicts; to send persons sentenced to restriction of liberty to correctional centers to serve their sentences; to implement a probation programme for persons released from serving a sentence on probation; to conduct measures to prepare for the release of a person serving a sentence of imprisonment for a fixed term or restriction of liberty; to implement other measures designed to reform convicts and prevent them from committing recidivism (Law of Ukraine "On Probation", 2015).

According to the legislation, the Criminal Executive Inspectorate for penalties alternative to imprisonment (correctional labour, community service, prohibition to hold specific positions and engage in some activities, release from punishment with probation) performed mainly a control function (Bohatyrov, 2005). As for individual preventive work, it was the responsibility of units of the internal affairs bodies, while social work was performed voluntarily by social policy bodies.

Currently, the probation service implements alternative sentences not involving imprisonment and conducts probation supervision, which includes behavioural control and a plan for individual psychological and social assistance, educational and preventive measures based on an assessment of the risk of recidivism and the needs of the offender. A probation officer, not an internal affairs body, performs educational and preventive work.

The current model of probation in Ukraine provides for the following types of probation: pre-trial, which is implemented during court proceedings; supervisory, which is implemented in the process of executing a sentencing alternative to imprisonment; penitentiary, which is applied during the period of preparation for the release of persons sentenced to imprisonment for a specific term (Law of Ukraine "On Probation", 2015).

Before the introduction of probation, the identity of the offender during the court investigation and after the sentence was passed was explored mainly for control and identification purposes. The personal needs and problems of the person who caused the criminal offence were not explored, and accordingly, no assistance was provided to resolve these issues (Yanchuk & Novokhatnia, 2019).

This problem is intended to be solved by pre-trial probation, which provides the court with organised information that describes the offender (Demura, 2019). It is done to allow the court to decide on the extent of the person's liability.

The law allows for the involvement of volunteers in supervised probation to supervise convicts and conduct social and educational work with them. A probation volunteer can be an individual who has reached the age of eighteen and is authorised by the probation authority to perform specific tasks related to probation on a voluntary and free-of-charge basis. The convicts with whom volunteers are involved have the right to choose the forms of volunteer assistance in the field of probation and to demand the replacement of the volunteer assigned to them (Order of the Ministry of Justice of Ukraine No. 98/5..., 2017).

It is important that, by the court decision, probation programmes with psycho-correctional content (e.g., overcoming bad habits, aggressive behaviour, psychological problems) or social rehabilitation programmes (acquiring positive social skills) are applied to a person released from serving a sentence with probation.

The task of probation programmes is to implement a set of measures necessary to correct the social behaviour of probationers (or its manifestations) and to develop socially favourable personality changes that can be objectively verified (Resolution of the Cabinet of Ministers of Ukraine No. 24..., 2017).

Probation should be designed for prevention, according to human rights activists, and people in prison should be taught to defend their rights by appealing to government agencies, rather than the way it frequently happens: through mass protests, self-injury, and hunger strikes (Furman, 2016).

In addition, probation officers perform their activities in closed institutions. They implement measures to prepare convicts for release, coordinating these measures with probation units at the place of residence of the convict after release or at the location of social adaptation institutions for released prisoners. In this way, a system of effective social support for released prisoners is being developed, starting with prisons (Aleksieiev, 2015).

According to its functional purpose, the probation service should apply educational measures to convicts, provide support for the execution of non-custodial sentences, and assist in the social rehabilitation of persons serving these sentences, and those released on parole or under an act of pardon or amnesty.

The main purpose of the post-trial area is to prevent repeat criminal offences, facilitate the offender's reintegration into society, and protect society.

One of the main activities of law enforcement agencies is to prevent recidivism. Recidivism is an indicator of the real inefficiency of the correctional system. In addition, they express growing distrust of it and, unfortunately, new victims.

An effective probation service can reduce recidivism and, as a result, significantly protect society. Thus, the main vector of work with offenders should be the introduction of a resocialisation policy of the correctional system.

The advantage of probation is manifested both in the humanity of the justice system and in its socio-economic feasibility. Thus, if the offender remains in society, the possibilities of their actual correction increase, the necessary social ties are preserved (establishment of a family unit), work is maintained (compensation for victims, development of the country's economy), and the adverse influence of other convicts in prisons is prevented (preservation of law and order).

Probation is an alternative to imprisonment. It establishes the preconditions for unloading prisons and saving money on the maintenance of offenders. Probation is possible during the trial, and after the sentence is passed, which is applied without isolation from society. It provides for monitoring the performance of duties imposed by the court. Specialists work with probationers to psychologically prepare them for a life where they do not have to commit offences. Such specialists should comprehensively analyse the needs of offenders, their problems, apply certain means of motivational influence to each offender, closely monitor changes and the person's condition, and promote change. It is a very complex system of changing the offender's worldview and reorienting their values.

In addition, a person who has committed an offence has the opportunity to change both external circumstances, such as the meaning and purpose of their life, and internal beliefs, all internal components, namely everything that is the core of their personality, their inner world.

From an economic standpoint, the budgetary burden of probation is less costly for the state than the maintenance of penitentiary institutions (staff, infrastructure, and maintenance of prisoners). An example is Finland, Sweden, Romania and Estonia, where the cost of organising probation per person is ten to eleven times less than the cost per prisoner (Aleksieiev, 2015). Thus, it is not difficult to calculate the benefits, considering that in European countries, only a quarter of the total number of offenders are imprisoned, while the rest are on probation. The appropriateness of probation is evident in the ratio of staff to offenders: while staff and prisoners are almost equal, the ratio of probation staff to offenders is twenty times higher.

Crucially, as a result of probation, a decent, full-fledged person returns to society, working, paying taxes, not violating the law, and starting a family. In addition, this system is more cost-effective compared to the huge costs of providing for each offender's imprisonment.

