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The Fourth Universal of the Ukrainian Central Council of the Ukrainian People's Republic, as a Result of One of the Stages of the Ukrainian Revolution

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Abstract. The article is devoted to the analysis of the historical and legal conditions of the Central Council and its activities through the prism of the adoption of the Fourth Universal, as a result of the peak of rule-making of the Ukrainian Central Council. The urgency of this issue is conditioned upon the main developments of the Ukrainian Central Council, which maneuvered between the responsibilities of Russian officials and the national consciousness of Ukrainian patriots and the victory of the "spirit of Ukrainianness" of Ukrainian state interest, based on the turbulent events of the Ukrainian Revolution. The aim of the article is to analyse the historical and legal basis for the adoption of the Fourth Universal of the Ukrainian Central Council as a legal statement of the desire of Ukrainians for independence at the initial stage of struggle and independence. The methodological basis of the study was a set of methods and approaches, including: dialectical method allowed studying the nature of historical and legal conditions of the Central Council and its activities through the prism of the Fourth Universal, historical and legal research method conditioned upon the need for historical approach in general and scientific methods, such as descriptive-chronological, which allowed forming the historical background of the study, comparative-historical, which provided an opportunity to compare the development of the studied institutions with similar institutions of this period, formed in other societies; formal-legal method allowed studying the subject of research in terms of purely regulatory regulation; institutional approach is used to comprehensively understand the role of the studied institutions in society, their impact on the legal system. The state policy is analysed through the principles and the main content of the legislation in the direction and support of the national movement and the development of the first elements of Ukrainian statehood. The activity of the Ukrainian intelligentsia was studied through the study of empirical material, namely, M. Hrushevsky – a great historian and strategist, permanent Chairman of the Ukrainian Central Council, which allowed to understand the worldview and political beliefs, namely the ideas of populism and federalism. The position of the belated, adopted under the pressure of external and internal factors, the Fourth Universal, which proclaimed independence and renunciation of autonomy, and became a shining example of the state position of the Ukrainian intelligentsia of the early twentieth century. The purpose of the Ukrainian Central Council in the context of state building after centuries of statelessness is analysed, because since the eighteenth century there was no pro-Ukrainian state development, despite the public demand that prevailed in society. The general principles of each universal are highlighted, which gave an opportunity to understand the phased development of the Ukrainian Central Council and give a historical and legal assessment

Keywords: Ukrainian idea, Ukrainian intelligentsia, national consciousness, General Secretariat, federalisation, autonomy, M. Hrushevsky

Introduction

The issue of gaining independence and state independence has always been acute for the Ukrainian nation. The Ukrainian revolution of the twentieth century (from 1917 to 1921) became an important natural phenomenon caused by the powerful national liberation struggle of Ukrainians, the revival of an independent state (proclamation of the Fourth Universal of the Ukrainian Central Rada) and the flourishing of the Ukrainian political nation. The urgency of the historical and legal context of socio-political and socio-cultural events of the Ukrainian Revolution is conditioned upon the study of the content of state independence to the right to be called the Independent Free Sovereign State of the Ukrainian people and gaining state status "stateless people".

A significant contribution to the study of the events of the Ukrainian Revolution (1917-1921), and in particular the significance of the Fourth Universal of the Ukrainian Central Rada, was made by Ukrainian and foreign scholars, both participants in these events and modern scholars: I. Lysyak-Rudnytsky, who in his historical essays covered his views on many issues of the Ukrainian Revolution of 1917-1921, clearly defined the role of the February Revolution in shaping the national consciousness of Ukrainians, and the proclamation of the Fourth Universal aimed to proclaim the sovereignty of the Ukrainian People's Republic, did not contain significant fundamental accents, compared to previous universals, but only clarified and detailed the provisions of the

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Third Universal [1, p. 11-27]. O. Bochkovskyi was guided by the assertion of tribal kinship as a nation-building factor. The scientist believed that at a certain stage of historical development "racial moment", ie the desire of small Slavic peoples to unite precisely based on belonging to Slavs and the creation of a national state development, G. Lukyanova noted that the establishment of legal culture plays an important role in legal monuments (for example, Universals of the Ukrainian Central Council) [2, p. 211; 3]. And also a significant contribution to this issue was made by: P. Miliukova [4], M. Hrushevskyi [5; 6], M. Paliy [7], I. Terliuk [8], M. Kovalchuk [9], M. Braichevskyi [10], I. Rozputenko [11], V. Verstiuk [12], I. Lebedeva [13], V. Yablonskyi [14], L. Mohylnyi, O. Liashchenko [15] and others. If we talk about the state of research on this issue, it should be noted that this topic was widely studied until the century of the Ukrainian Revolution, but does not lose its relevance in the time of new threats and challenges facing Ukraine. It is also worth examining the events of 1917 in retrospect of the methods and errors of countering Russian aggression that we have observed since 2014 against Ukraine, under the pretext of defending certain fictitious "Ukrainian state formations" that are de facto of Russian interest.

The aim of the article is to analyse the historical and legal basis for the adoption of the Fourth Universal of the Ukrainian Central Council as a legal statement of the desire of Ukrainians for independence at the initial stage of struggle and independence. *The aim of the article is* to clarify the preconditions and aspirations of Ukrainian society as a mature nation of Ukrainians to independence through the proclamation of the Fourth Universal of the Ukrainian Central Rada.

Development of Preconditions and Basis of the Ukrainian Revolution

The historical and legal dimension of socio-political and socio-cultural events of the early twentieth century of the Ukrainian Revolution of 1917-1921 is explained by large-scale events of national awakening, which became a transitional point (point of no return) of Ukrainian state thought, which resulted in such state establishments – Ukrainian People's Republic (1917), the Ukrainian State "Hetmanate" (1918) and the Directory (1918-1920). Notably, in the temporal dimension they did not last long for objective reasons (constant political strife, external aggression, etc.), but became in fact a statement of self-determination of Ukrainians in recent history.

To better understand the realities of the development of the state and the establishment of the Ukrainian state, it is necessary to consider the historical and legal conditions that directly or indirectly influenced its functioning. They were conditioned upon the difficulties of geopolitical location, between West and East, and the inability to influence their fate to move from the status of "object" of international law to the status of "subject of international law" [11, p. 4].

In the early twentieth century, the Russian and Austro-Hungarian empires were in danger of collapse conditioned upon certain cultural, political, economic, social differences in society. Significant territory and backwardness in the development of some regions from the metropolis also did not contribute to the consolidation into one whole society, and the complete subordination of personal interests to the interests of the state was a necessity for the preservation of empires. Under such circumstances, the collapse of empires was near, but every political party and organisation saw its solution to this difficult situation. In February 1917, the fall of the Russian Empire took place, the so-called Provisional Government came to power, the Ukrainian idea and the establishment of the Ukrainian nation were to grow on such favorable grounds, and the Ukrainian question was to be resolved.

However, according to O. Bochkovskyi, in the Russian Empire was an acute issue of national affairs of Finns and Poles. As for other peoples, their aspirations were not given much importance based on the concept of a purely national state [3, p. 154]. As evidenced by the works of the same O. Bochkovskyi "Finland and the national question" that the Ukrainian question does not exist at all, and the Ukrainian national movement, according to the Russian public, is fiction, Ukrainian separatism – the invention of a handful of chauvinistic intellectuals [16, p. 269]. As I. Terliuk appropriately noted, a nation is formed on the basis of two components: national consciousness and national identity. In view of this, it can be stated that in the twentieth century, these factors became crucial in the formation of the Ukrainian nation and found expression in the state formations mentioned above [8].

Ukrainian historian I. Lysyak-Rudnytsky described the role of the February Revolution in the development of Ukrainian consciousness: "In 1917, when the magic of the empire dissipated, thousands of yesterday's "Little Russians" almost overnight became nationally conscious Ukrainian patriots of potential separatists" [17, p. 8]. It is worth noting the following that an important place in the process of disintegration of the "prison of nations" was played by the March Revolution of 1917. However, we should not ignore the opinion of the American historian M. Palia on the fact that the events of March created the conditions for the peoples of the Russian monarchy to win the right to self-determination and national liberation, but without belittling the February revolutionary events that led to the destruction of the Russian state [7].

On March 17, 1917, the Ukrainian Central Rada was established in Kyiv at a meeting of representatives of Ukrainian parties, cultural institutions, student societies, and military organisations. The bright leaders of this meeting were V. Vynnychenko (writer, Ukrainian Social Democratic Workers' Party), V. Naumenko (teacher, Society of Ukrainian Progressives), M. Kovalevsky (lawyer, Ukrainian Party of Socialists-Federalists), M. Mikhnovsky (lawyer, military club named after Hetman P. Polubotko). The strategist of the Ukrainian sovereignty, Professor M. Hrushevsky, who was in exile in Moscow at the time, was actually elected Chairman of the Ukrainian Central Council. According to the socialist ideology of the participants of the Ukrainian Central Rada, the main principles of activity can be identified, namely legal equality and social justice in society, while declaring the abolition of private ownership of land.

The figure of M. Hrushevsky deserves special attention, who had no illusions about Ukrainian sovereignty and relations with the Provisional Government in the activities of the Ukrainian Central Council. Unlike some leaders of the socialist parties, who had a majority in the Central Rada and the General Secretariat and sincerely and unequivocally believed that federalisation was the only correct and compromise political solution between Kyiv and Petrograd. As noted by the Russian historian and politician of the early twentieth century P. Milyukov, a significant contribution to

the development of Ukrainians' desire for self-determination, the right to decide their own affairs in their national interests movement of Galicia, in the Austro-Slavic lands and the present moment pursues a flexible tactic, which he used against Vienna, and now against Petrograd centralism" [4]. Sam M. Hrushevskyi, in the first stage of the revolution, wrote in "What we want autonomy and federalisation" that we need to take the experience of creating American states to unite society and opposed federalisation to full independence, citing such confederations as the Brazilian or Swiss [5, p. 137].

It can also be concluded that M. Hrushevskyi realises that through the implementation of the idea of federalisation at the initial stage of the struggle, it is possible to gain full sovereignty. It is clear that the Russian liberal intelligentsia also pursued a strategic and balanced goal, as a desire for complete separation from Russia, as federalisation could be based on full trust and equality between its members, which Petrograd certainly could not agree to. It should be noted that at the initial stage of development of the Ukrainian Central Council was a representative institution, a parliament in which political life was booming. The ideological instigators of the creation of this collegial body were Ukrainian independents and their leader M. Mikhnovsky. The opinion of the Ukrainian researcher M. Kovalchuk is relevant, who notes the Ukrainian-Russian relations as a struggle of two revolutions that defended different socio-political and ethnonational values [9].

In its appeals and universals, the Ukrainian Central Council, along with choosing the optimal form of government as the highest territorial unit of the state and further development, paid attention to the current issue of changing the status of the Ukrainian language as a threat to the Ukrainian state. This can be seen from the analysis of the recall of the Ukrainian Central Council of March 9, 1917 [18], the resolution of the People's Council of March 19, 1917 [19], the First Universal of the Ukrainian Central Council [20], the Law of the Ukrainian Central Council "On Approval of the Ukrainian Language Trade Sphere" of March 24, 1918 [21]. It is clear that such steps of the Ukrainian Council contradicted the views of the Russian political elite. For example, representatives of the Russian Constitutional Democratic Party believed that the greatness of Russian culture and the rapid industrialisation of society would be the key to the assimilation of national minorities, and "the language of capitalism in this part of the world should be Russian."

It is necessary to consider the fact that the Russian government recognised the national principle as the main one in the division of the state, which undoubtedly had a positive effect on relations with national minorities and became the foundation for the future development of the Ukrainian state. It is also worth noting that before Ukraine's independence in the early 1990s, scholars portrayed the Ukrainian Central Rada as a deeply provincial organisation that did not influence the political life of the continent and did not recognise the nation's desire for independence. Which was a misjudgment, because more than thirty states recognised the Ukrainian state [10, p. 133]. Let us consider in more detail the courageous and progressive rule-making of the Ukrainian Central Council, and emphasise the Fourth Universal as the highest achievement of its activity.

Analysis of the Fourth Universal as a Way to Ukraine's Independence

Four Universals of the Ukrainian Central Rada became striking acts of the Ukrainian Central Rada that ensured the development of Ukrainian statehood. Each of them was accepted in certain historical and legal realities and had its own far-sighted goal through the solution of these problems. The first was adopted as a reaction to the reluctance to grant autonomy to the Provisional Government and declared Ukrainian autonomy within non-monarchical Russia. Based on the content of the document, a number of main positions of the Ukrainian Central Council can be identified: the autonomy of Ukraine within Russia; introduction of the institute of the highest legislative body; re-election of the local administration considering the Ukrainian party positions in society; coordination of local authorities with the Ukrainian Central Council. In connection with these positions, the Provisional Government of Russia, through its delegates, recognised the Ukrainian Central Rada as a local body of the Russian government, as prescribed in the Second Universal of the UCR [6].

The first serious step towards the independence of the Ukrainian People's Republic was made with the proclamation of the Third Universal of the Ukrainian Central Council, which in contrast to the highly poetic call of the First Universal "we will create our lives alone" becomes more pragmatic [23, p. 105], and the main message of the Third Universal is the political and volitional decision "From now on Ukraine becomes the Ukrainian People's Republic" [24, p. 398]. According to the Fourth Universal, the General Secretariat takes its place in the executive branch and, finally, receives the status of a full-fledged Ukrainian government, the absence in the text of a list of delegated powers 10]. It is also worth noting that the democratisation of the executive branch takes place only after the proclamation of independence of the Ukrainian People's Republic, a bill on provincial councils was developed with the involvement of all segments of the population [13, p. 22-30].

It will be appropriate to mention I. Lysyak-Rudnytsky, that: "The Third and Fourth Universals reflect two successive stages of Ukrainian state building. But they can be considered as manifestations of two different alternative concepts of Ukrainian statehood: federalist and independent" [1, p. 11-27]. The proclamation of the Fourth Universal was intended to proclaim the sovereignty of the Ukrainian People's Republic by the Central Rada and did not contain significant fundamental emphases compared to previous universals, but only clarified and detailed the provisions of the Third Universal. But the historical value of the Fourth Universal, adopted on January 9, 1918, is difficult to overestimate in historical and legal terms, and is often underestimated.

It is clear that the adoption of this document was positively received by the Ukrainian intelligentsia, which supported the idea of independence during the activities of the Ukrainian Central Council, and throughout his life fought in different political conditions for Ukraine's independence [15, p. 81-91]. Also noteworthy is the fact of the inspired struggle for independence through the awakening of national consciousness and emigration of the government of the State Center of the Ukrainian People's Republic [14, p. 155-165].

Also, the adoption of the Universals contributed to the formation of the legal culture of the Ukrainian people. According to V. Lukyanova, legal culture is formed by legal monuments (for example, Universals of the Ukrainian Central Rada), it is an integral part of universal culture. At the same time, a cultural society is one where a comprehensive system of normative legal acts based on generally accepted human values prevails, where individual rights are valued and protected, the rule of law prevails [24, p. 211].

With the adoption of the Fourth Universal, Ukraine has finally consolidated at the legislative level all the features of the state. It proclaimed: "From now on, the Ukrainian People's Republic becomes an independent, independent, free, sovereign State of the Ukrainian People." The historical and legal significance of the Fourth Universal is the proclamation of a sovereign state, and the division of the whole epoch into "before" and "after" in the minds of millions of Ukrainians, the completion of a difficult stage of Ukrainian national liberation struggle. This universal can be defined as the apogee of the rise of the Ukrainian nation in the crisis period of the history of the early twentieth century.

Proclaiming the Universal, the Ukrainian Central Rada declared that in foreign policy it would strive for peaceful coexistence with neighboring states, and in domestic politics it reaffirmed the powers of the Ukrainian Central Rada until the convening of the Ukrainian Constituent Assembly. They introduced the institute of the Council of People's Ministers instead of the General Secretariat as the highest executive body of Ukraine. A certain dissonance in the analysis of the Universal is introduced by the fact that with a call to repel the Bolsheviks, a willful decision was announced to disband the army and organise the people's militia. To reset the local government, it is proposed to re-elect local authorities. The authorities undertook to hand over the land to the peasants before the start of spring work to resolve the agrarian issue, which was acute during the national liberation struggle.

It is worth noting the connection between the political sympathies of the command of the army of the Ukrainian People's Republic, which operated under the Central Rada, and political parties to maintain power in the republic. Excessive politicisation was the reason for the lack of a capable army and a determining factor during the hetman's coup [26, p. 124-135]. The Council of People's Ministers was instructed to begin the restoration of the industry as soon as possible and reformat it for the manufacture of civilian goods. The state took control of the most important sectors of the economy (banking, trade, pricing, control over the market of strategic most profitable goods, exports and imports). It will be pertinent to note that all nations of the Ukrainian People's Republic have been granted the right to national autonomy with respect for all democratic freedoms. As noted by R. Bochkovskyi, that one of the best developments of the Fourth Universal is the national-personal autonomy granted to national minorities as a progressive factor in uniting society [2, p. 603].

Conclusions

Despite the fact that the activities of the Ukrainian Central Council were quite short (from March 1917 to December 1918), and the Fourth Universal was adopted before the overthrow of the Ukrainian Central Council, but the fact remains that at this stage of Ukrainian statehood can be identified a number of domestic and external gains.

At the initial stage, the internal achievements of state formation and consolidation of society include the struggle for territorial autonomy, first without severing ties with the Russian state, and later the proclamation of an independent state based on the principles of parliamentarism and democracy. It should be noted that the leaders of the Ukrainian national liberation struggles of 1917-1921 tried to build an advanced socio-political system based on unity in society, led by the pro-Ukrainian intelligentsia. An important achievement is the lack of delegated powers of the center's autonomy in the text of the Fourth Universal, which is undoubtedly a great achievement given the political and historical context. External achievements include Ukraine's breakthrough into the international arena, conditioned upon the Brest Treaty of February 9, 1918 with the countries of the Fourth Union, which recognised the Ukrainian People's Republic as a subject of international law. Although, in fact, such recognition and external commitments for peacekeeping had fatal consequences for the Central Council. On the one hand, the Ukrainian intelligentsia had a high level of education that allowed them to take on managerial functions, and on the other hand, the lack of experience that would give composure, pragmatism and speed of making the right decisions in specific historical conditions played a crucial role.

We can highlight a number of failures: procrastination with the declaration of independence (the status of an independent state with effective institutions of power would provide an opportunity for assistance from neighboring independent states, as equals in status); non-resolution of land (agrarian issue); lack of combat-ready troops. The ideological differences and sluggishness of the leaders of the Ukrainian Central Rada found expression in a society where destructive sentiments prevailed in the absence of a national leader who, with his charisma and foresight, could unite the entire pro-Ukrainian elite.

Thus, it can be stated that the Ukrainian Central Rada in a short time managed to lay the foundations of Ukrainian statehood and allowed future generations to revive Ukraine after the trials of the Holodomor, war and occupation by the Soviet regime. Therefore, without the progressive work of the Central Council, the success of the awakening of the Ukrainian nation in the late twentieth century would be difficult to imagine. And the study and analysis of the provisions of the late, adopted under the pressure of external and internal factors, the Fourth Universal, which proclaimed independence and renunciation of autonomy, is a clear example of the state position of the Ukrainian intelligentsia of the early twentieth century. Of course, it is difficult to cover the whole layer of the turbulent events of the Ukrainian revolution, but the analysis of the events of the past century will give hope that conditioned upon the experience of repeating miscalculations and failures in the future will not be.