The main purpose of probation is to protect society, prevent repeat criminal offences, and reintegrate offenders into social life (Telefanko, 2018).

It is both the humanity of the justice system and the socio-economic feasibility of probation that demonstrate the benefits of probation. Thus, if the offender is left in society, the necessary social ties (family, friendships) remain, and the possibility of their real correction increases. Having a job provides an opportunity to compensate victims. In addition, the prevention of adverse influence in prisons and the unlawful influence of other convicts should be considered.

If examining the institution of probation from the economic standpoint, the budgetary burden for the state of these bodies is less costly than the maintenance of prisons. The ratio of the number of staff to offenders demonstrates the feasibility of probation. In prisons, the number of staff and prisoners is almost the same. In the case of the ratio of probation staff to offenders, the number of offenders exceeds twenty times.

In current conditions, the implementation of probation is a necessity. This institution is an economic advantage for society, as it is less costly to maintain than penitentiary institutions. In addition, a significant possibility of preventing the recurrence of criminal offences is identified, and a moral component is added, which allows for achieving the purpose of criminal policy by more humane means. The introduction of the probation institution was the result of the launch of a new system of criminal law measures inherent in a democratic society. In addition, this process is connected with the approximation of Ukrainian justice to international standards. Currently, in Ukraine, as in many countries around the world, there are non-custodial penalties for those who have committed offences that do not pose a threat to human life and health.

Conclusions

Probation is a system of social, educational and supervisory measures. These measures must be applied according to the law based on a court decision. Probation can be introduced for convicts who have been sentenced to criminal punishment, but it is not associated with imprisonment.

The essence of probation is to establish supervision over the convicted person, who is subject to specific obligations and restrictions: to visit probation centres, meet periodically with a supervising officer, participate in certain activities, adhere to law-abiding behaviour, etc., but without isolation from society.

According to the authors, the activities of the probation institution should reflect a humane approach and the necessary support for the person who has committed a mistake rather than formal monitoring and supervision of such a person.

The probation service should be considered as a body that performs specific functions to encourage offenders to transform into law-abiding members of society, to implement supervision and effective control over such persons to reduce recidivism, and to develop skills that encourage offenders to maintain a positive lifestyle and social reintegration or integration.

Thus, the necessity of implementing probation in the current conditions is determined by the economic advantage for society, a significant opportunity to prevent the recurrence of criminal offences and, in addition, the moral component, which allows achieving the purpose of criminal policy by the most humane means.

Thus, in Ukraine, the probation institution is an effective mechanism with high-quality performance indicators. However, its improvement remains an urgent issue. It can be implemented through further improvement of the existing types of probation, regulation of the concept of post-penitentiary adaptation in the current legislation and implementation of positive international experience. The areas of such improvement can include borrowing from the experience of the Republic of Latvia in conducting collective probation measures or the Republic of Poland in implementing the principle of proportionality in the application of probation.

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Економіко-психологічний аспект правового забезпечення пробації

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Анотація. Актуальність дослідження зумовлена необхідністю ширшого впровадження видів покарань, альтернативних позбавленню волі. Це значною мірою пов'язано з тими міжнародними зобов'язаннями, які взяла на себе Україна в процесі європейської інтеграції. Мета дослідження – визначити економічні та психологічні умови функціонування правового інституту пробації. У роботі використано діалектичний, порівняльно-правовий, системний, формально-логічний та структурно-функціональний методи дослідження. У статті схарактеризовано поняття пробації як системи наглядових та соціально-виховних заходів щодо засуджених, яким призначено кримінальне покарання, не пов'язане з позбавленням волі. Представлено етапи впровадження інституту пробації в Україні, розкрито сутність пробації, її види та функції. Виявлено соціально-психологічні переваги такого інституту, обґрунтовано економічну доцільність пробаційного нагляду проти інших покарань. З'ясовано, що запровадження цієї інституції надає низку переваг для держави, суспільства та правопорушника. Окреслено переваги для держави, що проявляються в скороченні кількості ув'язнених осіб; зниженні рівня злочинності; дотриманні міжнародних стандартів, а також економічній вигоді. Визначено переваги для суспільства, які полягають у справедливому здійсненні правосуддя та убезпеченні громади від рецидивних злочинів. Звернено увагу й на переваги для правопорушника, а саме: можливість змінитися без перебування в місцях позбавлення волі, збереження людських стосунків, житла та роботи. Обґрунтовано, що в нинішніх умовах запровадження пробаційного нагляду – це необхідність, зумовлена економічною доцільністю та можливістю вершити правосуддя в більш гуманний спосіб. Результати дослідження можуть бути використані для впровадження в нормативно-правовій сфері, а також для написання монографій, наукових статей, дисертацій, складання рефератів, підготовки доповідей на наукових конференціях

Ключові слова: виправлення, покарання, альтернативне покарання, гуманне правосуддя, провадження

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Estimating Ukraine's financial losses from the war

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Abstract. Military aggression has caused many adverse consequences in various spheres of Ukrainian society, including significant losses in the economy. In such circumstances, it is relevant to calculate financial losses to determine the necessary amount of aid and investment for post-war economic recovery. The purpose of the research is to assess the impact of the war on the dynamics of key economic indicators and to calculate the financial losses of the state. To achieve this purpose, the research makes a forecast assessment of macroeconomic indicators. To determine the level of GDP decline, the forecasts of the International Monetary Fund, the World Bank, and the Ukrainian government were considered. The assessment of the expected level of decline is based on the regional structure of GDP production. The losses were estimated as the difference between the "pre-war" level of the indicator and the projected values of the indicators obtained after considering the impact of the war. It is established that military aggression is the reason for the reduction in the volume of GDP produced, which in the future will significantly reduce tax revenues, consolidated budget revenues, and the number of financial resources redistributed by the state. The author notes that among the consequences of war are direct losses (those that can be estimated in monetary terms) and indirect losses (lost opportunities that cannot be expressed in monetary terms). The author outlines the consequences of the war in the future. It is determined that the cause of long-term adverse effects is an increase in the level of public debt, depreciation of the national currency, reduction of gold and foreign exchange reserves, and outflow of foreign direct investment. The results of the study are intended to be used by public authorities, financial policymakers, academics, and potential investors. In addition, they can serve as a foundation for determining the number of reparations that Ukraine will claim after the war is over