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Четвертий Універсал Української Центральної Ради Української Народної Республіки, як підсумок одного із етапів Української революції

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Анотація. Стаття присвячена аналізу проблематики історико-правових умов становлення Центральної Ради та її діяльності через призму прийняття Четвертого Універсалу, як підсумку вершини нормотворчості Української Центральної Ради. Актуальність цієї проблематики зумовлена висвітленням основних напрацювань Української Центральної Ради, яка лавірувала між обов'язками чиновників Російської держави і національною свідомістю українських патріотів та перемоги «духу українства» державницького інтересу українства, виходячи з бурхливих подій Української революції. Метою статті є аналіз історико-правових засад прийняття Четвертого Універсалу Української Центральної Ради як юридичної констатації прагнення українців до самостійності на початковому етапі боротьби та незалежності. Методологічною основою дослідження став комплекс методів та підходів, серед яких: діалектичний метод дозволив дослідити природу історико-правових умов становлення Центральної Ради та її діяльності через призму прийняття Четвертого Універсалу, історико-правовий метод дослідження зумовлений як необхідність історичного підходу загалом, так і таких конкретно-наукових методів, як описово-хронологічний, який дозволив сформувати історичне тло дослідження, порівняльно-історичний, який забезпечив можливість порівняння розвитку досліджуваних інституцій з подібними інституціями цього періоду, що формувалися в інших суспільствах; формально-юридичний метод дозволив вивчити предмет дослідження в розрізі суто нормативно-правового регулювання; інституційний підхід використано для комплексного осмислення ролі досліджуваних інституцій в суспільстві, їх вплив на правову систему. Проаналізовано державну політику через принципи та основний зміст законодавства у напрямі підтримки національного руху та формування перших елементів української державності. Досліджено через вивчення емпіричного матеріалу діяльність української інтелігенції, а саме, М. Грушевського – великого історика та стратега, незмінного Голови Української Центральної Ради, що дало можливість зрозуміти світогляд та політичні переконання, а саме ідеї народництва та федералізму. Вивчено та проаналізовано положення запізнілого, прийнятого під тиском зовнішніх та внутрішніх чинників, Четвертого Універсалу, що проголошував самостійність та відмову від автономії, і став яскравим прикладом реалізації державницької позиції української інтелігенції початку XX століття. Проаналізовано мету діяльності Української Центральної Ради в контексті побудови держави після століть бездержавності, тому що від XVIII століття проукраїнського державного утворення не було, всупереч суспільному запиту, який панував у суспільстві. Висвітлено загальні засади кожного універсалу що дало можливість зрозуміти поетапність напрацювань Української Центральної Ради та дати історико-правову оцінку

Ключові слова: українська ідея, українська інтелігенція, національна свідомість, Генеральний секретаріат, федералізація, автономія, М. Грушевський

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Conceptual and Categorical Apparatus of the Concepts of "Right" and "Law" and Their Relationship

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Abstract. In today's context, the definitions of "right" and "law" are becoming increasingly important, because right is a normatively enshrined justice, and the law is the compiler of social relations. The aim of the article is to clarify the content and essence of the definitions of "right" and "law", to determine their relationship and difference and to reflect on this basis their own vision in jurisprudence. The theoretical and methodological basis of the study is the historical and legal method, structural and functional method, comparative method. The content and essence of the definitions of "right" and "law" are considered. The essence and understanding of such legal phenomena as natural law that arose outside society and positive law created by the state are clarified. The current views of Ukrainian researchers on the characteristics of common and distinctive features of positive and natural law, which differ in certain norms of behavior created by people to determine what is allowed and what is not legally allowed and are expressed in the form of laws. Considering the common features, it is determined that natural law fills the gaps in positive law, because human behaviour is determined not by man himself, but by the law that dominates him with a combination of justice and legality. The main ways of development and existence of positive law are identified, among which are customary law, law of judges, law of the legislator. The main features of positive law, which include mandatory regulations; the expression of norms in laws and other sources determined by the state; formal certainty; state security. The norms and principles of natural law, which are absolute in nature, confirm the truth that man can not live in a world where everything is relative and rely only on contractual bases, which are formulated by the people themselves. It is proposed to conduct research on the relationship and distinction between the concepts of "right" and "law" used in the process of scientific knowledge of a particular problem with which the researcher substantiates his research phenomenon

Keywords: law, legal law, non-legal law, unconstitutional law, natural law, positive law

Introduction

In Ukraine, there have recently been a large number of scientific publications on the interpretation and disclosure of such definitions as "rigth" and "law", some aspects of which have been actively considered and analysed by Ukrainian scholars. Thus, V. Selivanov [1] considered the relationship between right and law as one of the methodological problems of philosophy and theory of law. It is the philosophical understanding of law, sees fundamental values such as freedom, equality, justice. Adhering to these values and focusing on the legal framework for the organisation of any form of social interaction, you can avoid chaos and differences in yourself and in relationships with others. V. Savenko offered a deep understanding of the meaning of the terms "rigth" and "law" [2]. The author notes that judicial practice sees in right and law the unity of ideological content and normative consolidation. Right is perceived as an eternal and statistical phenomenon, law – as a constant and dynamic; the right acts as the organiser, and the law – the organiser of public relations; right as a timeless and supernatural heritage, and law as a historical and cultural specificity. It follows that the rught reflects the internal content of phenomena and processes and is created by society, and the law – reflects the external resistance to certain crimes and is created by the state.

The question of the relationship between positive and natural law as an integral part of legal awareness and understanding of law was studied by R. Lutskyi [3]. The researcher researched and singled out two phenomena of legal understanding – natural law, which has an objective nature and is created by people in the process of life and positive law, which, in addition to objective nature, is subjective and created by the state and its bodies based on and considering natural law. Thus, the two existing opposing currents merge into one naturally positive theory of law. M. Kelman, O. Kotukha, and I. Koval [4], V. Navrotskyi [5], N. Konieva [6], S. Slyvka [7] and other researchers have devoted numerous scientific publications to the understanding of "right" and "law" In modern jurisprudence. The foreign scientific work of the scientist D. Dudek was not left out [8]. In his work, the author analyses the concept of public confidence in the state and the rule of law and notes that true trust in relations between people, including in relations with the government, follows not from the law, constitution and codes, but from freedom, responsibility and human desire good that follows from natural law.

The purpose of the article is to define the essence and content of the concepts of "right" and "law", to clarify their relationship and differences and, accordingly, to reflect their own vision in jurisprudence.

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Theoretical and Legal Bases on the Essence of the Definitions of "Natural Law", "Positive Law" and "Law" in General

In the context of the study, we consider it appropriate to consider, first of all, the meaning of such definitions as "natural law" and "positive law", because, repeatedly in the publications of modern domestic and foreign researchers. relevance at the present stage of development of society, because the law is formed in a state-organised society as the main regulatory regulator of social relations. Analysis of the accumulated scientific knowledge identifies that the scientific interest in the uniqueness, social necessity and complexity of the phenomenon of law is not declining, but on the contrary, is constantly increasing.

First of all, it is worth paying attention to the distinction between the essence and content of law. As the researcher V. Andriiv notes [9, p. 47] "… if the essence reflects the internal nature of law, its basic and defining qualitative characteristics, without which law ceases to be law, then the content of law is the expression of its essence in many and varied manifestations, in the whole system of recurring social relations". Ukrainian researchers have pointed out that law derives its name from the word "justice", as justice is one of the main foundations of law, which is key in defining it as a regulator of social relations. M. Kelman is a supporter of a broad understanding of the phenomenon of law, who noted that "law is a social regulator of relations, built on the concept of justice" [4, p. 315].

As Professor M. Miroshnychenko notes [10, p. 132] "… law is an objectively defined, rationally justified system of proven in public practice principles, institutions, norms, rules of conduct, implemented in accordance with the laws of natural law and associated with government institutions that have a recognized right to coercion". We consider the opinion of M. Sambor to be correct [11, p. 60], who noted that… law is a normative (volitional) consolidation of the needs and interests of citizens, society and the state in ordering the proper regulation of private and public interests of legal entities; rules of conduct issued by the state and have a mandatory, official nature; a set of norms united by public authorities, which are a systemic set of regulations.

Realising the scientific need for analytical understanding of such legal phenomena as "natural law" and "positive law", we will try to summarise the current views on their nature, understanding, common and distinctive features of modern scholars. In his study, R. Lutskyi [3, p. 39] notes that the norms and principles of natural law are absolute. Among the vast number of variables and relative values, they point to inviolable prohibitions and unconditional ideals. By their existence, they confirm the truth that man cannot live in a world where everything is relative, and that he relies only on the contractual, ie formulated by the people themselves. Agreements can be different and can meet many criteria. Natural law borrows the principle of absoluteness from the sphere of religion and morality, with which it is closely connected and which have long nourished the sphere of spiritual and practical relations of man with absolute values and norms. If in traditional ancient and medieval societies religion directly influenced the legal system, today its influence on natural law is becoming mostly indirect, which is carried out through moral norms and theoretical and philosophical teachings.

Furthermore, N.I. Korchevna and O. Derhunova [12, p. 23] in their research note that "…one of the main means of implementing such universal values as freedom, justice, democracy, law in new political and socio-economic and socio-cultural conditions for Ukraine actualises the development of theoretical thought about the relationship between man and law. This interaction is manifested in natural law, which is considered to be derived from human nature, regardless of its fixation in law.

At the same time, foreign researcher D. Dudek is of the opinion that the state's respect for the natural human right to legal security is a stronger basis for real trust in relations between citizens and the state than the link between trust and the rule of rights, detached from social reality [8, p. 38].

Ukrainian scientists conduct a lot of research, which also applies to positive law, which is explained by the desire to find the foundations of law in everyday life. In particular, S. Slyvka explores positive law in terms of freedom of will. Positive law, in his opinion, means the national law of each state, the external form of regulation of which is enshrined in law. The process of adopting the legal norms of positive law is associated with certain elements of coercion, prohibitions, which can sometimes be subjective. The author considers the freedom of human will in positive law, which, in his opinion, can be achieved by violence or not by violence [7].

Ukrainian researcher R. Lutskyi shows a very clear tendency towards positive law, which states that "...it is obvious that it developed during the transition of mankind to civilisation, when there were objectified foundations for the freedom of the individual – the emergence of surplus product in the form of private property and the separation of individuals. As a result, positive law is formed as an institutional, externally objectified entity. The process of law development was associated with the development of writing, consolidation of norms and their implementation in written documents. Positive law, precisely in view of its written expression and relationship with the government, acquires the quality of an institutional, influential normative regulator. Certain requirements for people's behaviour are transformed into legal norms through specific forms and become public. "However, the analysis of accumulated scientific knowledge allows to distinguish the main ways of development and existence of positive law as a public phenomenon, among which is customary law (law, which is expressed mainly in customs); the right of judges (a right created mainly by the court); the right of the legislator (the right created by the legislative activity of the state). It is expedient to single out the key features of positive law, which include mandatory regulations; the expression of norms in laws and other sources determined by the state; formal certainty; state security" [3, p. 39-40].

The study of scientific literature revealed common and distinctive features of natural and positive law. We consider the opinion of R. Lutskyi to be correct, which singles out their common features, among which are:

– focusing on the regulation of human behaviour, supporting the idea of harmony of the universe;

– observance of many moral norms;

– reflection in positive law of natural legal principles and functions;

– the only logic of maintaining world and state law and order;

– natural law, like positive law, does not deny the needs

of public authorities;
– common duty for all people;
– the superiority of reason over will;
– natural law is a criterion for assessing positive law;
– natural law fills the gaps in positive law;
– human behaviour is ultimately determined not by the person himself, but by the law – natural or positive, which dominates him;
– a combination of justice and law;
– natural law in some cases is an intuitively positive law.

However, we emphasise that there are also distinctive features of natural and positive law:
– positive law, in contrast to natural, created by man;
– the theory of natural law is always ontological, and the theory of positive law tries to rely primarily on ontology;
– the law of nature is perfect and eternal, and the positive is imperfect and short-lived;
– some norms of natural law are unchanged, and norms of positive law are changeable, although much conservative;
– natural law regulates ontological and deontological processes, and positive law – only deontological;
– natural law is slowly changing and evolving, and positive law is changing rapidly and revolutionary;
– not all norms of positive law correspond to natural law, natural law is a standard of positive law;
– natural law is metaphysical, and positive law is rational;
– there is a supernatural right, but no superpositive law;
– natural law depends on the supernatural, positive – on international law;
– elementary morality is important for positive law, and higher – for natural law;
– positive law denies natural law, and natural, on the contrary, supports the positive;
– man is the basis of positive law, and for natural law the basis is not only man but also the real world as a whole;
– natural law is characterised by synergies that are unacceptable for the positive;
– positive law cannot prohibit euthanasia, and natural law has such force [3, p. 40].

The analysis of the existing scientific views of scientists reveals that there is a distinction between natural and positive law, which is that natural law has existed and will exist in nature, regardless of how people will perceive it; exists outside the time parameters; is the main basis for positive law; fills in the gaps in positive law. For its part, positive law differs from natural law in such basic properties as: mandatory regulations, state security, certain rules are variable and man is the basis of positive law.

Thus, having considered natural and positive law, we have our own vision of the formulation of the basic properties of the definition of "law", by which we mean:
– a social phenomenon without which society cannot exist;
– reflection of the requirements of general justice;
– establishment and protection by the state of a measure of conduct;
– a set of legal norms;
– the norm of freedom.

Having clarified the essence and content of natural and positive law, we can say that it is not necessary to find out which of these concepts is more perfect or which of them occupies a dominant place in modern jurisprudence, as each of these theories complements each other. Therefore, the task of modern legal science will be to explore the non-existent ideal system, which would stand above all available manifestations of law, embodying their advantages.

Theoretical Approaches to the Essence of the Concept of "Law"

In recent decades, in Ukrainian and foreign literature, and in legal practice, the essence and concept of legal and non-legal law remains the subject of research to this day.

Analysing Ukrainian jurisprudence, we consider it necessary, first of all, to consider the existence of legal law in its content and essence. A. Hryshchenko is a supporter of a broad understanding of this sphere [13, p. 6, 8], who noted in his work that "...legal law, as a formal consolidation of law, based on humanistic and progressive views, the maximum realisation of social ideas of a developed civil society, legal and democratic state; as a normative legal act aimed at the realisation of constitutional rights and freedoms of man and citizen, the source of which is the sovereign will of the people, the nature and content of humanistic ideas and universally recognised human values, and the purpose of regulation – the existence of civil society, social, democratic and the rule of law and the rule of law".

As N. Koneva notes, "natural human rights are the main criteria for recognising the law as a legal and material criterion of the legal nature of legislation, which later determine the possibility of its application in the spirit of ensuring fundamental human and civil rights and freedoms" [6, p. 99]. At the same time we emphasise, as noted by V. Selivanov [1, p. 55-56]: "… legal law as an expression of the essence of law, ie truth and justice, the truth of life – is a system of subjective rights based on real social needs and interests, it plays in society, in particular, the role of a degree of freedom of human behaviour, whose (freedom) is not identical with permissiveness, in contrast to arbitrariness. Only by adhering to the idea of freedom and justice and focusing on the legal basis in the organisation of any form of social interaction, we can avoid chaos, differences in themselves and in relationships with other people.

Identifying the essence of law as the main regulatory tool of the rule of law, which should be based on law and act within the law, Ukrainian researchers V. Tatsii and Y. Todyka, noted that: "... its role – to unite, not divide to unite society to solve urgent problems. Laws that adequately express the public interest, combine the ideas of freedom, justice and equality in the regulation of social relations, can be an important factor in stabilising the social situation, streamlining stable structures of state and civil society, development of democratic political and legal processes" [14, p. 9-10].

Having clarified the theoretical foundations of legal law, it is worth paying attention to the special characteristics of non-legal law. Exploring this legal aspect, N. Koneva [6, p. 142] notes that "… in non-legal law the law is not embodied, but acts as a form of legal arbitrariness. Illegal are laws whose effect leads to results that contradict the expectations of the legislator, including those bylaws that in their content must comply with the provisions of the law and in fact contradict it. There are also illegal laws or their special norms that are not directly related to arbitrariness, but are significantly contrary to the principle of justice and do not meet the needs of social development, and therefore are not only ineffective but also harmful.

Researching the scientific work "Problems of defining

the concept of legal law", V. Ryndiuk analysed the scientific views of many researchers, among which the prominent is M. Patey-Bratasyuk, who determines that "… illegal normative act, such as a document issued by a public authority significantly violates the principle of legal equality, thus, does not correspond to the ideas of law, but is mandatory and protected from violations by public authorities "[15, p. 24]. Considering the scientific and theoretical views of prominent researchers on legal and non-legal law, we consider it appropriate to interpret the term – "unconstitutional law", i.e. a law that does not comply with the Constitution of Ukraine [16] as the basic law of the state. As noted by M. Kelman [4, p. 330]: "…The Constitution is a special legal act that is important for man, society and the state. The Basic Law establishes the foundations of social and state order, the legal status of man and citizen, the principles of public authority by the people, the structure and relations of the state, and the foundations of local government. The Constitution is the foundation, the basis of the country's legal system and legislation; an outstanding factor in ensuring state sovereignty, consolidation of society, creates appropriate conditions for self-realisation of the individual.

Analysing the numerous works of researchers, these provisions show that in the scientific literature there is no unambiguous interpretation of the concept of legal and non-legal law. In a narrow sense, legal law means a law that adequately reflects the law, the "spirit" of law, legal principles. As for non-legal law, it is a law that does not reflect the essence, value, content of law and violates its principles. It is the Constitution, as the basic law of the state, embodies fundamental human values and is always legal in content, respectively, non-legal laws are unconstitutional.

Correlation and Difference Between the Concepts of "Right" and "Law"

Based on a number of fundamental foundations for the study of theoretical and legal aspects of positive and natural law and law, we consider it appropriate to dwell on the relationship between the concepts of right and law. Considering law as an objective socio-cultural phenomenon in time, in its essence and content precedes the law. Considering the scientific views of L. Korchevna, O. Derhunova [12] in "On the problem of determining the law" and V. Savenko [2] in the article "Comparative analysis of the concepts of "right" and "law" as elements of legal reality", it should be noted that they emphasised that there is a difference between right and law, since right is the freedom to act or not to act, while the law defines and binds one or another member of this alternative. Thus, right and law are different, as are duties and freedoms, which are incompatible with the same.

V. Savenko identified a very clear trend in the relationship between the definition of "right" and "law", noting that "...jurisprudence in right and law sees the unity of ideological content and normative consolidation, in which right is given the role of a holistic phenomenon and law – a micro-phenomenon in the structure of the first. He considers right to be an eternal and static phenomenon, law to be constant and dynamic; right– as an ideological heritage of a certain space-time continuum, law – as a source of objective law within a particular legal system; right – as an organiser, law – as a compiler of social relations; right – as a timeless and supernatural heritage, law – as a historical and cultural specificity" [12, p. 108].

According to criminal law researcher V. Navrotskyi, the recognition that "right" and "law" are not the same thing, and that the law must be legal, is a growing type of legal science. After all, it must not only explain, interpret the current law, but also find out how it meets the requirements of law, assess the quality of the law. At the same time, the requirements for the quality of the law itself are growing, which should not only express the will of the legislator, but also meet the requirements of law, which is a means of stabilising legislation, protects the law from unreasonable, current needs" [5, p. 350-351].

These provisions indicate that the relevance of the chosen research issues is influenced by the relationship between the concepts of law and law. As the researcher of this tradition V. Selivanov notes [1, p. 55] "... in the ontological aspect of the distinction between law and law, answering the question of what is law, identifies objectively essential features of law, the very presence of which in the law allows characterising it as a legal phenomenon or as a legal phenomenon as an external manifestation and the realisation of the legal essence".

We consider the opinion of the Ukrainian researcher V. Navrotskyi to be correct [5, p. 349], who noted that the interaction of the concepts of "right" and "law" is characterised by the fact that right is the content of the provisions, and the law – the form in which they acquired legal force. In this case, the content cannot exist without the appropriate form, and the form cannot be insignificant. Since the form (law) is formed by people with their interests, preferences, mistakes – the form does not necessarily have to be fully consistent with the content at any time. Therefore, there is a dialectical contradiction between form and content, which is eliminated in the improvement of law and change the perception of good and evil in society, the seriousness of repression that can be applied to criminals. In an analysis of existing theoretical approaches to clarifying the nature and content of right and law, professor V. Navrotskyi identified the most important features that characterise their differences and relationships.

Table 1. Characteristic properties of "right" and "law"

Right	Law
It is an instrument of society	It is an instrument of the state
	Expresses the will and interests of the legislator at a certain stage of the state
More stable and not related to current needs	Dynamic – constantly changing, reflecting, in particular, the interests of politically dominant legislators or lobby groups to oppose certain encroachments
The introduction into law of principles and definitions is a means of implementing the provisions of law, proof that the legislator is not arbitrary in creating legislative requirements, but limited by law	

Table 1, Continued

Right	Law
It consists of norms	It consists of articles grouped into larger structural units – sections, parts
the higher the level of law enforcement, the greater the role of law than law	
The Supreme and Constitutional Courts of Ukraine and the International Court of Human Rights focus more on law than on individual articles of law	
The «spirit» that follows from the system of provisions is important in law	In the law – "letter" – of wording given by the legislator
There are no persons or groups of persons who would impose the provisions of law as obligatory	The law is at the same time the will of the people, including individuals
The law clarifies the provisions of the law, in certain cases preventing their application	

Source: developed by the author based on [5, pp. 349-351]

In foreign literature there is a widespread opinion of prominent researchers in the legal field R. Kabalskyi and O. Shevchyk [17], who noted that "...one of the manifestations of the rule of law is that law is not limited to law as one of its forms, but includes other social regulators, such as morals, traditions, customs, etc., which are legitimised by society and historically implemented in national culture. All these elements of law are interconnected by a set of norms that correspond to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine [16]. Important is not only the law itself, but also the goals that pursue its norms, as stated in the doctrine, the law is defined as a manifestation of its value in the ability to regulate public relations, act as a means of regulating public relations, ensure adequate public good in law and order. In order for the law to be valuable, it is endowed with those qualities that identify it as an important social force of society and a carrier of social energy" [17, p. 161].