Keywords: war losses, GDP decline, currency depreciation, foreign exchange reserves, public debt

Introduction

The current realities of the Ukrainian economy are associated with numerous challenges and threats. Winning a war requires a lot of effort and resources, including financial ones. For a successful post-war recovery, it is necessary to assess the losses incurred at the present stage. Such an assessment will allow focusing efforts on priority requirements and redistributing financial resources.

There are many various methods of assessing losses from the war in the world: assessment of local economic losses, assessment of real GDP decline, and assessment of potential economic losses. However, these techniques are used after the end of hostilities. This research provides a preliminary assessment of Ukraine's financial losses from military aggression. International institutions and the Ukrainian government are focusing their attention on the decline in GDP. However, this approach is wrong, as the impact of the war is complex, and the resulting adverse effect is synergistic. The impact of the war is further manifested in a decline in foreign direct investment, a loosening of the "inflationary flywheel", job losses, and a deteriorating business environment.

The years of independence have been years of crises and trials for Ukraine. During this period, Ukraine failed to reach the level of economic development as of 1990:

– GDP in comparable prices decreased by almost 1.5 times, and the level of GDP per capita in 2021 is only 78.5% of the 1990 level;

– the share of industry in the economic structure has almost halved, while the service sector has grown;

– the structure of exports in recent years has been dominated by agriculture, metallurgy, and services (including revenues from gas transit), i.e., industries with low added value;

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– the level of public debt is quite high (Official website of the State Statistics Service of Ukraine, n.d.).

The military aggression has not only caused indescribable pain to every Ukrainian, but changed their lives and worldview, and caused the restructuring of established economic ties and the world order. The impact of the war on the level of economic development is evident. And it is about direct losses, lost revenues and lost prospects, restrictions on economic development, and the inability to use existing advantages.

In addition to the loss of human capital, and significant destruction of infrastructure, military aggression can cause an economic recession – a drop in GDP, rising inflation, the outflow of foreign investment, rising debt, falling living standards, etc. Scholars note various manifestations of the war's impact on the economy. Thus, G.I. Zhekalo (2019) emphasises the severance of trade ties. The researcher noted that the russian federation has used several economic instruments that have had an adverse impact on the Ukrainian economy, including trade embargoes, high gas tariffs, changes in the conditions of gas transit and supply, violations of several bilateral agreements, penetration into strategic sectors of the economy, etc. However, on the other hand, the scholar noted that there are positive developments for Ukraine, including a decrease in the dependence of the Ukrainian economy on its northern neighbour; the search for and emergence of new partners for cooperation; reorientation to European markets, accompanied by the modernisation of technologies and the improvement of quality standards for goods and services; and the development of innovation through cooperation with Western partners.

S. Gerashchenko and M. Kolotylo (2018) emphasise the impact of the war on the volume of private investment in the Ukrainian economy. The researchers identified that foreign investment has declined significantly in recent years as a result of the military conflict, high levels of corruption, and Ukraine's low position in key global rankings, at a time when Ukraine needs it most. Thus, scholars emphasise the importance of changing investment policy to ensure that it becomes more attractive to potential investors.

L.P. Londar (2016) explores the level of public debt. The researcher explored thoroughly the factors that influence the state's debt policy, determined the state of public and publicly guaranteed debt, analysed key trends, risks and threats in the field of public debt, and suggested ways to solve current problems.

Chalyuk (2022) notes the violation of financial stability, rising inflation, and the agri-food crisis. The researcher examines the consequences of russian aggression on a global scale, noting that both Ukraine and several developing countries that depend on Ukrainian food imports are adversely affected. In addition, the researcher assessed the impact of the war on migration processes in Ukraine and predicted the potential economic consequences of the economic downturn, including a humanitarian crisis and food riots. Thus, the international community must now condemn the aggressor's actions and force him to compensate for the damage caused.

Foreign scholars emphasise the long-term consequences of the war, such as a decrease in investor and consumer confidence, the destruction of trade chains (Rother & Gaelle, 2016), and a decline in the country's long-term productivity (Jong-A-Pin, 2009), while the International Monetary Fund points to a reduction in investment and a decrease in tax revenues (IMF, 2019).

The war in Ukraine has highlighted the necessity of researching the development of economic measures and the search for tools to finance military operations, the functioning of the economy in war conditions, and post-war economic recovery. The purpose of this research is to estimate Ukraine's financial losses caused by military aggression.

Literature Review

Wars have always had economic causes and consequences. The most common economic causes of wars include the redistribution of spheres of influence, access to natural resources and the latest technologies, and the occupation of territories and populations. For example, J. Sherman (2001) considers the presence or absence of natural resources and the transparency of their redistribution by the state to be the main cause of war. E. Fromm (2013) notes that it was the economic interests of the elite groups of the warring countries that were the real causes of the First World War. The author sees economic domination and the occupation of colonial territories as the main reasons. Developing this idea, I. Kononov (2018) emphasises the economic causes of armed conflicts in the world. The author notes that wars are mostly waged by ruling groups that use the population as a means of warfare. Ignoring the ideological justifications, it can be stated that wars serve to externalise costs. The "economic consequences" of the war (smuggling and illegal markets with high prices) benefit a narrow circle of people.