Conclusions

The analysis of the existing views of Ukrainian and foreign researchers and the accumulation of scientific knowledge to clarify the nature and content of definitions of right and law and their relationship allows concluding that right is a set of rules of conduct established or recognised by public authorities, universally binding and official, built on the principles of justice and equality in accordance with the interests of the population and the rule of law in the state.

In the course of the research certain distinctive and common features of natural and positive law are singled out. Differences in natural law: 1) exists from nature; 2) perfect, eternal; 3) there are no spatial restrictions on its existence and operation; 4) constant in time, there are no specifically defined temporal and spatial parameters; 5) has always existed and will exist in nature, regardless of its perception by humans. Differences in positive law: 1) created by man; 2) imperfect, short-lived; 3) operates in clear spaces (time, space, circle of people); 4) the existing concept of validity, i.e. provides for the time of occurrence of a certain rule and its entry into force or termination; 5) man is the basis of positive law. Common features: 1) commonality of many moral norms; 2) reflection of legal principles and functions; 3) maintenance of world and state law and order; 4) does not deny the needs of public authorities; 5) a common duty for all people; 6) human behavior is determined by natural or positive law; 7) a combination of fair and legal.

Thus, the analysis of accumulated scientific knowledge allows emphasising that the circumstances (opportunities) contained in the law must be embodied in reality, ie in law. Accordingly, in the narrow sense, a law is a normative legal act that has the highest legal force, adopted by the legislature or by popular vote, must directly express the will of the people and the interests of civil society. Thus, the law is a realised opportunity, which is embodied in law. Opportunity alone cannot become a reality. Just as the right cannot be exercised by itself, the requirements need to take legal form.

The right itself covers the internal content of phenomena and processes, and the law reflects the external opposition to certain crimes; right is created by society and law by the state. Thus, in the process of this study, certain differences and correlations between the concepts of "right" and "law" were identified. The main differences are that the right exists independently of the law and existed when the law did not yet exist; law is a natural phenomenon and in law it acquires an official state form.

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Поняттєво-категоріальний апарат концептів «право» і «закон» та їх співвідношення

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Анотація. Дедалі більшої актуальності в умовах сьогодення набуває визначення понять «право» і «закон», оскільки право – це нормативно закріплена справедливість, а закон – це упорядник суспільних відносин. Метою статті є з'ясування змісту та сутності дефініцій «право» і «закон», визначення їх співвідношення та відмінність і відображення на цій основі власного бачення в юриспруденції. Теоретико-методологічну основу дослідження становить історико-правовий метод, структурно-функціональний метод, порівняльний метод. Розглянуто зміст та сутність визначень «право» і «закон. З'ясовано суть та розуміння таких правових явищ як природне право, яке виникло поза суспільством та позитивне право, що створюється державою. Визначено наявні на теперішній час погляди українських дослідників щодо характеристики спільних та відмінних рис позитивного і природного права, відмінністю яких є певні норм поведінки, які створюються людьми для визначення того, що дозволено, а що юридично не дозволено та отримують зовнішнє вираження у вигляді законів. Розглядаючи спільні риси, визначено, що природне право заповнює прогалини позитивного права, оскільки, поведінку людини визначає не сама людина, а закон, який домінує над нею з поєднанням справедливості та законності. Виявлено основні способи формування та існування позитивного права, серед яких є звичаєве право, право суддів, право законодавця. Зазначено основні ознаки позитивного права до яких відносимо загальнообов'язкову нормативність; вираженість норм у законах та інших джерелах, що визначаються державою; формальну визначеність; забезпеченість державою. Охарактеризовано норми і принципи природного права, які мають абсолютний характер, підтверджують саме ту істину, що людина не може жити в світі, де все відносно і спиратися тільки на договірні основи, які сформульовані самими людьми. Запропоновано здійснити наукове дослідження щодо співвідношення та розрізнення понять «право» і «закон», що застосовуються в процесі наукового пізнання визначеної проблеми за допомогою яких дослідник обґрунтовує досліджуване ним явище

Ключові слова: закон, правовий закон, неправовий закон, неконституційний закон, природне право, позитивне право

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Some Problems of Making a Procedural Decision to Close Criminal Proceedings in Connection with the Release of a Person from Criminal Liability

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Abstract. In judicial practice, there are situations when, as of the day of the decision of the appellate court, the statute of limitations for bringing the accused to criminal responsibility has expired, and the defense does not take the initiative to release the person from criminal liability. Accordingly, the court in no way responds to the existence of this circumstance and does not decide on the application (non-application) of the grounds contained in paragraph 1 of Part 2 of Article. 284 of the CPC, or another, to make a procedural decision to close the criminal proceedings. Therefore, the aim is to try to answer the question of which of the procedural decisions, under the described conditions and circumstances, should be made by the court: to close the criminal proceedings in connection with the release of a person from criminal liability or a person should be released in the court of cassation from punishment? Due to the applied formal-logical method and systematic analysis, it was found that Part 2 of Art. 284 of the CPC concerns cases of closing criminal proceedings exclusively by the court. It was stated that in paragraph 1 of this part of the article, among the grounds for closing the criminal proceedings, the legislator provides and "...in connection with the release of a person from criminal liability." At the same time, it has been proven that the right of a person to be released from criminal liability, if there are grounds for it, judges often do not depend on their own duty to explain to a person such a right so that he can use it. It is established that the responsibilities enshrined in Art. 285 of the CPC apply not only to courts of first instance, but also to appellate instances. Research methods such as sampling, system-structure, induction and deduction have been used to argue that in circumstances where a court conviction has entered into force, a person should be exempt from the court of cassation, this is stated in Part 5 of Art. 74 of the Criminal Code of Ukraine, on the grounds provided for in Art. 49 of the Criminal Code of Ukraine. At the same time, it is proved that the court has hindered the adoption of such a procedural decision by the approach that the legislator laid down in the construction of paragraph 1, part 2 of Art. 284, art. 440 of the CCP

Keywords: release from punishment, appeal proceedings, cassation appeal, statute of limitations for criminal prosecution

Introduction

Various approaches have been developed in science and judicial practice to the declared issues, but primarily, the reason for this situation is that the current provisions of the CPC of Ukraine [1] and the Criminal Code of Ukraine [2] (hereinafter – the CCU) do not provide unambiguous answers. Thus, only the court has the authority to close criminal proceedings in connection with the release of a person from criminal liability (paragraph 1 of part 2 of article 284 of the CPC of Ukraine) [1]. Part 2 of Article 285 of the CPC of Ukraine [1] states that if available (which follows from the provisions of the CPC and the Criminal Code of Ukraine) release from criminal liability, the person is explained the right to such release. Judges often do not make such a right of a person with their own duty to explain to the person this right and legal consequences in case the person uses it or, conversely, does not use it. As a result, requests in the form of a request for release from criminal liability are submitted before the cassation hearing and even during it [3]. Given such realities, there is a problem of unambiguous understanding of which of the two procedural decisions, which follow from the existing provisions of the current CPC [1] and the Criminal Code of Ukraine [2], the court must take if there are established grounds: to close criminal proceedings with the release of a person from criminal liability or should the person be subject to release from punishment in the court of cassation? After all, under identical conditions, in one case, the court of cassation must release such a person from punishment, as stated in part 5 of Article 74 of the Criminal Code of Ukraine [2], on the grounds provided for in Article 49 of the Criminal Code of Ukraine [2], and in otherwise – there is an opportunity for the cassation instance to release from criminal liability and close the criminal proceedings, as regulated in paragraph 1, part 2 of Art. 284 of the Criminal Procedure Code of Ukraine [1]. Because Article 440 of the CPC of Ukraine [1] refers to the closure of criminal proceedings by the court of cassation, which obviously occurs after the verdict enters into force and the court establishes the circumstances provided for in Article 284 of the CPC of Ukraine [1]. In this case, Yu.V. Baulin noted that it is impossible to get rid of what has already happened [4, p. 191-192, 194], ie from criminal liability, when the sentence has already entered into force on the basis of the provisions of Article 532 of the CPC of Ukraine [1]. Therefore, in such a situation, it is illogical to make a decision on release from criminal liability [4, p. 191-192, 194]. After all, under such

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conditions, a person is already "considered to be subject to lawful conviction for a crime previously committed by him", quite correctly sums up O.P. Horokh [5, p. 271]. Therefore, it is logical to release this person from punishment, not from criminal liability [4, p. 194]. It should be emphasised that, in general, the institution of exemption from criminal liability is very controversial, which follows from the analysis of substantive and procedural law, and can be traced in scientific discourses. Thus, the institute of exemption from criminal liability has already been considered by O.O. Dudorov in the plane of its constitutionality [6, p. 40-48], and Yu.V. Baulin, among other things, criticised the approach that "through the release of criminal liability is its differentiation" [4, p. 192]. In the criminal procedural perspective, this institution was "inspected" by G. Ros in relation to the presumption of innocence, ans he found a number of inconsistencies between them [7, p. 232-237]. And although its conclusions were made under the previous CCP, ie before 2012, they are, for the most part, relevant in terms of doctrine. However, these researchers did not analyse the current array of case law on the declared issues, which, unfortunately, is not characterized by unity. The generaliaed list of components of the issue crystalliaed during the consideration in the Cassation Criminal Court of the Supreme Court of the case No. 521/8873/18 (proceedings No. 51-413kmo21) [3; 8], during which the judges of the First Judicial Chamber of the Criminal Court of Cassation of the Supreme Court, substantiating their position in the decision of September 23, 2021 [8], transferred the criminal proceedings to the Joint Chamber and invited members of the Scientific Advisory Board to join the Supreme Court to join this discussion by preparing relevant scientific conclusions [9]. In particular, it should be emphasised that in this criminal proceeding before the cassation hearing the defense filed a petition to the court of cassation to release the person from criminal liability under Article 49 of the Criminal Code of Ukraine [3; 8; 9]. It seems that the above only emphasises the relevance of the declared problem and the practical urgency of its solution.

Notably, attempts have already been made in the scientific conclusion to present their own beliefs and arguments to them [10]. *The purpose of this publication* is another attempt to give an already detailed answer to the question of which of the procedural decisions, under the described conditions and circumstances, should be taken by the court: to close criminal proceedings in connection with the release of a person from criminal liability or a person should to be released from punishment in the court of cassation? It is proved that in the circumstances when the conviction of the court came into force, the person should be subject to release from the court of cassation from punishment, as referred to in Part 5 of Art. 74 of the Criminal Code of Ukraine, on the grounds provided for in Art. 49 of the Criminal Code of Ukraine. At the same time, it was stated that the approach to which the legislator laid down in the construction of item 1 part 2 of Art. 284, art. 440 of the CPC, so it must be adjusted.

The Right of a Person to be Released from Criminal Liability, if There are Grounds for it, Depends on the Obligation of the Court to Explain to the Person this Right

It should be emphasised that only the court, among other things, closes criminal proceedings in connection with the release of a person from criminal liability (paragraph 1 of Part 2 of Article 284 of the CPC of Ukraine) [1] in cases provided by the Law of Ukraine on Criminal Liability (Part 1 of Article 285 CPC of Ukraine) [1]. A person has the right to have the charges against him or her tried in court as soon as possible or to have them terminated by closing the proceedings (part 1 of Article 283 of the CPC of Ukraine) [1], and the prosecutor is obliged to take some of the actions listed in part 2 of Article 283 of the CPC of Ukraine as soon as possible after notifying the person of suspicion, having, of course, collected the relevant body of evidence and having proper grounds.

At the same time, among the general provisions of criminal proceedings during the release of a person from criminal liability, part 2 of Article 285 of the CPC of Ukraine provides clarification of the right to such release, and part 3 of this article specifies aspects of this right and clarification [1]. However, the legislator in this article does not specify the subjects who are endowed with the corresponding duty to explain these provisions to the suspect, accused. However, it seems to us that this was done to avoid overloading the text of the CPC of Ukraine, because from Article 284 of the CPC of Ukraine and other provisions of the CPC of Ukraine, which regulate procedural activities, both in pre-trial investigation and court *to raise the issue* of exemption from criminal liability, if there are grounds for it, is available, both for the suspect and the accused, both in the pre-trial investigation and in the court stages [11, p. 64]. Moreover, cases of completion of pre-trial investigation, inter alia, by an indictment, and not only by a procedural decision in the form of a request for release from criminal liability, provide a further possibility, if identified, to release the person from criminal liability in court.

Based on the above, it is obvious that the requirement of the legislator to clarify the person suspected of being charged with a criminal offense and in respect of which the possibility of exemption from criminal liability the right to such release (Part 2 of Article 285 CPC of Ukraine) applies not only subjects that are authorised to conduct pre-trial investigation, but also the court of first and appellate instance, including [11, p. 66].

Thus, summing up the analysis, we can say that the court of first instance and the appellate court have a duty in accordance with the provisions of Article 285 of the CPC of Ukraine [1] to explain to a person prosecuted that at the time of trial or appeal The statute of limitations for bringing this person to criminal responsibility and the possibility of such release and the right to object to the closure of criminal proceedings on this non-rehabilitative basis have expired. Notably, the Joint Chamber of the Criminal Court of Cassation of the Supreme Court in its decision of 6 December 2021 in case No. 521/8873/18 (proceedings № 51-413km221) chose the same position, recognising the release of a person from criminal liability in connection with the expiration of the statute of limitations, the imperative duty of the court of first, appellate instances [3].

Failure of the Court of Appeal (First Instance) to Clarify the Provisions of Article 285 of the CPC of Ukraine is a Significant Violation of the Requirements of the Criminal Procedure Law within the Meaning of Part 1 of Article 412 of the CPC of Ukraine

Among the list of paragraphs of Part 2 of Article 412 of the CPC of Ukraine [1], which determines which of the violations of criminal procedure law should be considered significant, i.e. those "which prevented or could prevent the court to make

a lawful and reasonable court decision", paragraph 1 provides what the judgment shall in any case be set aside if "If there were grounds for the court to close the criminal proceedings, it was not closed" [1]. In the present case, this ground for setting aside the judgment in Case 521/8873/18 (proceedings 51-413 kmo21) [3] should have been applied. In turn, the joint chamber of the Criminal Court of Cassation in the decision of December 6, 2021 in the already mentioned proceedings chose a slightly different position and did not take into account the stated grounds. The Joint Chamber proceeded only from the fact that it had established the fact of unlawful conduct of the appellate proceedings without the participation of the accused; "The requirements of the criminal procedure law were violated, which led to the incorrect application of the criminal law." Part 1 of Article 438 of the CPC of Ukraine [1] was applied to overturn a court decision [3].

It seems that along with the mentioned undoubted violations of the requirements of the criminal procedure law, it is also necessary to explain to the person that at the time of the trial, based on the existing obligation of the court of first and appellate instance, in accordance with Article 285 or the appellate review, the statute of limitations for bringing that person to criminal responsibility has expired. The possibility of such release from criminal liability and its consequences for this person are also explained. Exemption from criminal liability is the basis for closing the criminal proceedings by the court (paragraph 1 of part 2 of Article 284 of the CPC of Ukraine) [1]. Therefore, the implementation of the above actions by the court and the establishment of the court's consent to such release from criminal liability can in fact be regarded as one of the steps towards the decision to close the proceedings. In turn, failure of the court of first or appellate instance to clarify the provisions of Article 285 of the CPC of Ukraine [1] to a person, as a result of which, if there are grounds for the court to close the criminal case, was considered a significant violation of Part 1 of Article 412 of the CPC of Ukraine.

There is an exception to the above, when the court decision should not be revoked, if the proceedings were not closed if there are grounds for such closure by the court. In the case we are considering, this is a situation when the materials of the proceedings confirm that the suspect or accused is exempt from criminal liability, including on such non-rehabilitative grounds, which is regulated in Article 49 of the Criminal Code of Ukraine [2] (expiration of the statute of limitations for criminal prosecution), *objected to this*. As a result, on the basis of Part 3 of Article 285 of the CPC of Ukraine [1], pre-trial investigation and court proceedings were conducted in full in the general order.

In the Circumstances when the Conviction of the Court Came into Force, the Person Should be Subject to Release in Court of Cassation from Punishment, as Referred to in Part 5 of Art. 74 of the Criminal Code of Ukraine, on the Grounds Provided for in Art. 49 of the Criminal Code of Ukraine

It is worth noting that globally at the heart of this issue is the idea of improving existing legal mechanisms to protect citizens from violations of their rights, in particular, during criminal proceedings, making the final decision on punishment or release. Its various aspects and components, including international [12, p. 257-267], are constantly in the field of view of scientists. Researchers, logically, justifiably advise to start with criminal policy [13, p. 282-293], resorting to the implementation at the level of the apparatus [14] and improving the existing individual components [15]. The aspect of introduction of humane approaches and respect for human dignity in special standards is also acute [16, p. 277]. We agree with the author's vision that a prerequisite for the development of the latest effective means of combating criminal offenses, among other things, is an in-depth study [17, p. 262]. After all, "now criminal law, as a means of protecting human rights and freedoms in national and international law is characterized by imperfect adaptation to rapidly changing social circumstances, which, accordingly, leads to problems in their legal protection" [18, p. 248-253]. Criminal procedural law is no exception, and when the issue concerns both of them, namely those legislative omissions that are interdependent, one should not hope for the unity of scientific and practical approaches. In this regard, it should be emphasised that the institution of exemption from criminal liability is very controversial not only among practitioners but also in scientific circles unanimity on its constitutionality [6, p. 40-48], individualisation or differentiation, consistency with the principles of criminal proceedings, in particular with the presumption of innocence, etc., is also absent [7; 19; 20]. In turn, considering the comprehensive at the dissertation level the institution of release from punishment, O.P. Horokh also did not establish absoluteness about him, moreover, comparing the substantive and procedural norms, he came to the conclusion that the legislator clearly could not solve this problem with dignity in the current CPC. "… and the question of the possibility of sentencing without sentencing has become even more confusing" [5, p. 139], therefore recommends an illustrative example of the wording of the article, which provides for the adoption of a conviction without sentencing [5, p. 140].

In line with this research, it is important for the legislator to determine the moment when a person will be prosecuted. In particular, during the pre-trial investigation the suspicion is formulated in the procedural document – notification of suspicion and the person is directly informed about the suspicion of committing a criminal offense in the manner prescribed by the CPC of Ukraine. It is also important that at this stage of the procedural activity there is an initial moment of bringing a person to criminal responsibility [11, p. 65], because according to paragraph 14 of part 1 of Article 3 of the CPC of Ukraine under criminal prosecution should be understood "… stage of criminal proceedings, which begins from the moment of notifying a person of suspicion of committing a criminal offense" [1].

This legislative wording generally follows from the Decision of the Constitutional Court of Ukraine No. 9-rp/1999 [21], although the legislator brought it in line with other provisions of the CPC of Ukraine in 2012 [1]. Since the said Decision of the Constitutional Court of Ukraine was adopted under the conditions of the then wording of the third part of Article 80 of the Constitution of Ukraine and the CPC of 1960 [22], the current procedural decisions were analysed. And in accordance with the requirements of the CPC of 1960 [22], the initial procedural decision of the investigator, prosecutor and, accordingly, the procedural document for criminal prosecution was the decision to prosecute as a defendant.

From the analysis of Part 1 of Article 42 of the current CPC of Ukraine [1] it follows that one of the cases of acquiring the status of a suspect is to notify the person of the suspicion.

Another case of a person acquiring the status of a suspect is drawing up a notice of suspicion, but not serving it conditioned upon failure to establish the location of the person, if measures are taken for service in the manner prescribed by the CPC of Ukraine for service [1]. The date and time of notification of suspicion and other data in accordance with Part 4 of Article 278 of the CPC of Ukraine [1] shall be immediately entered by the investigator, prosecutor in the Unified Register of Pre-trial Investigations [1]. Accordingly, based on such data entered into the Unified Register of Pre-trial Investigations, the technical possibility of generating information on bringing a person to criminal responsibility is provided. The current form of the certificate of criminal prosecution, absence (presence) of a criminal record or restrictions provided by the criminal procedural legislation of Ukraine [23] is logical and approved.

Denying the thesis that "through the release from criminal liability is realised and its differentiation", Yu.V. Baulin quite rightly sums up that "the subject of such differentiation is the legislator, who in advance, before committing a crime, differentiates potential criminal liability for different categories of crimes and criminals." At the same time, the court that decides on exemption from criminal liability "individualises the approach to determining the fate of a person, as not only does not apply the scale of differentiation of criminal liability, which laid down by the legislator, but, on the contrary, refuses to impose legislation on this person. restrictions for the crime committed by her "[4, p. 192].