The winners of the wars redistributed the world order, dictated new "rules of the game", and contributed to the redistribution of capital. K. Voznyi (2010) notes that since the beginning of the war, the development of private enterprise has intensified. In addition, the author argues that during wars and crises, private businesses accumulated the largest wealth. However, despite some positive manifestations, war is always evil. The consequences of the war are loss of life, destruction of the achievements of previous generations, and a reduction in economic development. The researchers unanimously agreed on the impact of war on the pace of economic development: any war causes a reduction in the amount of GDP established. Thus, R.J. Barro (1991) proved that coups and assassinations worsen GDP per capita growth.

L. Kucher (2018), while exploring the military aggression in Donbas, identified the following consequences: economic crisis, slowdown in economic growth and business activity; loss of capacity by enterprises; destruction of industrial and social infrastructure; destruction of housing and social infrastructure; reduction in the number of jobs, decline in living standards; deterioration of the investment environment and deterioration of business conditions; reduction in tax revenues to the budget, etc.

In his turn, S. Ivanov (2019), exploring the differences between the economy in times of war and armed conflict, focuses on post-war economic recovery measures. the author notes that post-war recovery should be based on "rehabilitation" programmes and include measures to restore housing and infrastructure, and restore industry and agriculture.

War researchers focus mainly on identifying the causes and consequences of military aggression. However, economists focus on the financial aspect when exploring wars. Waging war requires significant funding and results in significant financial losses. To establish an effective financial policy, it is necessary to assess financial losses. However, the publications examined do not disclose an estimate of the state's financial losses, which is relevant to the research subject.

Materials and Methods

A variety of methods are used to estimate losses from warfare. Common to all methods is that such an assessment is conducted after the end of the war. Considering the ongoing hostilities and limited statistical data, it is impossible to conduct a thorough econometric analysis of the data. Therefore, economic indicators are forecasted by analysing current trends, assessing expectations for the near-term forecast period, and making scenario forecasts for the short-term period.

The gap method was used to assess the losses of the Ukrainian economy from military aggression. The "GAP method" involves comparing expected and actual performance. Expected indicators are determined by transferring existing trends into the future, considering expected changes, i.e. they reflect future opportunities. The expected indicators are calculated using the trend extrapolation method, i.e., based on the assumption that the existing trends in the indicators will continue in the future. The "trend extrapolation" method is the main method of forecasting the dynamics of economic indicators and market development. The "trend extrapolation" method (Yarenko, 2015) involves exploring the dynamics of changes in indicators in the past, identifying specific patterns, considering expected changes, and transferring these patterns to the future. Tactical indicators predict the ability to obtain results that can be achieved under the influence of military operations. To calculate these indicators, it is planned to use of expert estimates or forecasts of international institutions. The desired results reflect the strategic aspirations of economic development (without considering the impact of the war and considering development trends in the pre-war period). They are measured by quantitative indicators of the vision of what should be achieved in the future. Tactical (operational) and strategic gaps constitute the gap between desired and expected performance.

When calculating the volume of GDP decline, the year 2021 was chosen as the foundation, which was used as the base year for further calculations. The assessment of losses was conducted by calculating the recorded damage caused by the russian army and by calculating the lost benefits and lost potential. The calculation of losses was determined by measuring the gaps between the projected "peaceful" values and the values obtained after considering the impact of the war.

This study used a dataset from 2017 to 2021 and developed forecasts for 2022. These data were obtained from statistical abstracts of the development of the Ukrainian economy developed by the National Bank of Ukraine (National Bank of Ukraine, 2022; NBU's comment..., 2022), the Ministry of Finance of Ukraine (Official website of the Ministry of Finance of Ukraine, n.d.) and international financial institutions (WIPO, 2021; World Bank, 2022a, 2022b, 2022c).

Results and Discussion

Despite the difficulties encountered by Ukraine, the reforms have had positive results, which are reflected in the country's improved position in global rankings (Table 1).

Table 1. Ukraine's place in world rankings in 2021

Indicator	Place in the ranking	Indicator	Place in the ranking
GDP volume	39	Human development index (HDI)	74
Social development index	48	Prosperity ranking	78
Global innovation index	49	Happiness index	110
Business index	64	Corruption perception index	122

Source: compiled by the authors from open sources: World Bank (2022a), World Bank (2022b), Ministry of Social Policy of Ukraine (2022), WIPO (2021), Perception of corruption... (2022)

The Institute for Economics and Peace conducts a generalised assessment of the costs of waging war in the world using the Global Peace Index (GPI). This indicator is based on a comprehensive analysis of 23 identifiers for each of the 163 countries included in the list (Global Peace Index, 2022). Countries are ranked according to this index based on the share of military spending in the country's GDP, expressed as a percentage. The top countries with the highest share of war expenditures in 2021 are Syria, where war expenditures account for 80% of GDP, South Sudan – 41%, and the Central African Republic – 40%, respectively. According to the results of 2021, Ukraine ranked 12th with 20% of its GDP spent on warfare. According to the calculations of the Institute of Economy and Peace, the cost of the military aggression of the Russian Federation is growing annually from 2013-2021 (Table 2).