At the same time, there are those researchers who consider it impossible to apply exemption from criminal liability of persons who have not yet been found guilty by a court verdict of a crime [24]. Partially agreeing, I would like to note that the "procedural steps" to such "application" may be the completion of the pre-trial investigation by the prosecutor's request to the court to release the person from criminal liability. Obviously, the researcher's approach should also be correlated with the initial moment of bringing a person to criminal responsibility and, based on this, *the opportunity to ask questions,* concluding the pre-trial investigation, for further release from criminal liability. After all, this is one of the forms of its completion, according to Part 2 of Article 283 of the CPC – the preparation of the prosecutor's petition [1]. It is also not easy to unequivocally agree with the arguments in the legal literature that acquitting a person as an institution of criminal and, in part, criminal procedural law is not in line with constitutional provisions, including the presumption of innocence. We support those well-known researchers [4, p. 196-197], which by their own counterarguments level such a concept. After all, it is necessary to proceed from the conceptual and comprehensive legislative understanding of the institution of exemption from criminal liability, which is impossible without criminal procedural approaches. At the same time, even considering them, one should not start from only one of all possible and available in part 2 of Article 283 of the CPC of Ukraine [1] forms of termination of pre-trial investigation – appeal to the court to release the person from criminal liability 283 of the Criminal Procedure Code of Ukraine) [1]. The analysis of judicial practice shows quantitatively, and the provisions of the CPC of Ukraine [1], in turn, provide that there is a release from criminal liability of persons convicted by a court conviction, not just those who have not been convicted. The urgent issue is that the court (in our case it did cassation) clearly and timely clarify when objectively there are grounds for release from criminal liability and adequately, in unison with the provisions of Part 8 of Article 284 of the CPC, Article 285 of the CPC of Ukraine [1], reacted to its existence. Of course, opponents may point to Article 440 of the CPC of Ukraine [1], which stipulates that the court of cassation also has the power to overturn a conviction or ruling and close criminal proceedings [1]. But then where is the place of procedural economy? Moreover, similar powers are provided for in Article 417 of the CPC of Ukraine for the court of appeal [1].

It should be clarified at once that we do not consider the current situation to be acceptable, when the wording "exemption from criminal liability" is used in legislative formulations and, accordingly, in case law, in cases *where the conviction has already entered into force*. It seems that this approach is not entirely correct and does not comply with certain provisions of the Criminal Code of Ukraine. In this sense, more extensively resorting to doctrinal approaches, we fully share the scientific position that it is only about the possibility of release from punishment, as part of such responsibility "[4, p. 198]. If the conviction of the court has entered into force, the person is considered to be subject to lawful conviction for a crime committed by him before [5, p. 271].

Continuing our consideration of the issues declared in this matter, we agree that those researchers are quite right when they say that "it is not necessary to talk about release from criminal liability when it has already occurred, i.e. the conviction has entered into force. Exemption from this real criminal liability, in contrast to potential criminal liability (which is already in the potential is enshrined in the sanctions of criminal law, but this potential does not come true) is not possible as such" [4, p. 194]. O.P. Horokh, who is a well-known expert in this field, analyzing the case law of the Supreme Court of Ukraine (decision of 27 July 2010 in the case No. 5-2347km10) agrees with her and notes that "… if the grounds for release from criminal liability at the time of trial there was no case, and they arose after a considerable period of time after the verdict of the court of first instance, the court must release the convict from punishment on the basis of Part 5 of Art. 74, paragraph 2, part 1 of Art. 49 of the Criminal Code" [5, p. 271]. Moreover, the author concludes this provision as relevant and recommends its application to the courts of appeal of Ukraine [5, p. 289]. However, the researcher did not refer to the provisions of the CPC of Ukraine in force in this regard since 2012 and did not express his opinion on the current situation, because the decision referred to by the scientist was made by the Supreme Court of Ukraine provisions of the CPC of 1960 [22]. There is also no understanding of such a word formation as "a significant period of time after the verdict." Very interesting and worthy of approval in terms of the declared issues, is the introduction of the cited scientist such an approach as "the expiration of the statute of limitations is favorable…" [5, p. 289-290].

There are more radical proposals of these and other scientists. In particular, the members of the working group working on the draft of the new Criminal Code of Ukraine are inclined to transform the institution of exemption from criminal liability into the institution of exemption from punishment [24], which does not seem to be fully consistent with criminal proceedings at some stages. turn, on pre-trial investigation. If there are grounds for this, this first stage, among other things, as mentioned above, may end with a prosecutor's request to the court to release the person from

criminal liability (paragraph 2 of Part 2 of Article 283 of the CPC [1]), which is logical. The initial moment of bringing a person to criminal responsibility in such circumstances is available, so it is possible to initiate such an issue in the pre-trial investigation, talking about the final release of the court from criminal liability. However, it is not possible to initiate the issue of release from punishment at the first stage of the criminal process, because it is illogical. It seems that we can talk about him only after the court has passed a conviction. But on the other hand, the current wording of paragraph 1 of part 2 of Article 284, Article 440 of the CPC of Ukraine and other related articles of the CPC of Ukraine [1], where the legislator *should lay down an approach to the powers of courts of different instances also for release from punishment by the court of cassation.*

Conclusions

Obligations enshrined in Part 8 of Article 284, Article 285 of the CPC of Ukraine apply not only to the courts of first instance, but also to the appellate instance. The person has the right to object to the closure of criminal proceedings on the non-rehabilitative basis of paragraph 1 of part 2 of Article 284 of the CPC of Ukraine. The execution of the above actions by the court and the establishment by the court of the person's consent to such release from criminal liability can in fact be regarded as one of the steps towards the decision to close the proceedings. In turn, failure of the court of first or appellate instance to clarify the provisions of Article 285 of the CPC of Ukraine to a person, as a result of which "if there were grounds for the court to close the criminal case was not closed" within the meaning of Part 1 of Article 412 of the CPC of Ukraine.

In the present case, the judgment *should not* be overturned by the Court of Cassation if the case file confirms that the suspect or accused in respect of whose release was pending due to the expiration of the statute of limitations *objected*. As a result, on the basis of Part 3 of Article 285 of the CPC of Ukraine pre-trial investigation and court proceedings were conducted in full in the general order. In circumstances when the conviction of the court has unequivocally entered into force, because the cassation proceedings are underway, if there are established grounds, *the court of cassation should release such a person from punishment* , as referred to in part 5 of Article 74 of the Criminal Code of Ukraine, provided by Article 49 of the Criminal Code of Ukraine. At the same time, the approach taken by the legislator in the construction of paragraph 1 of part 2 of Article 284, Article 440 of the CPC of Ukraine and other articles of the CPC of Ukraine is an obstacle to the adoption of such a procedural decision.

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Окремі проблеми прийняття процесуального рішення про закриття кримінального провадження у зв'язку зі звільненням особи від кримінальної відповідальності

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Анотація. У судовій практиці наявні ситуації, коли станом на день ухвалення рішення судом апеляційної інстанції вже закінчився строк давності притягнення обвинуваченого до кримінальної відповідальності, а сторона захисту не виступає з ініціативою про звільнення особи від кримінальної відповідальності. Відповідно й суд жодним чином на існування цієї обставини теж не реагує та не вирішує питання про застосування (не застосування) підстави, що міститься в п. 1 ч. 2 ст. 284 КПК, чи іншої, для прийняття процесуального рішення про закриття кримінального провадження. Тому й поставлено за мету спробувати дати відповідь на запитання щодо того, котре із процесуальних рішень, за описаних умов і обставин, повинно бути прийняте судом: про закриття кримінального провадження у зв'язку зі звільненням особи від кримінальної відповідальності чи особа мала би підлягати звільненню в суді касаційної інстанції від покарання? Завдяки застосованому формально-логічному методу та системного аналізу, з'ясовано, що ч. 2 ст. 284 КПК стосується випадків закриття кримінального провадження виключно судом. Констатовано, що у п. 1 цієї частини статті, серед підстав для закриття кримінального провадження, законодавцем передбачено й «…у зв'язку зі звільненням особи від кримінальної відповідальності». Водночас доведено, що право особи бути звільненою від кримінальної відповідальності, за наявності до цього підстав, судді нерідко не узалежнюють із власним обов'язком роз'яснити особі таке право, щоб вона могла ним скористатися. Встановлено, що обов'язки, закріплені у ст. 285 КПК стосуються не лише судів першої, а й апеляційної інстанції. Такі методи дослідження, як вибірка, системно-структурний, індукція та дедукція були використані під час наведення та відстоювання аргументів щодо того, що за обставин, коли обвинувальний вирок суду набрав законної сили, особа мала би підлягати звільненню в суді касаційної інстанції від покарання, як про це йдеться у ч. 5 ст. 74 КК України, на підставах, передбачених ст. 49 КК України. Водночас, доведено, що на заваді прийняття такого процесуального рішення судом є той підхід, який законодавець заклав у конструкцію п. 1 ч. 2 ст. 284, ст. 440 КПК

Ключові слова: звільнення від покарання, апеляційне провадження, касаційне оскарження, строк давності притягнення до кримінальної відповідальності

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Forms of Transport Safety in Air Transport

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Abstract. In the article with the help of the complex system analysis of the legal phenomena the forms of maintenance of transport safety on air transport are considered. The urgency of the topic is determined by the need to increase the level of aviation security. In air transport, the issues of interaction of entities that provide different types of security in one transport complex, are not properly regulated, which leads to organisational, informational and other management barriers. The purpose of the article is to study the forms of transport safety in terms of interaction and coordination of the activities of special competence bodies in civil aviation. Formal-legal and comparative-legal research methods are used. As a result of studying the organisational system of ensuring transport safety in air transport, the statuses of executive bodies, operational headquarters, commissions established at airports, and transport safety forces are characterised. Achieving the rule of law in the area under consideration is impossible without classifying transport safety as a strategic national task, to be solved, along with state, in particular, law enforcement agencies, under their patronage and control, related to the priority legal status of the latter must be not only employees of carriers are involved, but also divisions and forces of maintenance of transport safety. A solution to the problem that negatively affects the state of transport safety, on legal uncertainty in the delimitation of territorial, object, zonal and functional competence of law enforcement agencies, and others, including non-state actors in aviation security in the context of determining areas of activity this type of security

Keywords: aviation, aviation rules, administrative and legal regime, act of illegal interference, state programme, protection

Introduction

National security is considered as a set of interconnected segments of security, one of which is transport security. Such complexity is conditioned upon the presence of common threats to different types of security, direct and indirect impact of the state of protection of one related group of public relations on the security of relations of another group. In activities to neutralise threats, there is a tendency to specialise in a set of tools to ensure specific types of security.

The current stage of development of Ukrainian society is characterised by the growing role of the transport sector. It is a system-forming factor, actively influences the state of economic, political, defense security of Ukraine. Transport safety is differentiated by modes of transport. Ukraine's national security depends on ensuring transport safety. The main tasks in this area are: legislative regulation of transport safety; search and consolidation of threats of acts of illegal interference; maintaining the level of vulnerability assessment of transport facilities; definition of categories of transport infrastructure objects; constant development and implementation of requirements aimed at ensuring transport safety; training of specialists in the field of transport safety. A special place in the system of transport safety is occupied by aviation safety and flight safety, which are integral elements of transport safety. The main form of transport safety in air transport is the administrative and legal regime. One of the important forms of ensuring transport safety in air transport is the administrative-procedural form.

Ensuring transport safety is carried out in legal, organisational, technical and procedural forms. The purpose of ensuring transport safety includes measures aimed at: technical arrangement of transport infrastructure facilities and vehicles; establishment of special administrative and legal regimes that correspond to the current situation, the level of threats; creation of effective security forces; ensuring compliance with safety requirements by individuals and legal entities located on the objects of transport infrastructure and vehicles. In air transport, the issues of interaction between law enforcement agencies and coordination of law enforcement measures, which in parallel ensure security in the common sphere, and often in one transport complex, different types of security have not received due attention from the legislator. This leads to the emergence of organisational, informational and other management barriers, uncertainty in the content of the elements of the status of legal entities belonging to different groups of transport security forces.

Research on various aspects of transport safety was carried out by Ukrainian and foreign scientists, in particular: N. Bortnyk, S. Yesimov [1], I. Hutsal, A. Luchok, O. Myronets [2], O. Ostapenko [3], G. Ferdman [4], O. Yarema [5], S. Mitroff, B. Sharpe [6], A. Selehian, M. Sheikholeslam [7]. The need to implement an action plan for the implementation of the National Transport Strategy of Ukraine for the Period up to 2030 [8] poses the task of studying the effectiveness of implementation.

The purpose of the article is to study the forms of ensuring transport safety in air transport.

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Transport Security is a Component of Ukraine's National Security

The problem of ensuring transport safety in recent decades has been very important. This is conditioned upon the fact that the effective functioning of the transport complex depends on the progressive socio-economic development of the state. The issue of transport security has been brought to the highest level of political attention. In particular, the National Security Strategy of Ukraine determines the need to form a single transport space based on a balanced transport infrastructure and increase the level of transport connectivity of the country, create transport corridors, increase the volume and improve the quality of transport [9].

One of the priorities of domestic and foreign policy is the smooth functioning of the transport sector and the maintenance of national security. The role of the transport industry is constantly growing. The development of national interests in the transport sector directly depends on three factors: the implementation of the Association Agreement between Ukraine and the European Union [10]; domestic political situation in the country, the implementation of tasks related to economic and social development; realisation of interests and priorities of the state.

The main national interests in the transport sphere include: ensuring the satisfaction of the needs of the individual and the state in transport services and their implementation; achieving a high level of economic efficiency and safety of the transport process through technical progress and the introduction of European Union standards; ensuring the availability of transport services at a level that should be a guarantor of stability and security; bringing transport safety up to NATO standards; development of export-import services; ensuring public order and safety at transport facilities. This is provided by the action plan for the implementation of the National Transport Strategy of Ukraine for the period up to 2030 [8].

According to G. Ferdman, transport safety in modern conditions should be considered as one of the main goals and an integral part of the activities of people, social groups, societies, states and the world community. In view of this, a natural concrete-historical process for Ukraine is the revision of the constitutional and legal basis of the national security system considering the security factor in the transport complex, which is one of its most important components [4, p. 235].

Ensuring transport safety provides a number of goals, the achievement of which depends not only on the state, but also on individual entities that implement it, including citizens. Such goals include: continuous and safe operation of the transport complex; protection of the interests of the individual, society and the state in the field of transport complex from acts of illegal interference. The main tasks in this area are: legislative regulation of transport safety; search and consolidation of threats of acts of illegal interference; maintaining the level of vulnerability assessment of transport facilities; definition of categories of transport infrastructure objects; constant development and implementation of requirements aimed at ensuring transport safety; training of specialists in the field of transport safety.

Transport safety should be constantly monitored by the entities that implement it, using information, material and scientific and technical means and technologies. The main principles of transport safety are: legality; compliance with the balance of interests of the individual, society and the state; mutual responsibility of the individual, society and the state in the field of transport safety; continuity; integration into international security systems; interaction of transport infrastructure entities, state authorities and local self-government bodies. The implementation of the state policy in the field of transport safety of Ukraine is assigned to the Ministry of Infrastructure of Ukraine, which deals with the development of regulations governing activities in this area. This issue is relevant for law enforcement agencies, including the National Police [5, p. 207].

Disclosure of the content of activities to ensure transport safety in air transport is of methodological and practical importance, because only on this basis can we share the responsibilities of executive bodies and other entities, set realistic goals and provide the necessary powers to solve problems, establish rights and obligations. In the field of transport safety, public safety measures are implemented and at the same time the rights and freedoms of citizens are protected.

The analysis of the Air Code of Ukraine allows naming the areas of transport safety: the establishment of special administrative and legal regimes of access of people to certain areas of airports or airfields; establishment of a special procedure for boarding passengers, loading cargo and luggage on aircraft; ensuring the safety of unmanned aerial systems; implementation of special measures to counteract acts of illegal interference in aviation activities; exercising control over aviation security [11]. The procedure for boarding passengers is an element of the administrative and legal regime. Therefore, the following list includes: establishment of administrative and legal regimes; ensuring compliance with regime requirements; control [12].

The State Program of Aviation Security of Civil Aviation identifies 12 areas that can be combined: the adoption of regulations, improving the system of legal regulation; organisational support; implementation of legal regulations (protection of airports, aircraft and air navigation facilities; control for the safety of persons and objects placed on board the vessel); supervision and control in the field of aviation security; logistical support (technical means and security systems; information protection); financial security [13].

Forms of Transport Safety

The main form of transport safety is the administrative and legal regime. Administrative-legal regime is a special order of functioning of its subjects based on the norms of administrative law, aimed at overcoming or preventing negative phenomena in the relevant sphere of public administration [3, p. 572]. Despite the fact that administrative and legal regimes are designed to ensure the stability of legal regulation as their main and most valuable quality, to ensure the adaptability of legal regulation through the development of regimes: ordinary – for different areas of the airport and aircraft, depending on the category of aircraft transport, and extraordinary – introduced in case of complication of the operational situation, increasing the level of threats to transport safety is the task of the legislator.

In the field of public law, the interests of society and the state are of paramount importance for the legal regime, so the generally prohibitive type of regulation is used. Establishment of specific administrative and legal regimes at air transport facilities, application of extraordinary administrative

and legal regimes in case of complication of the operational situation, ensuring compliance with regime requirements – tasks that require the participation of entities endowed with appropriate powers. These tasks cannot be solved by one subject – one executive body. The participation of several executive bodies, state organisations, air transport entities, and special collegial bodies that coordinate the actions of security entities is required. An effective organisational form of transport safety must be established. Collegial bodies that coordinate the functioning of the whole system are necessary because aviation differs from other modes of transport in a number of essential features, such as the lack of routes, participation in air transportation of independent and self-employed companies that own and operate airports, operate aircraft.

One operating company uses several airports, including foreign ones, foreign operators use national airports, one airport serves several national and foreign airlines. In the practice of aviation security, there have been repeated cases of aircraft being sent to other airports. In 2021, the Interdepartmental Commission on Civil Aviation Security was established to coordinate in the field of aviation security, a component of transport security [14]. Ensuring transport safety in air transport involves the implementation of technical measures.

In particular, the need for technical measures required by the legislation of a foreign country arises in the national airline, which opens flights to a foreign country [6, p. 387]. There are many such requirements, they apply to aircraft and airports. These are technical forms of transport safety.

One of the important forms of ensuring transport safety in air transport is the administrative-procedural form. Features of the legal nature of administrative-procedural measures applied in connection with the commission of an offense, create a certain theoretical basis for the development of measures to improve legal regulations and practice [1, p. 31]. Various measures to ensure transport safety are implemented in the form of administrative procedures. The National Police conducts special inspections of candidates for the positions of employees of transport security units, other services and airport units, as a result of such inspections employment contracts are concluded, passes are issued to protected areas of airports. For special inspections, a peculiar procedural form of providing administrative services is determined. State control (supervision) is carried out within the control and supervision proceedings. The administrative-procedural form is typical for proceedings in cases of administrative offenses in the field of transport safety.

To determine the forms of transport safety, it is advisable to start from the purpose of the activity. The purpose of ensuring safety in transport is stated in the Law "On Transport" [15]. This is a stable and safe operation of the transport complex; protection of the interests of the individual, society and the state. This view does not fully correspond to the concept of "transport safety", based on the provisions of the Air Code of Ukraine [6], which implies one goal – the safe operation of the transport complex. If the act of illegal interference threatens the safety of the transport complex, the main goal will be to maintain or maintain safe activities. The act of illegal interference may be aimed directly at the functioning of the transport complex, for example, power outages, communications, false reports of explosive devices; or indirectly through causing property damage – damage to aircraft, buildings, equipment, damage to life and health or by violating public order.

The state is interested in ensuring that the transport complex functions safely so that events that affect people do not occur. The interests of society are diverse. The transport complex meets a number of social needs – freedom of movement, social contacts, development of the labor market and various economic spheres, jobs in the transport complex. The interests of a person in the transport complex may also be different. The definition of "transport safety" in the Law "On Transport" [15] does not indicate the interests of the individual, society or state.

Thus, the purpose of ensuring transport safety is to maintain the sustainable and safe operation of the transport complex, bearing in mind that acts of illegal interference threaten its sustainable and safe operation. This goal is achieved by preventing the commission of acts of unlawful interference, termination and elimination of consequences, if the act was committed. Prevention, termination and restoration of the right is a range of tasks to achieve this goal, but the Law "On Transport" [15] does not specify anything to eliminate the consequences of acts of unlawful interference.

Acts of Illegal Interference in the Context of Transport Safety

Transport security is a state of protection of transport infrastructure and vehicles from acts of illegal interference, including political [16]. Given that the aviation industry has the absolute ability to transport any type of people or factors to the global arena at an extraordinary rate, this feature makes the aviation industry a platform for the spread of threats and develops them as a transnational threat. Given the growth of the aviation industry and its far-reaching implications for the international community, security threats have also evolved as a result of the impact of this technology [16].

The stability of transport can be disrupted by events, including those involving people who cannot be identified as acts of unlawful interference (for example, a sudden deterioration in a passenger's health, a bird hitting an aircraft engine or a lightning strike). Acts of unlawful interference include terrorist acts. Regulation of public relations regarding acts of illegal interference in national legislation is enshrined in the Air Code of Ukraine [6]. Article 86 of the Code establishes the definition of an act of unlawful interference as an act or an attempt to endanger the safety of civil aviation. The provisions of the Law on Combating Terrorism [17] may be applied to the relations that are the subject of regulation of the Air Code of Ukraine [11], which provide for compensation for damage caused by a terrorist act, social rehabilitation of victims involved in the fight against terrorism [16]. These measures should be applied in the event of terrorist acts on transport.

To prevent the commission of acts of illegal interference, a set of measures with a specific focus is being implemented. The provisions of the Law "On the State Program of Aviation Security of Civil Aviation" [13] allow to identify measures aimed at creating an environment at infrastructure facilities and vehicles, which eliminates or minimises the threat of illegal interference. This is ensured by the arrangement and establishment of an administrative and legal regime adequate to external conditions. The second area can be described as "staff" – organisations and people who provide transport safety. In the State Civil Aviation Security Program, they are defined as transport security forces. In this area, requirements are set for these persons, permissive administrative procedures of

attestation and accreditation are carried out, state control (supervision) is exercised over how they perform their assigned duties and adhere to mandatory requirements. The third direction can be described as "users" – passengers, visitors, employees. They are subject to access, inspections and interviews are conducted, behaviour is monitored, and measures of administrative coercion are applied.

To prevent acts of unlawful interference, measures are taken primarily aimed at users. An act of unlawful interference may be committed by a staff representative, such as an aircraft commander. In such cases, these individuals should be considered as users, as they do not act in favour of transport security forces, but in favour of terrorist organisations or on their own. In case of illegal interference, to restore the right it is necessary to restore the transport infrastructure, provide assistance to victims, ensure the delivery of passengers, luggage, cargo in alternative ways, to compensate for the damage. At the same time, according to the authors of the research "Theoretical and legal aspects of protection of civil aviation from acts of unlawful interference", the issue of legal regulation of protection of civil aviation from acts of unlawful interference in its activities remains open for research, discussion and suggestions [2, p. 287].

Conclusions

The theory of administrative law and legislation do not identify areas for transport safety. Complexity, multi-vector activities to ensure transport safety allows to identify areas – organisational, rule-making, permitting, law enforcement, control and supervision in the context of water, air, rail, road, urban electric transport. Ensuring transport safety is carried out in legal, organisational, technical and procedural forms.

An analysis of the provisions of the State Program of Civil Aviation Safety, which define the activities of ensuring transport safety, indicates that the purpose of these activities is not defined specifically. The purpose of ensuring transport safety should be considered to maintain the sustainable and safe operation of the transport complex, bearing in mind that acts of illegal interference threaten its sustainable and safe operation. This goal is achieved by solving three main tasks: preventing acts of illegal interference; termination of committed acts of illegal interference; elimination of the consequences of acts of illegal interference, restoration of the transport complex, elimination or compensation of the caused damage.

The purpose of ensuring transport safety includes measures aimed at: technical arrangement of transport infrastructure facilities and vehicles; establishment of special administrative and legal regimes that correspond to the current situation, the level of threats; creation of effective security forces; ensuring compliance with safety requirements by individuals and legal entities located on the objects of transport infrastructure and vehicles.

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Форми забезпечення транспортної безпеки на повітряному транспорті

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Анотація. У статті з використанням комплексного системного аналізу правових явищ розглянуто форми забезпечення транспортної безпеки на повітряному транспорті. Актуальність теми визначається необхідністю підвищення рівня авіаційної безпеки. На повітряному транспорті питання взаємодії суб'єктів які, забезпечують різні види безпеки на одному транспортному комплексі, не урегульовані належним чином, що зумовлює виникнення організаційних, інформаційних та інших управлінських бар›єрів. Мета статті – дослідження форм забезпечення транспортної безпеки щодо взаємодії та координації діяльності органів спеціальної компетенції у цивільній авіації. Використано формально-юридичний і порівняльно-правовий методи дослідження. Унаслідок вивчення організаційної системи забезпечення транспортної безпеки на повітряному транспорті охарактеризовано статуси органів виконавчої, оперативних штабів, комісій, створюваних в аеропортах, сил забезпечення транспортної безпеки. Досягнення стану правопорядку у галузі, що розглядається, неможливе без віднесення забезпечення транспортної безпеки до розряду стратегічного національного завдання, до вирішення якого поряд з державними, зокрема, правоохоронними структурами, під їх патронажем і контролем, пов›язаними з пріоритетним правовим становищем останніх, повинні бути залучені не лише працівники перевізників, але й підрозділи та сили забезпечення транспортної безпеки. Запропоновано рішення проблеми, що негативно впливає на стан транспортної безпеки, щодо правової невизначеності у питаннях розмежування територіальної, об›єктової, зональної та функціональної компетенції підрозділів правоохоронних органів, а також інших, включаючи недержавних суб'єктів забезпечення авіаційної безпеки у контексті визначення напрямів діяльності щодо даного виду безпеки

Ключові слова: авіація, авіаційні правила, адміністративно-правовий режим, акт незаконного втручання, державна програма, захист

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Administrative Coercion in the Field of Taxes and Fees

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Abstract. The article is devoted to the study of the essence and content of administrative coercion in the field of taxes and fees. The subject of the study is the regulations of the current legislation and the legislation of the European Union governing public relations arising from the implementation of administrative coercion in the field of taxes and fees on individuals and legal entities conditioned upon violations of tax legislation of Ukraine. practice. The research was performed in accordance with the methodology of complex systematic analysis of legal phenomena using special methods of legal science: formal-legal, historical-legal and comparative-legal. In effective legal regulation, which ensures the balance of public and private interests in the field of taxes and fees, administrative coercion should be ancillary in nature and used in cases where the legal regulation exhausts other methods of regulatory influence used in the fiscal function of taxation. The regulatory function of administrative coercion in the legal regulation in the field of taxes and fees and its relationship with the fiscal function of taxation, considering the complexity of their implementation. Ways to ensure the effectiveness of administrative coercion in the mechanism of legal regulation of taxation are considered. A comprehensive system of measures of administrative coercion for violations of tax legislation to ensure their balanced application, in particular based on identifying problems of implementation in law enforcement administrative and judicial practice. New approaches to the concept of administrative process of implementation of measures of administrative coercion for violation of tax legislation, and certain types of administrative process are substantiated. A model of complex reform of the system of administrative coercion in the mechanism of legal regulation of taxation with unification of approaches to reform in the system of administrative and legal regulation is proposed

Keywords: legal responsibility, administrative responsibility, tax responsibility, tax offenses, fiscal function, regulatory function

Introduction

Modern conditions related to external challenges and threats, and the dynamic development of technology in the financial sector necessitate finding and developing optimal and effective ways to achieve financial stability and financial security of the state, in particular in the regulation of tax relations. Administrative coercion should be used in the mechanism of legal regulation in the field of taxes and fees in such a way as to ensure the proper functioning and balance of interests in favour of public authorities and taxpayers. To this end, it is necessary to define the function of administrative coercion in the field of taxation as exclusively regulatory, used to prevent violations of tax legislation.

The existing system of measures of administrative coercion has shown inefficiency, which is indicated in the National Economic Strategy for the period up to 2030 for strategic goal 1 "Ensuring the sustainability of public finances and improving sovereign ratings" [1]. To make administrative coercion more perfect, it is necessary to guarantee the certainty and stability of tax legislation, create a transparent system of tax administration, introduce tax compliance and a risk-oriented approach to tax control. Measures of administrative coercion for violation of tax legislation require systematic revision in the context of the last two trends of economic reform: liberalisation of state coercion and increase the effectiveness of administrative and legal influence on participants in tax relations to prevent violations of tax legislation.

To ensure organisational and legal guarantees of the legal status of persons subject to measures of administrative coercion for violation of tax legislation, to limit the discretion of subjects of administrative jurisdiction, which may lead to arbitrariness in the application of measures of administrative coercion in the field of taxes and fees, freedoms and legitimate interests of taxpayers and others, considerable attention should be paid to the development of the administrative process in the field of taxes and fees as a procedural procedure and forms that ensure proper implementation and protection of taxpayers, tax agents and other financial market organisations in relations with tax authorities .

The National Economic Strategy for the period up to 2030 sets the task of expanding the number of real taxpayers and directly links property interests with the size and methods of withdrawing from the budget part of the income of individuals and legal entities [1]. The attitude of the state to taxpayers is changing. Therefore, shortcomings in tax legislation that are directly related to the violation of the rights and freedoms of citizens must be eliminated. Administrative coercion should be applied to the legal regulation of taxes and fees to balance

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the interests of public authorities and taxpayers. This necessitates theoretical and legal research, which should be further analysed based on the results of practical law enforcement.

The study of administrative coercion in the context of administrative and tax law was carried out by scientists: O. Baik [2], L. Bila, S. Kivalov [3], D. Doroshenko [4], O. Ivanyshyna, A. Prokopenko, Yu. Panura [5], M. Kovaliv, I. Krasnytskyi [6], Yu. Nazar [7], O. Ostapenko [8], V. Rarytska [9], N. Skliar [10], M. Berenson [11], A. Monayenko [12] and O. Mamaluy [13]. Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, in the context of adapting tax legislation requires research on the effectiveness of legal regulations governing administrative coercion in taxes and fees [14]. Considering the peculiarity of the field of research, the methods are based on the principles of theoretical and practical activities of the subjects of tax relations, proposed by O. Baikom [2, p. 85].

The purpose of the article is to study administrative coercion in the field of taxes and fees.

Administrative Coercion in the Field of Taxes and Fees

Administrative and legal coercion in the field of taxes and fees – the type and extent of which are established by law, applied in procedural forms, meets the principles and essence of law, enshrines the rights and freedoms of individuals and legal entities in the tax sphere. The mechanism of legal regulation of taxation distinguishes its own regulation and coercion. Regulation in the field of taxes and fees is exclusively sectoral, manifested in the establishment of tax law in the regulatory norms of tax law. These norms are implemented in the Tax Code of Ukraine, on the basis of which tax relations arise, change and terminate [15]. Such a system of elements of the regulatory influence of the mechanism of legal regulation of taxation allows ensuring the implementation of the fiscal function of the state.

Coercion should be interdisciplinary and expressed in the maintenance of tax law by protective norms only in those areas of law where their own tort. According to D. Doroshenko, intersectoral means that methods and knowledge of various branch legal sciences are used, among which the leading place is occupied by financial law [4, p. 373].

Protective norms should be within the institutions of administrative, criminal, civil, disciplinary and material responsibility. They are implemented in acts of protection value: the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine, on the basis of which arise, change, terminate protective jurisdictional relations [16; 17].

The regulatory function should be the only main function of administrative coercion in the mechanism of legal regulation of taxation, as the implementation of the fiscal function must be ensured by other elements of this mechanism. The regulatory function of administrative coercion determines the objectives of legislation on administrative offenses: protection of human and civil rights and freedoms, legitimate interests of society and the state from administrative offenses, protection of public authority, public order, morality, health, property, environment, ensuring defense and security of the state, prevention of administrative offenses. These tasks define a set of measures of administrative coercion common to all areas of application of the institute of administrative responsibility. O. Ostapenko noted that the achievement of these tasks is the main purpose of the emergence and development of legal relations in connection with administrative liability, within which the system of necessary measures of administrative coercion is applied [8, p. 32].

The regulatory function of administrative coercion in the mechanism of legal regulation of taxation can be effectively implemented within the institution of administrative responsibility. Otherwise, it is possible to replace the fiscal function, the implementation of which allows the establishment of public funds at the expense of private funds through tax burdens and which characterises tax regulation and tax administration in the narrow sense, but not coercion in taxes and fees as long as provides a general level of taxation. If the general level of taxation is exceeded, along with the fiscal function of the tax, the regulatory function begins to manifest itself with the threat of transition from the system of tax regulation and administration in the narrow sense to the system of actual but not legalised coercion in taxes and fees. It is advisable to prevent the transition from acceptable or justified risk of tax influence to uncontrolled suppression of economic activity conditioned upon the undermining of the tax base and regulatory function due to the loss of controlled influence.

The legal regulation of state coercive measures in the field of taxes and fees outside the legal institutions of legal responsibility leads to a negative result. The task of law is to prevent and end conflicts, to settle disputes, to restore violated rights, to stabilise relations inherent in society, its social and political system, through legal means. Legal grounds should be provided in the legislation on a certain type of public liability, ie administrative liability or in exceptional cases of real public danger – criminal, if it is impossible to ensure the goal of legal regulation in the field of taxes and fees by sectoral tax regulation. This is done through the regulatory norms of tax legislation [15], which are implemented in regulatory tax relations, in which the fiscal function of taxation provides an acceptable level of tax burden. The function of administrative coercion, which is characterised solely as regulatory, should be ancillary to the mechanism of legal regulation of taxation and used in exceptional cases when exhausted other methods of regulatory influence of positive legal regulation, which are used in taxes and fees.

According to V. Rarytska, the tax law of the state is a legal form of the taxpayer's obligation to accumulate financial resources in the state budget [9, p. 195]. To ensure the effectiveness of the fiscal function of taxation and the regulatory function of administrative coercion in the mechanism of legal regulation of taxation, it is necessary to adhere to the balance of public and private interests. An important guarantee of the balance is the administrative process to protect the rights and legitimate interests of taxpayers from their violation by the tax administration. As noted by B. D. Bila and S. Kivalov, legal regulation of sectoral coercion, control and supervision, non-legal forms of activity of subjects of power (as directly determining the properties of legal), administrative responsibility has not undergone radical restructuring, only "cosmetically" assimilated centrism [3]. Without solving this problem, the association of Ukraine and the European Union in the field of economy is impossible.

Implementation of Administrative Coercion in the Mechanism of Legal Regulation of Taxation

According to V. Berenson, Ukraine is undergoing a transition from compulsory to manageable tax status. This will reduce administrative coercion in taxation and redistribution of functions, which is typical for the policy of the European Union in the tax sphere [11, p. 43]. The regulatory function as a function of administrative coercion is implemented in the form of a set of components of prevention, termination, provision, punishment and recovery. In the field of taxes and fees, the precautionary function is aimed at preventing illegal acts that adversely affect the tax system, and ensures the prevention of violations of tax legislation if the threat of relevant tax risks is identified. The purpose of the termination function is to stop illegal actions that encroach on the normal functioning of the tax system.

The security function of administrative coercion in the field of taxes and fees is aimed at repaying tax arrears and allows implementing the tasks of proceedings in the case of violation of tax legislation. The restorative function is aimed at restoring the balance of public and private interests during taxation by effectively protecting and fully restoring the violated rights and legitimate interests of public authorities that own public funds, taxpayers who own private funds. The punitive function of administrative coercion is preventive, it provides for the punishment of persons who have committed administrative offenses in the field of taxes and fees, the composition of which, along with circumstances that exclude exemption from administrative liability, should be established by administrative jurisdiction as grounds for administrative punishment in case of inability to achieve the goal through other measures of regulatory and coercive influence.

According to M. Kovaliv and I. Krasnytsky, with the development of tax legislation over the past decade, its social orientation and the development of the information function along with the control functions are clearly visible [6, p. 370]. The set of measures, in the context of the implementation of functions related to the use of administrative coercion in the mechanism of legal regulation of taxation, is characterised by the fact that measures differ in purpose, methods and grounds, but together ensure law and order in the field of taxes and fees. In tax law [15], they belong to the ways of ensuring the fulfillment of tax obligations, to precautionary measures or to tax sanctions. Methods of ensuring the fulfillment of tax obligations and precautionary measures are defined with elements of civil law structures and in the cases provided by the Tax Code [15] may be replaced by civil law ways of ensuring the fulfillment of tax obligations. This affects their administrative and legal characteristics and prevents them from being properly classified and transferred to the sphere of administrative and legal regulation for systematisation, codification, effective application of law.

Convinced of the insufficient effectiveness of the measures of administrative coercion provided by the tax legislation in the mechanism of legal regulation in the field of taxes and fees, the tax administration proceeds to the application of effective measures of civil liability together with the institution of bankruptcy. Taxpayers are forced to translate tax relations into civil law to more effectively protect the rights and legitimate interests from illegal and unjustified use of administrative coercion for violations of tax law, using for this purpose in relations with counterparties civil law institution of damages, related to the collection of taxes, fines, penalties for violations of tax legislation. This is not fully consistent with the principles proposed by the National Economic Strategy until 2030 [1].

There are several problems in the mechanism of legal regulation in the field of taxes and fees. First, the methods of securing civil law obligations, civil liability, bankruptcy are civil law institutions and are intended for use within exclusively civil law relationships. Secondly, the inclusion in the mechanism of legal regulation of administrative coercion in the field of taxes and fees violates such principles of civil law as property separation of subjects and tax law, independence of tax payment, principles of legal liability and related measures of state coercion. These circumstances are exacerbated by the lack of a comprehensive system of legal regulation of measures of administrative coercion, which provides a clear distinction in legislation and law enforcement practice of measures, purposes, grounds, conditions and procedure for implementation. This provokes the transformation of the institution of administrative coercion into a struggle of departmental interests. Incomplete codification of administrative liability and lack of systematisation of administrative coercion in the field of taxes and fees – the main causes of shortcomings and gaps in the legal regulation of tax arrears, fines, penalties.

These shortcomings are: the lack of a clear delineation of responsibilities and measures of administrative coercion; wide discretion in the application of measures of administrative coercion; mixing measures of administrative coercion with civil law methods of ensuring the fulfillment of obligations; subsidiary use of institutions of civil liability and bankruptcy to fill the shortcomings of the mechanism of legal regulation of administrative coercion. According to O. Ivanyshyna, I. Prokopenko, Yu. Panury, thanks to coordinated and verified actions and measures of the state can minimise and overcome problems. It is necessary to ensure a certain balance, namely: on the one hand, the state must position a respectful attitude towards taxpayers who create financial and economic security of the state, and on the other – increase their responsibility to the state by forming a high tax culture [5].

Measures of administrative coercion should not be confused with the responsibilities imposed on the subjects of tax relations. This leads to the fact that forms of guilt (intent or negligence) as a subjective aspect of administrative offenses are used not only when deciding on the imposition of tax sanctions as a measure of administrative liability for violations of tax law, but also when deciding on the amount of tax duty [7, p. 1248]. This should be determined on the basis of the legislation on taxes and fees [15], considering the actual circumstances of the taxpayers, regardless of guilt in tax offenses.

Administrative Liability for Tax Offenses in the Context of the Implementation of the Fiscal Function in the Field of Taxes and Fees

The permissive type of regulation of the legal status of a public administration entity does not provide for the possibility of administrative discretion, let alone legal regulation, which provides for extensive use of administrative discretion on legal structures and institutions such as abuse of subjective rights of taxpayers, tax benefits. This contradicts the main purpose of tax control, defined by the legislator: to ensure the correctness of calculation, completeness and timeliness of payment

to the budget system of Ukraine of taxes and fees, fines and penalties. Leads to the replacement of the fiscal function of taxation by the regulatory function of administrative coercion, not properly legalised in the institution of administrative responsibility.

The Constitutional Court of Ukraine has repeatedly in its rulings and rulings expressed the legal position that the provisions of tax legislation do not allow additional amounts of taxes to be added in excess of the law, but are determined by actual indicators of economic activity of the taxpayer [18]. In the legislation [15] and law enforcement practice in the field of taxation [16; 17] the tendency is intensified during the implementation of measures of administrative coercion to violate tax legislation or tax abuses of civil law institutions, the use of which involves a wide degree of administrative discretion of the subjects of administrative jurisdiction. It is a question of possibilities of bringing to legal responsibility during realisation by the taxpayer of the right of presumption of legality of decisions of the taxpayer in case of legal uncertainty (item 4.1.4 of item 4 of the Tax code of Ukraine [15]). Such a model of behavior in some cases is recognised as an abuse of subjective tax law, an act related to obtaining tax benefits is classified as an offense. This is non-payment or incomplete payment of taxes, tax evasion depending on the amount of arrears, as it involves direct intent.

The Tax Code of Ukraine [15] focuses tax authorities on accounting for economic transactions to properly assess the tax consequences, to assess the relationship between the commercial purpose and the purpose of tax savings identified by the taxpayer due diligence in choosing a counterparty, which is to verify the integrity of the counterparty as a taxpayer. Honesty comes down to the reality of the taxpayer's counterparty's performance of civil obligations. With such legal regulation of abuse of subjective tax law, the legislator opened opportunities for administrative discretion of tax authorities in the case of administrative coercion in cases of tax fraud and abuse.