Table 2. The economic cost of the war in Ukraine in 2013-2021

Year	Economic losses from the war, mln dollars US	The economic cost of the war, mln dollars US	The cost of war per capita, dollars US	Cost of war, % of GDP
2013	...	11 265	245	3.3
2014	...	42 845	942	11
2015	...	44 430	979	18
2016	...	66 749	1571	20.4

Table 2, Continued

Year	Economic losses from the war, mln dollars US	The economic cost of the war, mln dollars US	The cost of war per capita, dollars US	Cost of war, % of GDP
2017	102,780.6	68 977,3	1567.3	20
2018	76 246,1	50 058,7	1137.5	14
2019	82 303,7	50 420,6	1 870,1	11
2020	102,817.1	62 095,5	2 475,4	12
2021	167,590.8	123,832.7	4 058,6	20

Source: compiled according to the Institute for Economics and Peace (Global Peace Index, 2022)

For 9 years, the cost of war per capita in Ukraine has increased 16.5 times, and the share of GDP used to finance the war has increased almost 6 times from 3.3% to 20% of GDP. Since 2017, the Institute for Economics and Peace has been calculating the impact of violence on the economy, i.e., calculating the losses incurred by the state as a result of the war. Table 2 demonstrates that in 2021, Ukraine lost more than $167 billion from hostilities. A comparison of the losses incurred as a result of hostilities with the nominal GDP of Ukraine in US dollars demonstrates that the losses incurred in 2017 amounted to 91.6%, in 2018 – 58.27%, 2019 – 53.5%, 2020 – 66.1%, and 2021 – 85.7%, respectively (Global Peace Index, 2022).

The study established that the global economic impact of wars in the world in 2021 amounted to USD 14.4 trillion, which is equivalent to the economy of China. Reducing the level of violence by only 10% would save 1.4 trillion US dollars, which is equal to the contribution of the russian federation to the global economy (Global Peace Index, 2022).

The military aggression of the russian federation against Ukraine has undoubtedly caused an economic downturn. The extent to which Ukraine's GDP has fallen as a result of the hostilities is a subject of discussion among government officials and representatives of international financial organisations. Notably, there is still no unified approach to calculating the extent of the GDP decline in 2022. Thus, the World Bank Group in its "World Economic Outlook" forecasts a decline in Ukraine's GDP in 2022 amid the war by about 45% (The World Bank, 2022c). The International Monetary Fund predicts that Ukraine's economy will fall by 35% in 2022 (IMF, 2022). The Ukrainian government predicts a drop in Ukraine's gross domestic product in 2022 due to a full-scale war between russia and Ukraine in the range of 30 to 50% (Economist, 2022). The Ukrainian investment company Dragon Capital expects Ukraine's GDP to fall by up to 30% in 2022 if the war continues until the end of the year (Interfax, 2022). Each of the above-mentioned institutions uses its forecasting methodology, which is why the results are varied. The war is still ongoing, thus, any forecasts made at this stage of the development of events cannot be considered accurate. However, the current situation requires understanding, analysis, and immediate decision-making. When assessing the possible extent of the GDP decline, it is advisable to consider the regional structure of its development, considering the territories that are or have been under occupation. The structure of GDP production by regions of Ukraine in 2020 is presented in Fig. 1.

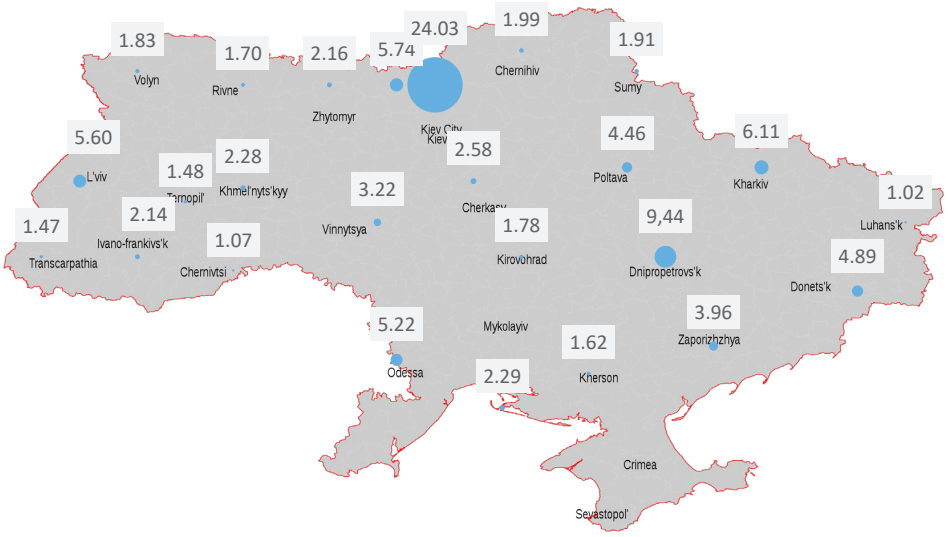

Figure 1. Regional structure of Ukraine's GDP production in 2020, %

Source: compiled by the authors based on data from the Ministry of Finance of Ukraine (2022)

According to Fig. 2 demonstrates that the territories that were occupied and are currently under occupation account for about a third of total GDP production. Considering the regional structure of GDP production and the disruption of production chains, sales schemes, and logistics links, the expected GDP decline will be close to the International Monetary Fund's forecasts and amount to 35% (Figure 2).

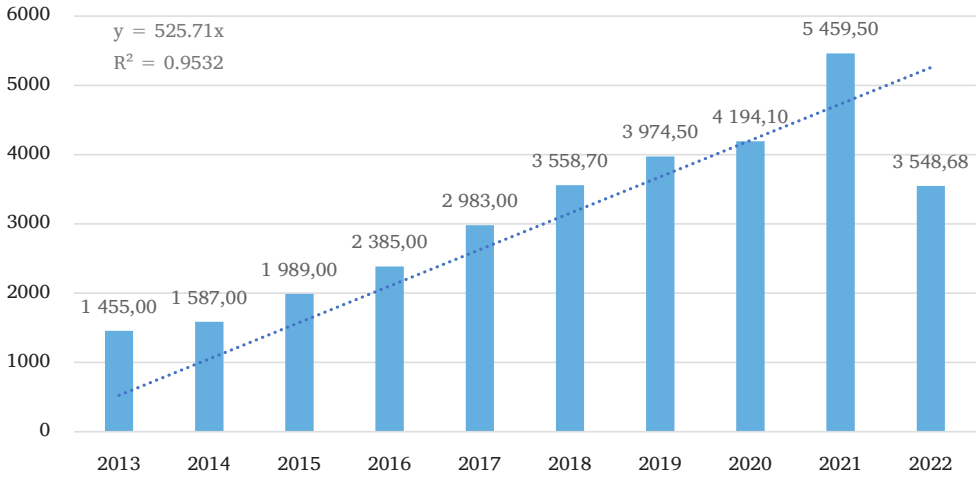

Figure 2. Ukraine's GDP in 2013-2022, billion UAH
Source: compiled by the authors based on data from the Ministry of Finance of Ukraine (2022) and own calculations
Notes: data for 2022 are forecasted

The danger of a sharp decline in GDP is manifested in a reduction in tax revenues to budgets of various levels, public sector revenues, and the consolidated budget. To predict the level of these indicators in the future, it is necessary to calculate the volume of GDP in 2022 at the pre-war level. When calculating the projected fiscal losses of Ukraine in 2022, the relevant data for 2021 were extrapolated. Thus, the share of redistribution through general government revenues was 39.98%; including consolidated budget revenues – 30.45%; including consolidated budget tax revenues – 26.63% (The Ministry of Finance of Ukraine, 2022) (Table 3).

Table 3. Ukraine's fiscal losses in 2022 as a result of GDP decline, UAH billion

Indicators	Share in GDP, %	Forecasted "pre-war" GDP in 2022	Forecasted "war" GDP in 2022	Amount of decline. billion UAH
General public administration sector	39.98	2265.65	1418.76	846.89
Consolidated budget revenues	30.45	1725.59	1080.57	645.02
Tax revenues of the consolidated budget	26.63	1509.11	945.01	564.10

Source: calculated by the authors

A drop in GDP is inevitably accompanied by a simultaneous drop in the value of the national currency. Global financial institutions do not make any forecasts about the possible level of inflation in Ukraine in 2022. Instead, the NBU notes that inflation in 2022 may exceed 20% but will remain under control (The National Bank of Ukraine, 2022). External and internal factors put pressure on the value of the national currency. External factors include global trends affecting the value of the hryvnia, with the biggest impact being the rise in energy prices. Internal factors are exclusively related to the war and the most influential are the disruption of logistics chains, the destruction of production facilities, rising production costs, and a surge in demand from the population for specific groups of goods. The value of the hryvnia on the part of producers is most affected by the growth rate of prices for fuels and lubricants, which increased by 57.5% in May 2022. The dynamic of consumer inflation indicates pressure from consumers. Information waves about the escalation of aggression result in a situational increase in the purchase of food and essential goods. Such changes in consumer behaviour increase inflationary pressures in the domestic market. In addition, the russian federation's deliberate destruction of fuel and food depots, blocking of ports, and damage to critical infrastructure facilities keep inflationary risks high. The high level of uncertainty and panic among citizens increased demand for foreign currency, which in turn naturally devalued the hryvnia.

Table 4. Key indicators of the Ukrainian foreign exchange market in February-July 2022

Indicators of the Ukrainian currency market	February 2022	March 2022	April 2022	May 2022	June 2022	July 2022
NBU interventions						
sales, mln dollars US	1261.5	2475.9	2244.3	3410.6	3 986,8	2 117,0
purchases, mln dollars US	951.2	616.9	41	56.4	26.7	922.0
The weighted average hryvnia exchange rate on transactions with foreign currency in cash						
sales:						
US dollar	28.4890	30.1622	31.1292	34.9203	35.4844	37.7585
Euro	32.3614	33.9124	33.5605	36.3414	37.4668	38.2623
purchases						
US dollar	28.1764	29.2549	30.4188	34.5235	35.1725	37.3310
Euro	31.9549	32.4255	32.6817	36.2018	37.0528	37.7364

Source: compiled by the authors based on NBU data (NBU, 2022)

The Ukrainian economy has been characterised by a high level of dollarisation of the economy, a significant level of import dependence, and panic among the population, with exchange rate fluctuations being a significant factor in inflation. The rising demand for foreign currency in the early days of the war prompted the NBU to intervene in the market, which subsequently reduced the number of foreign exchange reserves (Figure 3).

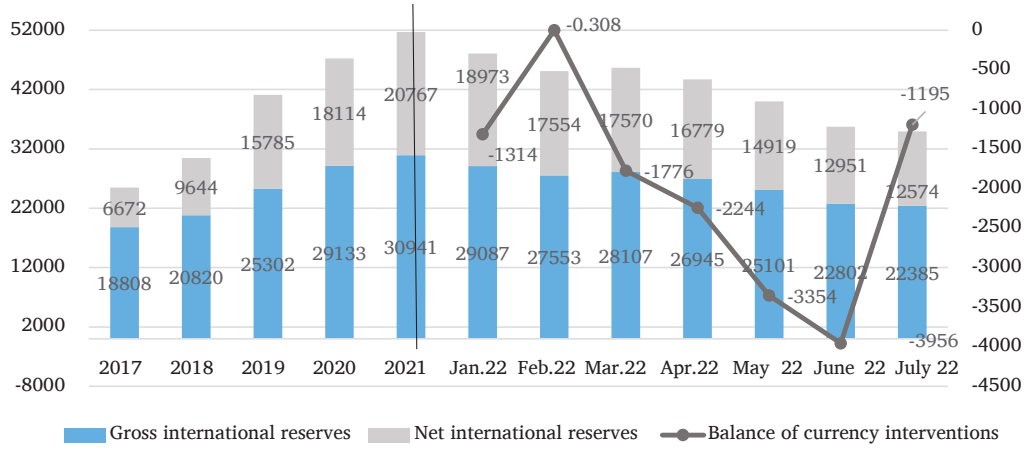

Figure 3. Ukraine's foreign exchange reserves in 2017-2021 and January-July 2022, billion USD
Source: compiled based on NBU data (NBU, 2022)

Considering the limited reserves of the regulator and the impossibility of direct influence on the cash foreign exchange market, the NBU suspended the interbank foreign exchange market and fixed the official exchange rate at UAH 36.56865/USD.