Illegal provision of tax benefits, if it was the result of illegal behavior of the taxpayer, the taxpayer is subject to recovery of arrears, fines and penalties from the moment when the tax authority learned or should have learned about the lack of grounds for tax benefits. If the tax authority recognises the taxpayer's conduct as lawful, the application of coercive measures is excluded. If illegal – as arrears, the amount of which accrues and collects fines, the issue of legal liability of officials is resolved. In this situation, the decision on which the qualification of the tax debt depends on whether the taxpayer's conduct is lawful or unlawful is not taken within the administrative procedure of consideration and review of the case of an administrative offense. This may lead to complete discretion of the tax authority, bordering on arbitrariness, when officials at administrative discretion determine the grounds for the application of administrative coercion, the procedure and time from which the statute of limitations for application is calculated.

N. Skliar [10, p. 46] notes that even greater ambiguity in the future implementation of the principle of responsibility for "guilt" introduces paragraph 112.2 of Art. 112 of the Law No. 466-IX [19], according to which a person is found guilty of an offense if it is established that he had the opportunity to comply with the rules and regulations for violation of which the Tax Code of Ukraine [15] provides liability, but did not take sufficient measures regarding their observance.

The described tendencies, considering the position of the Supreme Court, outlined in the article by R. Khasanova and A. Biriukova [20], in legal regulation and law enforcement practice lead to violation of the principles of administrative coercion: on personification; inadmissibility of deterioration of the position of the person to whom they are applied in the following stages of the administrative process; compliance with the deadlines set by law for the application of remedial measures and the statute of limitations for bringing to administrative responsibility; reviewing the case of an administrative offense to ensure a comprehensive, complete and objective consideration and making a lawful decision in the case during the appeal or appeal of the adopted act of administrative liability.

Conclusions

Dualism in the legal regulation of measures of administrative coercion in the legislation on taxes and fees and in the legislation on administrative offenses, mixing and replacing measures of administrative coercion by civil law institutions level the legal and organisational guarantees of taxpayers' rights in administrative relations. This may lead to a violation of constitutional rights, freedoms and guarantees of their implementation by the direct subjects of tax relations and third parties – owners, whose rights are violated by illegal seizure of property by non-tax method. As a result, in the legal regulation and application of measures of administrative coercion for violation of tax legislation there is an illegal bringing of persons to administrative responsibility, illegal use of measures of administrative coercion for violation of tax legislation.

These problems can be solved by systematising, unifying and codifying measures of administrative coercion within the institution of administrative responsibility, in administrative and administrative-procedural legislation without exception to the general rules and procedures. As an intermediate stage of such a process, the concept of full codification of administrative responsibility can be adopted in the draft Code of Ukraine on Administrative Offenses (Offenses) with sectoral codification by systematising and unifying other measures of administrative coercion in tax legislation.

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Адміністративний примус у сфері податків та зборів

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Анотація. Стаття присвячена вивченню сутності та змісту адміністративного примусу в сфері податків і зборів. Предметом дослідження є нормативно-правові акти чинного законодавства та законодавства Європейського Союзу, що регулюють суспільні відносини, що виникають під час реалізації адміністративного примусу у сфері податків і зборів щодо фізичних та юридичних осіб внаслідок порушення податкового законодавства України, а також наявна правова доктрина й сформована правозастосовна практика. Дослідження виконано відповідно до методології комплексного системного аналізу правових явищ з використанням спеціальних методів юридичної науки: формально-юридичного, історико-правового та порівняльно-правового. В ефективному правовому регулюванні, що забезпечує баланс публічних і приватних інтересів у сфері податків і зборів, адміністративний примус повинен мати допоміжний характер та застосовуватися у випадках, коли у межах правового регулювання вичерпано інші способи регулюючого впливу, що використовуються при реалізації фіскальної функції оподаткування. Охарактеризовано регулюючу функцію адміністративного примусу у правовому регулювання у сфері податків та зборів та її співвідношення з фіскальною функцією оподаткування з урахуванням комплексності їх реалізації. Розглянуто способи забезпечення ефективності адміністративного примусу у механізмі правового регулювання оподаткування. Визначено комплексну систему заходів адміністративного примусу за порушення податкового законодавства з метою їх збалансованого застосування, зокрема на основі виявлення проблем реалізації у правозастосовній адміністративній та судовій практиці. Обґрунтовано нові підходи до концепції адміністративного процесу реалізації заходів адміністративного примусу за порушення податкового законодавства, а також окремих видів адміністративного процесу. Запропоновано модель комплексного реформування системи адміністративного примусу у механізмі правового регулювання оподаткування з уніфікацією підходів до реформування у системі адміністративно-правового регулювання

Ключові слова: юридична відповідальність, адміністративна відповідальність, податкова відповідальність, податкові правопорушення, фіскальна функція, регуляторна функція

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Administrative and Legal Protection of Public Morality

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Abstract. In the article on the basis of complex system analysis with the use of formal-legal, comparative-legal and factorial methods, the administrative-legal protection of public morality is considered. The peculiarity of the methodology of this study is explained by the multifaceted nature of the category of "public morality" and the existing need to study it, considering the approaches and developments of other legal sciences. Insufficient efficiency of public authorities in protecting public morals can lead to a decrease in the level of spiritual well-being of society. The aim of the article is to analyse the administrative and legal regulation in the field of protection of public morality. It is pointed out that public morality is a historically determined state of social relations that have formed as a result of conscious human activity. Public morality is correlated with public order and public safety as part and whole, where public morality is a component. Legislation on determining the purpose and functions of administrative and legal norms aimed at protecting public morals is considered. In the process of research the structural-functional analysis of the mechanism of interaction of law and morality is carried out, its elements as interacting parts of the system (legal norms, morality) are identified, functional connections and relations between them are established and theoretically substantiated. Subjective and objective factors that determine the measures of administrative and legal protection are considered. It is proposed to single out public morality as an independent object of administrative and legal protection. Protection of public morality is considered as an activity aimed at ensuring the conditions of moral well-being of society and the individual. The concept of the mechanism of administrative and legal protection of public morality and its content is formulated. Administrative and legal protection of public morality ensures the neutralisation of threats in the field of research

Keywords: social regulation, administrative and legal protection, protection system, public relations, administrative responsibility

Introduction

Relations in society are governed by various social norms. Among the variety of social norms can be distinguished rules of law, moral norms, customs, traditions, corporate norms. A special role belongs to law and morality. Law regulates important areas of life. Morality permeates almost all the diversity of relations between people, enshrined in legal norms. Morality and law are inextricably linked with the foundations of law and order and the consciousness of the individual. In the modern period, the relevance of the interaction of law and morality is especially great. The destruction of the totalitarian state and the emergence of the state, which declared its main task of ensuring the rights and freedoms of citizens, requires a change in ideological attitudes in the relationship between citizen and society and state, law and morality.

The relevance of the study of the problem of interaction of law and morality in social regulation is difficult to overestimate. The fact of close social and functional interaction of law and morality is well known. At the same time, the task of eliminating undesirable conflicts and contradictions between law and morality, achieving the most optimal interaction is clearly not solved due to different approaches to understanding law and morality, lack of theoretical developments in the mechanism of interaction of these social regulators. It is necessary to solve this problem, because without considering the multifaceted relationship of law and morality, the legal system is ineffective. The movement of the state by building a sustainable economic and political system, the development of civil society and the rule of law is impossible without proper legal regulation. To date, the manifestations of legal and moral nihilism have become widespread, which indicates the presence of serious shortcomings in social regulation.

Protection of moral foundations at every stage of development of society and the state is an important condition for normal existence. The Constitution of Ukraine declares the duty of the state to recognise and protect the rights and freedoms of citizens [1]. Public morality organises the consciousness and behaviour of individuals in such a way that the private is subordinate to the general. The peculiarity of moral rules is that they are usually provided by the power of public opinion. The development and complication of social relations leads to the desire of the state to carry out legal regulation of moral values, making it mandatory. Such provisions acquire special significance and become the object of legal protection. The need for administrative and legal protection of public morality is conditioned upon the process of globalisation and the growth of threats explained by the accelerated development of information and communication technologies. Law in general is understood as a system of universally binding, formally defined norms, which are issued or sanctioned by the state and are protected by the possibility

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of state coercion. Morality is perceived as a form of social consciousness, as one of the types of social regulation aimed at reconciling personal and social interests.

Problematic issues of administrative and legal protection of public morality in the system of social regulation were studied by: O.P. Bilan [2], V.P. Boychenko [3], M.V. Kovaliv, V.S. Borovikova [4], O.V. Yemets [5], S.S. Yesimov [6], O.V. Zakharova [7], S.A. Kucher [8], O.L. Lopuha [9], N.I. Svadeba [10], G. Blicharz [11], R. Perrone [12] and others.

V.P. Boychenko writes that from the standpoint of the anthropological approach it should be about morality as an element of individual development and public morality as an element of law and order. This is the modern anthropological approach [3, p. 13]. O.V. Yemets notes that public morality is a sphere of moral regulation that encompasses values accepted in society and focused on the achievement of common (collective) good, rules of conduct, their reflection in the minds of people and relevant behavioral standards (patterns of behaviour) relevant values and norms, and also has the means of collective condemnation of immoral acts of members of this society [5, p. 185].

According to V. Kuchera, the opportunity to spread their own views and beliefs is not only the right of a citizen of Ukraine, but also provides responsibility for the content of those views that a person spreads [8, p. 45]. G. Blicharz connects public morality with constitutional provisions and human rights [11, p. 19]. The development of social morality was influenced by morality, which emerged in the historical development of human society and is a mandatory attribute that characterizes the state of society and reflects common interests, including morality expressed in real social relations of people who implement moral norms in behavior. The sphere of protection of public morality in modern conditions requires the development of the most acceptable solutions to the problem. Lack of consolidated and coherent state policy, insufficient efficiency of public authorities to protect public morality can lead to a decrease in the level of spiritual well-being of society as a whole.

The aim of the article is to study the administrative and legal protection of public morality in modern conditions.

Legal Bases of Protection of Public Morality

In the context of Russia's economic and informational expansion, activities to protect national moral values, rights and interests of children, educating the younger generation such as patriotism and spiritual and moral values are especially important as the basis for confident development of Ukrainian society and integration into the European socio-economic space. There are no effective measures of administrative and legal protection of public morality in Ukraine. This fact can provoke the loss of spiritual values in society, as well as landmarks in the education of the younger generation.

Significant increase in diseases and other negative factors accompanying antisocial behavior, intensification and consolidation of criminal groups of criminal business, negative trends in public morality indicate that the protection measures applied by public authorities are not effective enough. One of the main reasons is the imperfection of current legislation [9, p. 53]. The long-term absence of state policy in the field of protection of public morals has led to the need to take radical measures to change the situation. In this regard, determining the forms of administrative and legal policy in this area is a priority.

The literature shows that the problem of public morality in the context of human rights requires in-depth and continuous study, as it depends on space and time [13, p. 42]. The constitutional right to free expression of views and beliefs may be limited in certain cases established by law [1]. One of the grounds for restricting this right is a violation of the law on the protection of public morals. Criteria for determining the fact of violation of public morality due to the spread of certain views are set out in the Law of Ukraine "On Protection of Public Morality" [14].

The Law of Ukraine "On Protection of Public Morality" defines public morality as a system of ethical norms, rules of conduct established in society based on traditional spiritual and cultural values, ideas of goodness, honor, dignity, public duty, conscience, justice [14] .

Unlike morality and ethics, which are ethical categories, social morality is a legal category. It can be defined as a historically determined state of social relations formed as a result of conscious human activity under the influence of customs, traditions, morals and ethics governed by the rule of law in places open to free access of citizens (including cyberspace by technical means) that ensure the physical, mental, social, spiritual well-being of individual citizens and society [2, p. 44]. Public morality is correlated with public order and public safety as part and whole, where public morality is a component. The system of state protection of public morality includes:

– normative certainty;

– public authorities endowed with the functions of protecting public morals;

– system of indicators, reporting and centralised collection of information, which reflects the practice of administrative and legal protection of public morality;

– special measures of administrative and legal protection of public morality;

– norms that provide for legal liability for encroachment on protected relations;

– other measures to protect public morals: related to social adaptation; aimed at informing citizens about the negative consequences of antisocial phenomena; aimed at strengthening and protecting the family;

– banning all forms of propaganda and advertising of antisocial phenomena;

– interaction of public authorities with the public, including volunteer movements and organizations;

– specialised social assistance; measures of medical protection of public morality; measures of religious protection of public morality [3; 5; 7, p. 164].

Under the administrative and legal protection of public morality should be understood as a set of administrative and legal measures, including coercive, applied by public authorities to persons leading an antisocial lifestyle aimed at neutralizing and eliminating threats in this area, jurisdictional activities in the field of public morality. The study of administrative and legal protection of public morality allows speaking of a double understanding of this institution. In a broad sense, it includes all elements, including administrative liability for offenses in the area under consideration. In the narrow sense, the administrative and legal protection of public morality is the activities of public authorities to implement state tasks related to ensuring the proper moral condition of society and the individual citizen, which is carried out through administrative and legal protection of various orientations.

Priority in matters of administrative and legal protection of public morality belongs to the understanding in the narrow sense, as the protection of public morality is one of the tasks of public administration and can be achieved through the proper functioning of public authorities. This activity should be aimed at eliminating the causes and conditions of social deviations from socio-moral behaviour and their eradication in the future. In this approach, the emphasis should be on the application of administrative and legal prevention, rather than punitive and repressive measures aimed at eliminating factors and conditions that may adversely affect socio-moral behaviour. Legal recognition of the existence of negative socio-legal phenomena gives rise to preventive norms. In the field of protection of the law, preventive regulation arises from the moment when there is a rule of law that contains or allows the possible negative consequences of illegal behaviour or behaviour that is evaluated by society or the state negatively [8, p. 43].

Two conditions are required for the attribution of methods and means to administrative and legal measures for the protection of social morality. First, the administrative and legal measures to protect public morality should include methods and means used after the violation of subjective law, non-performance or improper performance of duties or in the event of threats to public morality. Secondly, administrative and legal protection measures should be aimed at restoring socio-moral behavior. Observance of the rules of coexistence in the rule of law is carried out consciously and voluntarily, because the law embodies the will of the people, its rules are mandatory, based on the support of the state and public opinion [15, p. 350].

Administrative and Legal Protection of Public Morality in Modern Conditions

The peculiarity of the application of legal protection measures is that the application can be initiated by a public authority, a person whose rights are violated, a person who directly leads an anti-social lifestyle [16, p. 54]. However, the norms of one administrative law do not protect public morality. Administrative and legal protection of public morality is a structural element of legal protection of public morality. In the field of legal protection of public morality can be divided into two groups of legal protection measures: administrative and criminal and criminal. These measures have special properties that distinguish them. The main ones concern the grounds for administrative and criminal liability, types of punishment, application procedures, sectoral regulations [3].

Administrative and legal protection of public morality is one of the elements of the system of higher order – the system of protection of public morality. Protection of public morals is not limited to administrative and legal measures and provides for an arsenal of other measures (social, medical, religious, pedagogical). Together, these measures form an original model of protection of public morality. R. Perrone notes that when the law mentions morality, it refers to social morality, ie the rules of coexistence and behavior that must be followed in a civilized society [12, p. 365-366]. We can talk about the understanding of the term “protection of public morality” in a broad, narrow and personal sense. In a broad sense, the protection of public morality means the activities of the state to protect public morality with the use of measures of various directions. Protection of social morality is the activity of public authorities to protect social morality through administrative and legal measures [16, p. 55]. In the narrow sense, the protection of public morality should be understood as the application of measures of legal responsibility for offenses in this area.

The mechanism of administrative and legal protection of public morality includes a number of interrelated elements. Opinions on the mechanism of protection of objects of legal protection were expressed in the scientific literature. The following elements were proposed: threat – object of protection – police protection [7, p. 46]. The content of the mechanism of administrative and legal protection of public morality is conditioned upon the peculiarities of the area under consideration:

– normative-value (consists of legal norms that form attitudes to the protection of public morals, requirements for lawful conduct);

– target (represented by the system of public authorities that protect public morals, legally established goals, objectives and functions in the analyzed area);

– organisational and instrumental, includes the establishment on a regulatory basis of the powers of the subjects of protection of public morality and the formation of links between them in the protection of public morality with the use of various legal instruments;

– factor (includes a system of factors that harm public morality as an object of administrative and legal protection) [3; 5; 7].

One of the elements of the mechanism of administrative and legal protection are the factors that cause harm in the legislation [14; 17] and the works of scientists [3; 7, 16; 18] are considered as “danger”, “threat”. Although the study of the content and relationship of the concepts of “danger”, “threat” is important for the protection of public order and public safety, there are no generally accepted or scientifically developed approaches to the definition.

Both terms are used in legislation. In the legislation of Ukraine [17] the threat to public safety is understood as the possibility of harm to human rights and freedoms, material and spiritual values of society. Recently, in the scientific literature, the categories of “challenge” and “risk” have been used as factors causing damage to protected objects [18]. In law, risk is understood as a model of negative implementation of the law, which threatens the deformation of the final legal results, reducing the quality of legal regulation [18, p. 54].

The system of factors causing damage to the objects of administrative and legal protection is formed by danger, threat, challenge and risk. The danger can be described as a potential possibility of harm to various protected administrative and legal relations. Factors causing damage to public morality should be considered threats due to compliance with these characteristics. Antisocial phenomena cause real and irreparable damage to public morality.

According to N. Svadeba, law and morality have a common purpose – it is to influence the behaviour of the subjects. The functioning of law and morality is not subject to a certain area of social relations, operate in a single field of social relations; they form a standard of behaviour, value and normative orientation of society. Law and morality are based on common socio-economic interests, culture of society, people’s commitment to the ideals of freedom and justice, they have a single spiritual nature, a single value core – justice [10, p. 407].

M.V. Kovaliv and V.S. Borovikova noted that the functional purpose of the police is law enforcement to protect and defend the population in criminal and non-criminal situations, this determines the number of personnel, the need to maintain a constant and high level of mobilisation training, round-the-clock work, information, use of vehicles and communication [4, p. 189]. This position is consistent with the position of the legislator. The strategy of public safety and civil protection of Ukraine among the main sources of threats to public safety in the context of public morality includes: alcohol abuse, non-medical use of drugs, psychotropic substances and precursors that cause a significant number of crimes under the influence of alcohol or drugs [19].

Conclusions

Administrative and legal protection of public morality is a structural element of legal protection of public morality, consideration of the features of which allows speaking of the duality of its understanding. Administrative and legal protection of public morality is one of the elements of the system of higher order – the system of protection of public morality. Protection of public morals is not limited to administrative and legal measures and provides for an arsenal of other measures. Together, these measures form a model for the protection of public morals in Ukraine. The mechanism of administrative and legal protection of public morality can be defined as a complex administrative and legal phenomenon, including a system of legal norms and starting points, purpose, objectives and content of organizational and legal activities of authorized entities that independently and in cooperation with certain forms various administrative and legal measures protect public morals.

The broad content of the studied mechanism requires the need for an orderly mutual arrangement of components and content formation. The content of the mechanism of administrative and legal protection of public morality is a holistic system of interconnected elements formed based on administrative and legal regulation, which are consolidated into developing components and organically interconnected, functionally oriented to achieve a common goal – moral well-being. The mechanism of administrative and legal protection of public morality includes blocks: normative-value; target; instrumental and functional; factorial. The study of these blocks involves the continuation of scientific research to develop proposals to improve the effectiveness of administrative and legal protection of public morality

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Адміністративно-правовий захист суспільної моралі

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Анотація. У статті на підставі комплексного системного аналізу з використанням формально-юридичного, порівняльно-правового та факторного методів, розглянуто адміністративно-правовий захист суспільної моралі. Особливість методики цього дослідження обумовлена багатоплановістю категорії «суспільна мораль» та наявною потребою її вивчення з урахуванням підходів і напрацювань інших правових наук. Недостатня ефективність діяльності органів публічної влади щодо захисту суспільної моралі можуть призвести до зниження рівня духовного добробуту суспільства. Метою статті є аналіз адміністративно-правового регулювання у сфері захисту суспільної моральності. Вказано, що суспільна мораль є історично обумовленим станом суспільних відносин, що сформувалися унаслідок свідомої діяльності людей. Суспільна мораль співвідноситься з громадським порядком і публічною безпекою як частина та ціле, де суспільна мораль є складовою. Розглянуто законодавство щодо визначення цільової належності та функцій адміністративно-правових норм, спрямованих на захист суспільної моралі. У процесі наукової розвідки проведено структурно-функціональний аналіз механізму взаємодії права та моралі, виявлено його елементи як взаємодіючі частини системи (правові норми, мораль), встановлені та теоретично обґрунтовані функціональні зв'язки та відносини між ними. Розглянуто суб'єктивні та об'єктивні чинники, що детермінують заходи адміністративно-правового захисту. Запропоновано виділити суспільну мораль як самостійний об'єкт адміністративно-правового захисту. Захист суспільної моральності розглянуто як діяльність, спрямовану на забезпечення умов морального добробуту суспільства та конкретної особи. Сформульовано поняття механізму адміністративно-правового захисту суспільної моралі та його зміст. Адміністративно-правовий захист суспільної моральності забезпечує нейтралізацію загроз у сфері, що досліджують

Ключові слова: соціальне регулювання, адміністративно-правовий захист, система захисту, суспільні відносини, адміністративна відповідальність

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The Role of the 102 Service Department in the System of Operative Response of Police Bodies and Divisions

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Abstract. The relevance of the chosen topic is to determine the role and content of the structural unit "102" in the rapid response system, and the algorithm of their actions in providing the necessary assistance to people who called the special telephone line of the National Police of Ukraine. The purpose of the study is to determine the main function of the service department "102" as one of the structural units of organisational and analytical support and operational response of the National Police of Ukraine. The following methods for collecting and processing information were widely used in the research process: specific sociological (documentary, survey, observation) and some private scientific methods (system-structural, comparative-legal, historical-legal). The role of the service department "102" of organisational and analytical support and operational response of the National Police of Ukraine in the system of operational response of police bodies and units to statements and reports of criminal, administrative offenses or events. It is argued that the main function of the service department "102" units of organisational and analytical support and operational response of the National Police is to receive, process and register applications and notifications of offenses and events throughout the service area. It has also been proven that the necessary legislative initiative is to locate a person who has applied for real help on line 102. In addition, it was established that to properly perform the powers of officials of the service department "102" it is necessary to introduce the position of a psychologist to provide psychological assistance to victims. At the same time, it is argued that the service department "102" is a basic element in the operational response system of the National Police of Ukraine

Keywords: bodies and subdivisions of the National Police of Ukraine, subdivisions of organisational and analytical support and operative response, registration of statements and notifications about offenses and events, operative assistance of police squads, centralised management of dispatchers

Introduction

According to the Report of the National Police of Ukraine on the results of work in 2020 [1], the organisation of a single safe space where everyone feels protected is the main goal of the National Police. One of the important indicators of police activity is the speed of response to statements and reports of citizens about criminal, administrative offenses or other events. Notably, the first, basic element of the response system is the department of service "102" units of organisational and analytical support and operational response of the National Police of Ukraine (hereinafter – the department of service "102", OAZOR).

According to the data reflected in the Report of the National Police of Ukraine on the main results of work in 2020 [1], almost 10 million calls were received by employees of the "102" service department. On average, 1 operator received a phone call every 10 minutes. Ukrainians are actively turning to line "102" with various problems. In recent years, the number of calls has increased almost 8 times. Contidioned upon the well-organised work of the 102 service staff, coordination of actions aimed at proper organisation of rapid arrival of police officers to the applicant or the place of the offense to stop it, efficiency of providing necessary assistance to citizens, public confidence in modern police is gradually growing, which is a key criterion for assessing the effectiveness of their activities. As correctly noted O.V. Negodchenko, department "102" is one of the key units of organizational and analytical support and operational response of the National Police of Ukraine, which implements operational response and information and analytical support of police bodies in general [2, p. 151].

Thus, the current stage of development of society is marked by a steady trend towards a rapid increase in the role of electronic information environment of analytical and telecommunications systems for the functioning and development of social institutions. Under these conditions, the issue of speed of providing necessary assistance to citizens, when the operator of the "102" service receives a notification of an offense, becomes of strategic importance, which in turn emphasises the study of the specific features of the "102" service in the rapid response system.

In the legal literature, the study of the problem of prompt response of police officers to citizens' appeals is not left out of the attention of scientists. In particular, these issues were investigated in the works of V.O. Negodchenko [2], Yu.Ya. Gladuna, A.V. Lipentseva [3], V.V. Sereda, and Yu.A. Khatnyuk [4], V.Ye. Kraskevich, Yu.Yu. Yurchenko [5],

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Ya.S. Posokhova [6] and others. It should be noted that the specific features of the implementation of the function of rapid response to reports of criminal, administrative offenses or events covered in the scientific work of Yu.Ya. Gladun and A.V. Lipentsev on the construction of a standard center for public safety on the example of the Situation Center of the Main Directorate of the National Police in Lviv region. In particular, the authors of the study concluded that the coordinated work of the situation center and the service department "102" allows to achieve positive changes in the work of regional police units and centralised management of dispatchers by all police meetings to stop offenses and solve crimes on the "hot trail" [3, p. 119].

Also the publication V.V. Sereda and Yu.A. Khatnyuk on the organisational and legal basis of the National Police of Ukraine, carrying out analytical work, provides that "it is the units of organisational and analytical support and operational response exercise within its competence the powers of the National Police of Ukraine in coordination, planning, control and coordination police in the implementation of the function of rapid response" [4, p. 189]. At the same time V.Ye. Kraskevich and Yu.Yu. Yurchenko in his study on "The use of situational training centers for resource management" noted that the main function of the situational center and service department is a comprehensive assessment of the problem situation based on the use of special processing of large amounts of information and operational work given the change of the operational situation" [5, p. 111].

Considering the results of the research of the above-mentioned scientists, this article focuses on the key role of the service department "102" in the system of operational response of police bodies and units. *The purpose of the study* is to determine the role and tasks of the service department "102" in the rapid response system, and to identify the main shortcomings that affect the quality of its work.

The Role and Functions of the Service Department "102" in the Rapid Response System

The Instruction on the organisation of response to statements and notifications about criminal, administrative offenses or events and operative informing in bodies (divisions) of the National Police of Ukraine (hereinafter – the Instruction), approved by the order of the Ministry of Internal Affairs of Ukraine from 27.04.2020 No. 357 on statements and notifications of criminal, administrative offenses or events, and prompt information to the central police authority, interregional territorial bodies of the National Police of Ukraine, territorial police bodies in the Autonomous Republic of Crimea and Sevastopol, regions, Kyiv, their territorial separate subdivisions" [7].

In accordance with the requirements of the Instruction, the term "102 service department" should be understood as a unit whose employees use the automated workstation, operator "102", the Information Portal of the National Police of Ukraine (IPNP) to receive emergency calls and registration around the clock. reports of offenses or events received by telephone under the abbreviated number "102", as well as through other types of communication" [7]. These include text messages, e-mail, mobile applications and other specialized software and hardware. Notably, the reception of emergency calls is carried out centrally from all over the service area of the relevant police authority. It is important that each operator of the "102" service department should be provided with an automated workplace and use authorised access to the STI system.

According to the requirements of the Instruction [7], one of the main tasks of the operators of the service department "102" is to receive within two minutes from the applicant information about the offense or event and enter it in the electronic workstation card "operator 102" of IPNP. In this context, it is worth noting the position of Ya.S. Posokhova, who notes that the service "102" provides a number of tasks: optimising police squads, reducing response time to messages and maintaining the quality of response to police squads [6, p. 257]. In addition, in accordance with the requirements of the Instruction [7], the operator (inspector) of the service department "102" has a number of other tasks: in the process of conversation with the applicant to adhere to the principles of professional ethics and morals; in the process of receiving a notification of an offense or event, communicating with the applicant, at the same time enter information into the IPNP system; information generated in the TINP in electronic form to be automatically transmitted for response to police officers authorised to respond to offenses or events; in case of damage to the main and backup channels of information transmission in electronic form, information about the offense or event to transmit to authorized employees using other means of communication; after entering all basic and additional data into the STI system to save information; in case of applying to line "102" of the applicant in a language not spoken by the employee, to take measures to attract another employee who speaks the required foreign language, as well as, if necessary, by videoconference; immediately report to the senior changes on the receipt of complaints about the actions or inaction of the police, violation of their rights and legitimate interests, repeated complaints about the improper organisation of police response to reports and enter relevant information into the IPNP system; in the event of a sudden interruption of the call, call the applicant immediately to find out in detail the circumstances of the event or offense. If the applicant does not answer the call and there is a suspicion of illegal actions against him (shouting, noise, fighting and other signs), enter in the STI system information that "communication with the applicant is lost" and put a mark "informed duty". If the address of the place of the offense or the location of the applicant is unknown, put the appropriate marker on the map at the location of the unit "102"; enter into the IPNP system information on notifications of emergency services to the population under the abbreviated number "112" ("101", "103" and "104") and pass for response to the relevant police officers or operational and dispatching services of other public authorities and local governments, authorised to organize the response to them; immediately mark the "inform the duty officer" to respond accordingly, if during the acceptance of the application or notification it became known that the applicant or the person who committed the offense is wanted; if the statement or report refers to issues that do not fall within the competence of the police and certain actions that do not contain signs of an offense, the appeal is informational and advisory in nature or it does not state the essence of the issue, the applicant expresses personal attitude to the event, does not name his personal data, politely explains to the applicant his further actions, etc. [7].

Thus, the main role of the officials of the service department "102" in the rapid response system is to receive,

process and register applications and notifications of offenses and events throughout the service area. This, in turn, provides an opportunity to fully implement the priority goals of the Government, set out in the Programme of Activities of the Cabinet of Ministers of Ukraine, approved by the resolution of 12.06.2020 No. 471 [8]. According to her requirements, a person who is in trouble (an emergency or other life situation that threatens his life or health) will receive assistance in any part of the country.

Problematic Issues of the Service Department "102", Including to Solve Them

The Strategy for the Development of the Ministry of Internal Affairs until 2020 [9] is the basis for the development of the Ministry of Internal Affairs as an integral part of a certain sector of national security of Ukraine and defines a safe living environment as one of their priorities. As correctly noted by V.V. Sereda and Yu.A. Khatnyuk that "the units of organisational and analytical support and operational response of the National Police of Ukraine occupy a central place in the information and analytical support and the system of operational response of police bodies and units, which also includes ensuring the circulation of information. These structural subdivisions provide and carry out tasks and powers of the National Police of Ukraine on coordination, analysis, planning, control and coordination of actions of territorial interregional bodies of territorial (separate) police subdivisions on implementation of state policy in the field of public order and safety, protection of rights and freedoms man, the interests of society and the state, as well as combating crime" [4].

The report of the Head of the National Police of Ukraine on the main results of the department in 2019 [10] stipulates that the legislative initiative of the police is to determine the location of the applicant at the time of his call to line "102" to provide the necessary assistance. At the same time, we believe that the above initiative has its advantages and disadvantages. One of the advantages is the efficiency and timeliness of response to applications and messages from citizens. Thus, for example, in practice there are often cases when the call of an applicant who called the line "102" is suddenly interrupted and in the future the operator can not establish contact with him. However, during the previous conversation with the citizen, screams, noise and struggle were heard, which in turn give sufficient grounds to believe that the person is subject to illegal actions. Therefore, in such cases, the improvement of legal and software, which would allow determining the location of the applicant who called the line "102", would lead to timely and necessary assistance to citizens, reduce time and improve control over the flow of information from the call center "102" to a specific performer, reducing the time of arrival of police squads to report offenses and events. As Yu.Ya. Gladun and A.V. Lipentsev correctly noted, an improved management system would optimise the management of police units, increase the efficiency of police squads, investigative teams, duty units and police units, reduce the response time to applications and reports of citizens [3].

However, there are situations where locating an applicant who has contacted line 102 may be a significant shortcoming. In particular, a person who calls line 102 to report a criminal offense that is being prepared or committed, clearly does not want to disclose his personal data and location. And if the above initiative is implemented, the number of such appeals to line "102" will immediately decrease, which in turn will lead to low disclosure of criminal offenses. In addition, locating the applicant without his consent may be considered a violation of the right to respect for private life as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms [11]. Also, it may contradict the principle of confidentiality of information, which is provided by the Law of Ukraine of 13.01.2011. "On Access to Public Information" [12], according to which the definition of information confidential is the desire of a natural or legal person to consider certain information about him or information in his possession, confidential.

In view of the above, after analysing all the pros and cons, it is proposed to determine at the legislative level the possibility of establishing the location of a person seeking help on line "102", only in some cases. In particular, with her consent, and when there is a real threat to human life or health, in the interests of national security, economic prosperity and human rights. Another urgent problem in the activities of the "102" service department is the introduction of a psychologist who would provide timely and professional support to a person who finds himself in a difficult life situation and seeks help on the 102 line. As appropriately noted by V.Ya. Posokhova, the operator of the 102 service department, is the first official to contact the applicant after a stressful situation. The functions of the operator of the service department "102" are not only to receive and communicate the necessary information, but also to provide emotional and psychological support to the citizen after a collision with a problematic situation [6, p. 259]. At the same time, the Instruction [7] stipulates that when receiving reports of domestic violence, crimes against sexual freedom and sexual integrity, including other crimes, the operator of the service department "102" must ask the citizen with the operator of which article he wants to communicate. We believe that in such cases the psychologist, thanks to his professional competence, will be able to provide timely psychological assistance to the applicant, which in turn will affect the speed and quality of operational response of bodies and units of the National Police.

As noted earlier, the organisational and analytical support and operational response units of the National Police of Ukraine play a key role in implementing an effective operational response to citizens' statements and notifications. The main function of OAZOR dispatchers is to centrally manage all police units that respond directly to offenses or events. Automated control system is the main tool of dispatchers, which optimizes the activities of police units, increases the optimality of police squads, investigative teams, and reduces the response time to applications and reports of citizens. We believe that it is thanks to the coordination of dispatchers that patrol police squads, patrol police response teams, and investigative and operational groups operate in a more coordinated manner.

Thanks to this coordination, the time and control over the passage of information from the call center "102" to the main executor is significantly reduced, which leads to a real reduction in the time of arrival of police squads to the scene [13, p. 112]. However, organisational constraints, obligations, rules, and the expectations and beliefs of citizens, the activities of the police can also hinder this function of protection [14]. The number and types of incidents in which people turn to the police are enormous, and the vast majority obviously cannot be passed on to other organisations or the public sector without

significant resource costs or adjustments [15]. However, if the police retain these responsibilities, they must also recognise how they can address community issues more effectively [16]. Therefore, the effective implementation of the rapid response function requires the introduction of the position of psychologist in the service department "102", which will, in turn, improve the operational response system, and provide quality police services needed by society and the state.

Conclusions

The "102" Service Unit of the Organisational-Analytical Support and Operational Response Unit of the National Police of Ukraine is a structural unit whose employees receive emergency calls and register notifications of criminal, administrative offenses or other events around the clock with the help of an automated workstation in the IPNP system. The relevant unit plays a key role in the proper prompt response to applications and communications from citizens. The main function of the officials of the "102" service department in the rapid response system is to receive, process and register applications and notifications of offenses and events throughout the service area.

To ensure a proper prompt response to statements and reports of citizens about criminal, administrative offenses or other events, it is proposed at the legislative level to determine the possibility of locating a person who calls the police on line "102" in some cases, including with his consent, when real threat to human life and health, in the interests of national security and economic well-being. Also, the effective implementation of the rapid response function is possible during the introduction of the position of a psychologist in the staff list of the service department "102", which will provide psychological assistance to persons who have sought help from the police. Thus, the department of the service "102" is a basic element of the system of prompt response to applications and notifications of citizens, because it is from the professional and priority actions of its officials depends on the efficiency and quality of response.

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Роль відділу служби «102» у системі оперативного реагування органів та підрозділів поліції

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Анотація. Актуальність обраної теми полягає у визначенні ролі та змісту діяльності структурного підрозділу «102» у системі оперативного реагування, а також алгоритму їх дій під час надання необхідної допомоги людям, які звернулись на спеціальну телефонну лінію Національної поліції України. Мета дослідження зводиться до визначення основної функції відділу служби «102» як одного зі структурних підрозділів організаційно-аналітичного забезпечення та оперативного реагування Національної поліції України. У процесі дослідження широко використовувались наступні методи для збирання та обробки інформації: конкретно-соціологічні (документальний, опитування, спостереження) та деякі приватно-наукові методи (системно-структурний, порівняльно-правовий, історико-правовий). Розкрито роль відділу служби «102» підрозділів організаційно-аналітичного забезпечення та оперативного реагування Національної поліції України у системі оперативного реагування органів та підрозділів поліції на заяви та повідомлення про кримінальні, адміністративні правопорушення або події. Аргументовано, що основною функцією відділу служби «102» підрозділів організаційно-аналітичного забезпечення та оперативного реагування Національної поліції є прийом, опрацювання та реєстрація заяв і повідомлень про правопорушення та події на всій території обслуговування. Також доведено, що необхідною законодавчою ініціативою є визначення місцезнаходження людини, яка звернулась за реальною допомогою на лінію «102». Окрім цього, встановлено, що для належного виконання повноважень посадових осіб відділу служби «102» необхідно ввести посаду психолога для надання психологічної допомоги потерпілим. Водночас аргументовано, що відділ служби «102» є базовим елементом у системі оперативного реагування Національної поліції України

Ключові слова: органи та підрозділи Національної поліції України, підрозділи організаційно-аналітичного забезпечення та оперативного реагування, реєстрація заяв і повідомлень про правопорушення та події, оперативна допомога нарядів поліції, централізоване управління диспетчерами

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Legal Regime of Human Organs and Tissues as Objects of Civil Law in the Field of Transplantation

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Abstract. The article covers the issue of determining the legal regime of organs and tissues in the context of civil law in the field of transplantation. The issue of recognising organs and tissues as objects of civil law, given the gaps in the current civil legislation of Ukraine, is presumed. This situation is conditioned upon the need for national legislators to consider a range of moral and ethical aspects related to the civil circulation of human biomaterials. The publication attempts to define the legal regime of organs and tissues separated from the human body as specific objects. The study is based on a systematic approach; special legal and logical methods were used. The declared problem is studied considering the achievements of Ukrainian and foreign academic literature. A comprehensive analysis of special transplant legislation contributes to the understanding that organs and tissues are exceptional objects not removed from civil circulation, which are currently used for the purpose of providing medical services. Since the necessity of classifying such anatomical materials as separate independent objects of civil rights, limited in circulation, is substantiated, given their exceptional nature and specificity. Based on a comprehensive study of national legislation and doctrinal approaches, the need to apply to the organs and tissues used for transplantation, a special legal regime that considers the specific features of these objects

Keywords: anatomical materials, biomaterials, donation, objects of civil rights, property rights

Introduction

The current possibilities of transplant medicine are impressive, but limited by the problem of shortage of donor material. Conditioned upon this, organs and tissues used for transplantation are of particular value. At the same time, the current civil legislation of Ukraine [1] does not contain proper regulation of the legal regime of organs and tissues. The problem is that at the legislative level the issue of classification of organs and tissues as objects of civil law has not been resolved.

I.V. Spasibo-Fateeva emphasises the possibility of the existence of organs and tissues outside the human body, which indicates that they are not tied to the subject and do not constitute its essence. The scientist believes that anatomical materials are medical, medical means and are the good that appears in the legal environment, and therefore can be attributed to the objects of law [2, p. 15]. O.V. Hubskyi notes that "human organs and other anatomical materials, acting as elements of the material base of intangible health and ultimately the good of life, in turn is a material phenomenon, and therefore they can legally be called objects of civil donation" [3, p. 144]. According to V. Dontsov, human organs and tissues have a tangible visible form, have value available for human domination and can have a monetary value, in connection with which the specifics of human organs and tissues are independent objects of civil law [4, p. 14].

There is no doubt that until the moment of separation, human organs and tissues are part of the whole organism, and therefore are protected based on personal non-property rights that ensure the integrity of the person. From the moment of separation, these anatomical materials lose their connection with the donor of organs or tissues and become objects of the material world. However, the very fact of ratification should not lead to the idea that anatomical materials have become a thing within the meaning of Art. 179 of the Civil Code of Ukraine [1].

There is also an opinion in legal doctrine that, conditioned upon certain specifics, organs and tissues are independent objects of civil law, which, however, may be objects of property rights, but only for a limited period of time: from their removal from the human body. and until the moment of implantation in another organism (or until the moment of other use) [4, p. 9]. In the legal field, the controversy over the expediency of recognizing separate body parts as objects of property rights is quite lively and controversial. Yes, another philosopher J. Locke believed that "everyone has property in his own person" [5].

In view of the above, in the legal field there are heated debates about the feasibility of extending the legal regime of things to organs and tissues and the recognition of these objects as property. On the one hand, the application of the legal regime of things to these anatomical materials will bring legal certainty to the regulation of relations, the objects of which are organs and tissues. On the other hand, the recognition of human biomaterials as things is considered inappropriate, as it will promote the application of a kind of machine metaphor to the human body, where man is understood as a set of interchangeable parts. All this raises the question of

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understanding the legal regime of organs and tissues in a number of the most pressing issues of civilisation.

The purpose of the article is to study the problem of determining the legal regime of organs and tissues separated from the body as specific objects.

Conceptual Approaches to the Definition of Organs and Tissues in the System of Objects of Civil Rights and the Extension of the Legal Regime of Things

In light of the progressive achievements of modern medicine, anatomical materials can be separated from the human body and still retain their useful properties, because they are a kind of tool to save lives when using such a method of treatment as transplantation.