The support of international partners allowed for avoiding a collapse in the currency market. The receipt of financial assistance allowed the NBU to gradually restore the positive dynamics of international reserves. Overall, in January-June 2022, net lending to the outside world amounted to USD 3.8 billion, while net borrowing amounted to USD 154 million in the same period last year (NBU, 2022).

Considering the fact that Ukraine is still at war and that UAH 2 billion is spent daily from the state budget to finance military operations, while losses amount to USD 4 billion (Interfax-Ukraine, 2022), the burden on the budget will only increase. The increased risks associated with the hostilities have prompted the search for conditions to restructure Ukraine's financial system to ensure its financial stability.

Considering the acute shortfall in budget revenues and the simultaneous increase in expenditures for defence and public order, support for low-income groups and internally displaced persons, the issue of reducing the budget deficit, and reducing the state debt while ensuring an acceptable level of the tax burden is becoming increasingly important.

In March 2022, the Verkhovna Rada of Ukraine adopted amendments to the Tax Code of Ukraine to support businesses under martial law, which provide for a reduction in the tax burden and simplification of taxation. In January-July 2022, the state budget was executed with a deficit of UAH 412.0 billion, including the general fund for

UAH 411.3 billion, against the deficit of UAH 743.4 billion planned in the general fund schedule for January-July 2022. Since the beginning of the military invasion, Ukraine has been receiving financial assistance from international financial lenders and donors under two types of programs: programmes designed to support the overall macro-financial stability of the country (the IMF's Rapid Financing Instrument and EU macro-financial assistance), and programmes designed to address specific sectoral problems in the areas of security, healthcare, food, fuel, medicine, etc.

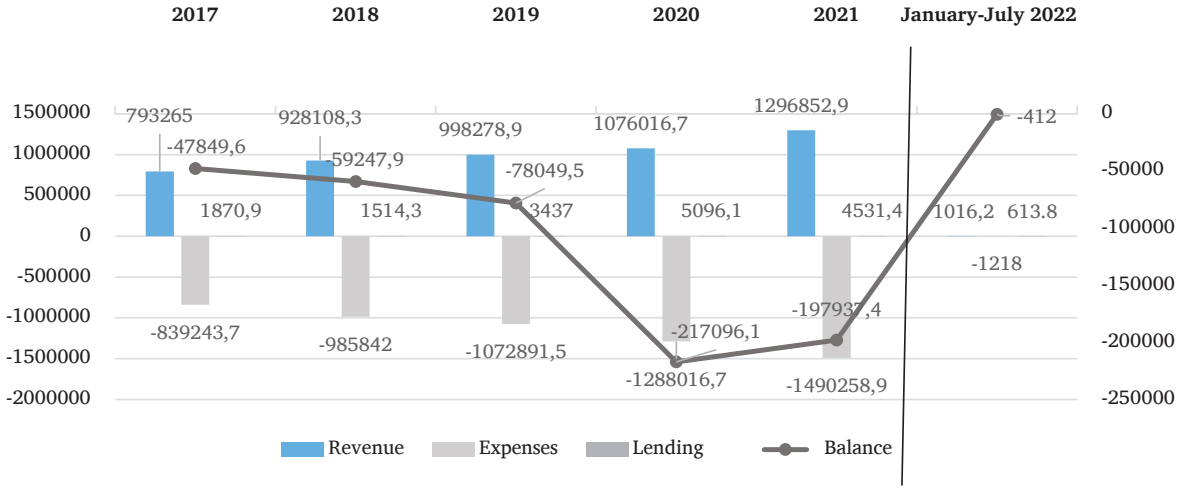

Figure 4. Revenues, expenditures and deficit of the State Budget of Ukraine, UAH billion
Source: compiled by the authors based on data from the Ministry of Finance of Ukraine (Official website of the Ministry of Finance of Ukraine, n.d.)

The legislator does not plan to fund the budget deficit by increasing tax revenues under these conditions, and the role of official creditors is increasing. The main trends in Ukraine's martial law hunt policy are as follows:

– active involvement of state loans, an increase in the level of public debt in the initial stages of the conflict with a simultaneous decrease in the tax burden and reduction of tax revenues;

– strengthening international support in the form of grants from partner countries, the IMF, the World Bank, the EU, the EIB, and the EBRD. International support is provided as a manifestation of solidarity with Ukraine by the world's leading countries and international financial institutions;

– higher yields on external loan bonds in the secondary market and the actual closure of external private sources of financing;

– issuance of domestic military bonds by the Government and attraction of issuance resources of the central bank;

– the outflow of resources of commercial banks of Ukraine from the domestic bond market when banks have excess liquidity (Bohdan, 2022).

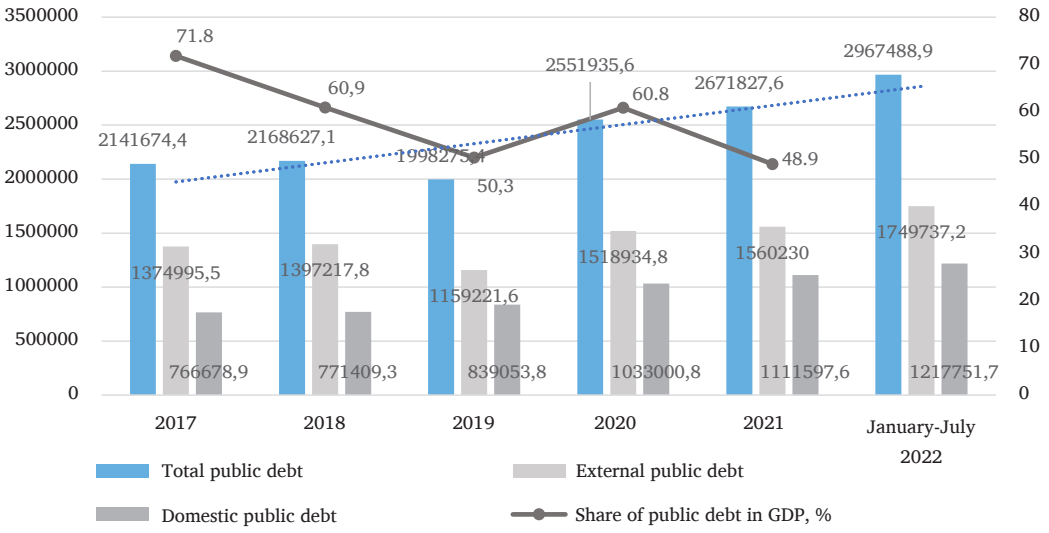

Figure 5. Public domestic, external and publicly guaranteed debt in 2017-2021 and January-May 2022, billion UAH
Source: compiled based on NBU data (The National Bank of Ukraine, 2022)

The amount of public debt in the first five months of 2022 increased by UAH 183.65 billion, including domestic public debt by UAH 33.81 billion, external public debt – by UAH 159.79 billion, and publicly guaranteed debt decreased by UAH 9.91 billion (The Ministry of Finance of Ukraine, 2022).

The war has an adverse effect on the country's economy. This impact is systemic and manifests itself in various sectors of the economy. The study confirms the adverse impact of the war on the country's financial system, which is manifested in a reduction in the number of financial resources redistributed through the country's budget system, exchange rate volatility, high inflation, and an increase in the level of debt burden on the budget.

Conclusions

The study established that the decline in GDP is the foundation for the deterioration of the state's fiscal capacity, which is manifested in a reduction in tax revenues and a decrease in consolidated budget revenues. Military operations require funding, which in turn increases the expenditure side of the budget. Under such conditions, the state budget deficit and public debt will grow, and the country's foreign exchange reserves will decline, which will generally worsen the state's financial capacity.

In the research, the authors of the study demonstrate, based on data analysis, that different Ukrainian and international institutions estimate Ukraine's economic losses in 2022 differently, as these organisations conventionally use different approaches and methods for forecasting and calculating. The final figures for losses have not yet been calculated, but it is already clear that the decline in GDP is in the range of 30 to 50%, meaning that there is a significant difference between the upper and lower limits. The lack of more precise figures is still preventing from making immediate decisions to improve the economic situation.

The author's assessment of Ukraine's economic losses from the war is based on the difference between the "pre-war" level of the indicator and the forecast values of the indicators obtained with the impact of the war. However, it is not enough to limit ourselves to the projected figures presented in the study to assess the scale of the situation, since in addition to specific (direct) losses that can be calculated, there are indirect losses, which consist of several lost potential growth opportunities.

The assessment of financial losses contributes to understanding the nature of the war's impact on the financial system and can serve as a foundation for developing a financial strategy for the country's recovery. Future research will emphasise the impact of the war on Ukraine's economic security and the development of measures to neutralise it.

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Анотація. Військова агресія спричинила багато негативних наслідків у різних сферах життєдіяльності українського суспільства, зокрема суттєвих збитків зазнала економіка. За таких умов актуально порахувати фінансові втрати, для того щоб визначити необхідні обсяги допомоги та інвестицій для повоєнного відновлення економіки. Мета статті – оцінити вплив війни на динаміку основних економічних показників та розрахувати фінансові втрати держави. Для досягнення мети в роботі здійснено прогнозну оцінку макроекономічних показників. Для визначення рівня падіння ВВП розглянуто прогнози Міжнародного валютного фонду, Світового банку та українського уряду. В оцінці очікуваного рівня зниження показників враховано регіональну структуру виробництва ВВП. Утрати оцінювались як різниця між «довоєнним» рівнем показника та прогнозними значеннями показників, отриманими з урахуванням впливу війни. Установлено, що військова агресія є причиною скорочення обсягів виготовленого ВВП, що в майбутньому значно скоротить податкові надходження, доходи зведеного бюджету, суми фінансових ресурсів, що перерозподіляються державою. Зауважено, що серед наслідків війни є прямі втрати (ті, які можна оцінити в грошових одиницях) та непрямі (втрачені можливості, які не можна виразити в грошовому еквіваленті). Окреслено наслідки, до яких призведе війна в майбутньому. Визначено, що причиною тривалих негативних наслідків є збільшення рівня державної заборгованості, знецінення національної грошової одиниці, скорочення золотовалютних запасів, відтік прямих іноземних інвестицій. Результати дослідження орієнтовані на те, аби їх могли використати органи державної влади, що формують фінансову політику, науковці, потенційні інвестори. Також вони можуть стати основою для визначення суми репарацій, яку Україна заявить після завершення війни

Ключові слова: втрати від війни, падіння ВВП, знецінення грошової одиниці, золотовалютні резерви, державний борг

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