At the present stage of development of civil doctrine there is no single concept of theoretical determination of the place of organs and tissues in the existing system of objects of civil law regulation. Article 177 of the Civil Code (hereinafter – CC) of Ukraine to the objects of civil rights includes things, including money and securities, other property, property rights, results of works, services, results of intellectual, creative activity, information, and other material and intangible benefits [1]. In accordance with Part 1 of Art. 178 of the CC of Ukraine, "objects of civil rights may be freely alienated or transferred from one person to another by succession or inheritance or otherwise, if they are not withdrawn from civil circulation, or not limited in circulation, or are not integral to natural or legal person" [1].

However, the CC of Ukraine does not explicitly state that organs, tissues or other anatomical materials are separate objects of civil rights. Along with this, in accordance with Part 3 of Art. 290 of the CC of Ukraine, "an individual may give written consent to the donation of its organs and other anatomical materials in case of death or prohibit it" [1]. That is, the current civil law provides for the ability to dispose of their anatomical materials in case of death. In addition, in Ukraine relations in the field of transplantation are regulated by special legislation, in particular the Law of Ukraine "On the Use of Transplantation of Anatomical Materials to Humans" [6], which regulates transplantation and transplant activities, and allows managing organs and tissues in the case of posthumous and in the case of lifelong donation of organs and tissues for their use as grafts.

A systematic analysis of special legislation in the field of transplantation [6] suggests that organs and tissues are independent objects not removed from civil circulation, can be physically separated from a person and used as transplants in the provision of medical services for organ transplantation or fabrics. In view of this, the prevailing approach in modern civilisation is that donor organs and tissues are independent objects of civil law.

At the same time, some scholars believe that the application of the concept of things to the legal regime of organs and tissues intended for transplantation is unjustified. For example, V.L. Skrypnyk notes that donor organs and other anatomical materials cannot be recognised as objects under any circumstances; they are specific independent subjects of civil law agreements, limited in civil turnover [7 , p. 66]. A separate argument in favor of this view is the statement that human organs and tissues are of special origin, and therefore such anatomical materials can not be identified with things, because "they are directly the highest human values associated with his right to life. and health, which must be inviolable in any case" [8 , p. 174].

Other scientists, on the contrary, argue that organs and tissues as a result of separation acquire the legal regime of things and their dynamics is based on property law [9 , p. 385]. The right position in the field of civil studies is that it is unjustified to say that organs and tissues or other anatomical materials become things automatically on the basis of separation from the person, because the current civil Law of Ukraine [1] clearly does not answer this question. Therefore, this aspect needs its legislative regulation and the best in this case, according to some scholars, is the way of recognising organs removed from the human body as things, property, but with certain limits and restrictions on their civil circulation [10 , p. 111].

In addition, it is debatable whether the separated organs and tissues are objects of property rights from the moment of their separation until direct transplantation into the recipient's body. In civil doctrine, it is traditional to understand property as a kind of set of rights, which in the classical sense includes the right of possession, the right of use and the right of disposal. In this context, D.M. Wagner believes that a person has the rights of the owner in relation to his body, because the rights that exist in relation to the human body are similar to those rights that are traditionally included in the set of property rights [11, p. 934]. Proponents of this position emphasise that the right of ownership as a defined and well-known legal structure should apply to such specific objects as organs and tissues. This design is the most attractive for the judicial system [12, p. 25]. The main argument is that the institution of property law provides relatively clear and established principles that could be applied in cases of damage to anatomical materials, their theft or other illegal actions against them. Ultimately, the recognition of anatomical materials as objects of property rights would give the rightful owner the right to require the use of property rights, such as vindication.

However, despite some practical advantages, this approach in the context of civil law in the field of transplantation is not without its drawbacks. For example, in the scientific literature [13, p. 250] there is an opinion that separate organs and tissues are newly created things. According to the provisions of Art. 331 of the CC of Ukraine, "the right of ownership of a new thing that is made (created) by a person is acquired by him, unless otherwise provided by contract or law" [1]. However, if we agree with this statement, then the question arises as to who should be considered the legal first owner: the person who is the source of these tissues or organs, the surgeon who performs the operation to separate organs and tissues or the health care facility where transplantation. In addition, if in the case of lifelong organ or tissue donation for transplantation it would be fair to consider the source of the anatomical material to be the source of the material, in the case of *ex mortuo* donation it is unlikely to be the owner of the deceased donor or heirs, who are legally authorised to consent to the removal of anatomical materials for transplantation. This would lead to the misconception that organs and tissues can be inherited.

An argument against extending ownership to organs and tissues is also the fact that such anatomical materials cannot be objects of sale or other commercial relations. N.M. Kvit notes that it is impossible to speak unequivocally about the emergence of property rights in the person from whom such anatomical material originates. In this situation "it is worth remembering the principle of prohibition of commercialisation

of the human body and its parts, and property rights also allow to benefit from the disposal of objects of such law, which in this case is debatable" [14, p. 52]. In addition, some scientists [15, p. 89] tend to believe that the recognition of organs and tissues as property is equivalent to slavery and violates Art. 4 of the Universal Declaration of Human Rights [16].

In fact, the norms of international legal documents establish the principle of prohibition of commercialisation of relations in the field of donation and transplantation. In particular, the Convention for the Protection of Human Rights and Dignity of Biology and Medicine: The Convention on Human Rights and Biomedicine [17] stipulates that the human body and its parts as such should not in themselves be a source of financial gain (Article 21). The legislation of the European Union is also consistent and categorical in this sense [18]. European standards in the field of research relations [19; 20] establish that programmes for the use of organs and tissues should be based on the principles of gratuitousness. The European Community condemns any financial incentives in the context of human organ and tissue transplantation relations. Finally, the philosophy of altruism and the understanding of donor organs and tissues as a "gift of life" is central to the practice of donation and transplantation around the world.

The concept of donor organs and tissues as a "gift of life" implies that such a philosophy denies the application of property construction to anatomical materials. The point is that human biomaterials should be seen as a gift, but not as property. However, in the foreign academic literature there is a denial of this opinion, which appeals that the legal gift implies the exercise of property rights. Therefore, a person must have the right to a thing to present it [13, p. 252; 21, p. 627].

Interesting is the position of scholars, who argue that understanding the body and its parts as objects not covered by the legal regime of property is not the only way to maintain the altruistic spirit of donation in the context of transplantation and withdraw them from business. According to the supporters of this standpoint, the recognition of organs and tissues as property does not prevent the general recognition of commercial transactions with the body illegal [22, p. 27]. Obvious examples of objects that are owned but cannot be sold, or where the authority to sell is limited, are prescription drugs or weapons [13, p. 259]. However, it is difficult to agree with this, because human anatomical material cannot be compared with objects such as weapons or medicine. Organs and tissues are a source of genetic information. The special nature and exceptional value of these objects is also indicated by their identification as sacred in religious doctrines. Thus, the conceptualisation of personal attributes of man, such as human biomaterials, as interchangeable goods, certainly levels the human personality and the conceptualisation of what man is.

Justification of Expediency of Application of Special Legal Regime to Organs and Tissues

Analysing the relationship in the field of transplantation, it is necessary to consider the fact that organs and tissues are removed for a specific purpose, which is to further transplant into the recipient's body. It is this goal that defines their legal nature as transplants. Therefore, these anatomical materials are special objects, the specificity of which is conditioned upon their purpose – to become part of another organism. The use of such organs and tissues is carried out according to the rules of the special legal regime in accordance with the norms of transplantation legislation [6]. It is stated that such anatomical materials are used only for medical purposes in the presence of medical indications for the use of this method of treatment and based on informed consent, considering the principles of voluntariness, anonymity, humanity and other norms of this legislation.

The above considerations indicate that organs and tissues are specific objects of civil rights, and therefore the assertion that they should be classified as items in the existing system of civil rights objects is incorrect. The proposal to extend the legal regime of property to organs and tissues in its traditional sense is also contradictory, as it generates a number of ambiguous and debatable aspects. In this situation it is necessary to proceed from the position that the range of objects of civil rights is not constant [7, p. 64]. Therefore, organs and tissues and other anatomical materials, given their specificity, should be classified as independent objects of civil rights, limited in circulation. Given the significant social value of these objects, it is necessary to apply a special legal regime of organs and tissues, which will take into account their specifics.

It is important that such a regime must be differentiated, because organs and tissues can be of more than human origin. In particular, xenotransplantation is used in medical practice, which involves the transplantation of an organ or tissue from a human to an animal. Today, this type of transplantation remains largely an experimental activity [23]. However, it is obvious that the legal regime of organs and tissues of an animal removed for human transplantation must be different from the legal regime of organs and tissues of human origin. After all, anatomical materials can be artificially created with the modern possibilities of genetic engineering, which also requires a differentiated approach in the context of establishing a legal regime.

In view of the above considerations, *the legal regime of human organs and tissues must meet at least four requirements:*

1) recognition of the special nature and value of human anatomical materials;

2) recognition of the ban on profit and ensuring non-commercialisation of relations in the field of transplantation;

3) ensuring the use of these anatomical materials only for therapeutic purposes due to transplantation legislation;

4) ensuring legal certainty.

The special nature of these materials is conditioned upon the fact that the source of their origin, given the current state of transplant medicine, is mostly human. Human anatomical materials are not just random things, because even when separated from the human body, their nature is "human" and their purpose is to become part of another human body for therapeutic purposes. Therefore, organs and tissues can be considered as "vital assets" that have a special nature.

Prohibition of profit and non-commercialisation of transplant relations. Despite the fact that this issue is debatable in legal doctrine, generally accepted international standards [17; 18] in the field of regulation of transplantation relations are categorical. Therefore, the legal regime for the use of organs and tissues must prevent their commercial circulation or commercialisation. Instead, one of the characteristics of the institution of property is the free disposal of goods. In a market economy, the most common ways of disposing of things are undoubtedly those that allow getting economic profit from them or by buying and selling, or through other transactions. Therefore, the extension of the legal regime of property to

organs and tissues does not correlate with the principle of prohibition of commercialisation in the field of the studied relations.

Ensuring the use of these anatomical materials only for therapeutic purposes due to transplantation legislation. The authority to use human biomaterials should be limited explained by their special nature. In the field of civil law, transplants should be used exclusively to promote health and be used for medical therapy.

Legal certainty. Legal regulation of anatomical materials should guarantee legal certainty. In this context, it is a technical or instrumental requirement, without which no legal regulation will meet the purpose for which it is aimed.

Conclusions

The analysis contributes to the conclusion that organs and tissues, explained y their special nature, should be classified as independent objects of civil rights, limited in circulation. Given the significant social value of these facilities, the issue of determining the legal regime of organs and tissues is quite acute and needs to be addressed in the regulatory field of special transplant legislation. It is important that the legal regime of organs and tissues used for transplantation should be differentiated according to their source. At the same time, the legal regime of human organs and tissues must consider: 1) the special nature and value of human anatomical materials; 2) prohibition of profit and non-commercialisation of relations in the field of transplantation; 3) the need to use these anatomical materials only for therapeutic purposes, conditioned upon transplantation legislation; 4) the requirement of legal certainty. It is expedient to mediate the legal regime of organs and tissues separated from the human body, not through the legal structure of property, but through the powers established under special legislation to make decisions regarding such objects.

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Правовий режим органів і тканин людини як об'єктів цивільних правовідносин у сфері трансплантації

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Анотація. У статті висвітлюється питання визначення правового режиму органів і тканин у контексті цивільних правовідносин у сфері трансплантації. Проблематика визнання органів і тканин об'єктами цивільного права, з огляду на наявність прогалин в чинному цивільному законодавстві України, є презюмованою. Означена ситуація зумовлена необхідністю врахування національним законодавцем цілого комплексу морально-етичних аспектів, пов'язаних із цивільним обігом людських біоматеріалів. У публікації зроблено спробу визначити правовий режим органів і тканин, відокремлених від тіла людини, як специфічних об'єктів. Проведене дослідження ґрунтується на системному підході; використано спеціально-юридичні та логічні методи. Задекларована проблема досліджується з урахуванням напрацювань української та зарубіжної академічної літератури. Комплексний аналіз спеціального трансплантаційного законодавства сприяє розумінню, що органи і тканини є винятковими об'єктами, не вилученими з цивільного обігу, які сьогодні застосовуються у цілях надання медичних послуг. Позаяк обґрунтовується необхідність віднесення таких анатомічних матеріалів до окремих самостійних об'єктів цивільних прав, обмежених в обороті, з огляду на їхню виняткову природу та специфіку. На основі комплексного дослідження національного законодавства та доктринальних підходів обґрунтовується необхідність застосування щодо органів і тканин, які використовуються у цілях трансплантації, спеціального правового режиму, який максимально враховуватиме специфіку цих об'єктів

Ключові слова: анатомічні матеріали, біоматеріали, донорство, об'єкти цивільних прав, право власності

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Empirical Research of Features of Emotional Competence of University Teachers in the Conditions of Distance Learning

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Abstract. The article describes the place and importance of emotional competence of a teacher in professional activities in the conditions of distance learning. In particular, attention is drawn to the importance of emotional competence as a professional quality of the individual during training sessions in distance learning. The aim of the research is to determine with the help of theoretical and empirical research the features of emotional competence of scientific and pedagogical workers during distance learning. The main components of emotional competence are described: reflection, self-regulation, empathy and expressiveness. An empirical study of the features and level of their manifestation in teachers during training sessions in the process of distance learning. To conduct an empirical study, we used the method of diagnosing emotionality by V.M. Rusalov, methods of assessing emotional intelligence by N. Hall, "Characteristics of emotionality" test by E. Ilyin, "Emotional expression" questionnaire by L. Bogina. According to the results of the methods, insignificant dominance of communicative emotionality in teachers was determined, which indicates vulnerability in the situation of failures, feelings of constant anxiety in the process of social interaction, some uncertainty and irritability in the communication process. Notably, the assessment of the appropriate level of development of emotional awareness, ie the ability of teachers to understand their own emotions and the emotions of others. Regarding the expression of various indicators of emotions, teachers have the highest level of manifestation is characterised by the characteristic "intensity of emotions". Regarding emotional expression, the highest rate belongs to expressiveness, which is not differentiated by channels and indicators of language imagery, which is a sign of completeness and expressiveness of language communication and an important component of educational success through the development of emotional component and its above characteristics

Keywords: emotional sphere, emotionality, reflection, empathy, expressiveness, higher education

Introduction

The main characteristics of the emotional sphere of the individual, such as emotional stability, emotional self-regulation, and emotional competence are among the key in professional scientific and pedagogical activities. Emotional competence of the teacher provides the ability to understand their own emotional world and emotional experiences of students, gives a sense of inner harmony and understanding of the right approaches to solving pedagogical problems and openness to the world [1]. Undoubtedly, the formed emotional competence of the individual, in particular the teacher, is the key to effective interaction with students of higher education, professional success and a sense of satisfaction with their professional activities in general.

However, in the context of distance learning, which causes constant psychological tension and chronic stress of participants in the learning process, it is important to develop the ability to manage emotions as an important component of emotional competence. The predominance of bad mood, apathy, high levels of neuroticism of emotional excitability, anxiety, fears, asthenic emotions in teachers in online learning creates the need for emotional competence and its systemic properties such as reflection, empathy and expressiveness [2, p. 79]. Improving the emotional competence of the teacher is associated with the inclusion in the system of interpersonal communication understanding of emotional experiences of the pedagogical process, increasing the level of conscious management and control of their feelings and emotions, moral regulation of values and norms (sense of duty, responsibility and conscientiousness). Explained by this, the educational process in the conditions of distance learning in higher education, based on the general emotional orientation of the teacher's personality and the formation of emotional competence is filled with creativity and richness, provides emotional stability and stability of emotional experiences of teachers.

B. Garcia-Cabrero and others in their research on the features of distance learning and the development of teacher competencies proposed a comprehensive model MESDSL, which describes the cognitive, social and emotional components in the learning process, communication cycles and features of educational activities. MECDL is proposed to be used as a conceptual framework for managing the productivity, evaluation and training of online learning teachers [3, p. 343]. Given the components of this model, special attention is paid to the emotional component in the learning process in a remote format, as the emotional sphere is accompanied by a large number of destabilising moments in its functioning.

Thus, the results of research by E. Pomytkin and others

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point to the dominance of unstable and negative emotional states of teachers with the beginning of distance learning. It was found that most educators are in a state of frustration, accompanied by doubt, despair and confusion. The emergence of such destructive conditions is explained by the lack of skills for the organisation of distance learning and high requirements for the process of distance learning by parents and management of educational institutions [4; p. 267].

Also the studies of M. Carvalho focuse on the importance and value of emotions in the learning process, in particular during distance learning, special attention is paid to the perception and understanding of students' emotions by teachers and the development of understanding of students' emotions by teachers to improve the quality of learning. Accordingly, it is noted that during the study of the features, forms and principles of distance learning, insufficient attention is paid to emotional competence [5; c. 267]. In his article, T. Knopik points out the importance of proper organisation of distance learning, as it provides the development of socio-emotional skills and helps reduce feelings of fear, anxiety and situational, which often occur during distance learning [6].

Given the above, the *aim of the study* is to determine through theoretical and empirical research the characteristics of emotional competence of research and teaching staff in the process of distance learning.

The Role and Importance of Emotional Competence in the Professional Pedagogical Activity of a University Teacher

Emotional competence of a person as the core of his emotional culture is the key to interpersonal interaction, as it helps to understand their emotions and the emotions of others, understand them and make important decisions, create deep and multidimensional connections with the outside world, adequately assess their emotional state in counteracting stress and an important bonus for adaptation. In general, emotional competence ensures the preservation and strengthening of a person's mental health.

According to the definition of D. Goulman, emotional competence is the ability to realise and recognise one's own feelings, including the feelings of others for self-motivation, to manage one's own emotions and in relationships with others [7]. According to him, emotional competence includes two components: personal competence (self-understanding, self-regulation and motivation) and social competence (empathy and social skills). Considering each of the above characteristics, we note that:

1) self-understanding includes knowledge of one's own emotional states, resources and intuition, understanding of the peculiarities of experiencing emotions and their consequences, adequate self-esteem and self-confidence;

2) self-regulation involves the ability to manage their own emotional states, impulses and resources, control over destructive emotions, flexibility of emotions and openness to the new (willingness to work with new information and new approaches, which is especially relevant in distance learning);

3) motivation is related to emotional tendencies that control or facilitate the achievement of goals (optimism, perseverance, initiative, etc.);

4) empathy is characterised by sensitivity to the feelings and needs of others, understanding others, promoting the development of others and using diversity;

5) social skills affect the ability to provoke desired reactions, persuade, resolve conflicts, catalyse change and build constructive relationships, establishing cooperation and collaboration [8].

Research of emotional competence by C. Saarni focused on the consideration of emotional competence from the standpoint of a set of eight types of abilities or skills, namely: awareness of their own emotional states; ability to distinguish the emotions of others; ability to use a dictionary of emotions and forms of their expression, characteristic of this culture; ability to feel other people' emotions; ability to understand the internal emotional state, which does not necessarily correspond to the external manifestation, ability to be emotionally adequate [9, p. 93].

Important components of emotional competence of the individual are awareness of their emotions, the ability to determine the dominant emotion at a particular time, determine the basic emotions included in a complex emotion, determine the causes and sources, their usefulness, ability to change intensity, determine emotional states by verbal and nonverbal cues, the ability to manage emotions, and adequately express them [10; 11].

According to V. Matiikiv, important in the development of emotional competence of teachers, which determine his style of emotional response and behaviour is the focus on values (interaction based on tolerance, respect, understanding, trust and sensitivity); responsibility (the position of personal responsibility allows solving various situations without resentment, accusations and aggression); positive attitude towards oneself, other people and the environment (maintaining internal balance and positive attitude, regardless of what is happening inside or outside); awareness of the process of interaction (experience of the process and its awareness "here and now", observation, focus on the process, attention to the interlocutor, his condition and needs, attentive listening, meaningful actions); sense of moderation and tact; openness to change (flexibility to respond to external changes, trust in the process of life, living without expectations, recognition and acceptance of events); gratitude (a sense of gratitude helps to change lives for the better and improves relationships) [12, p. 470].

In general, scientific papers have defined that emotional competence is a systemic property of the individual, which includes skills of adequate situation of reflection, self-regulation, optimal level of empathy and expressiveness. As you can see, this definition includes several components and mechanisms that ensure the functioning and development of this property: reflection and self-regulation [13; 14]. Emotional competence itself is an affective-cognitive phenomenon. It includes both affective and cognitive components. Emotional competence is closely related to both cognitive abilities and personal characteristics [14].

In the educational process, all the above characteristics of emotional competence play a significant role, especially their value intensified during distance learning, as "reading" emotions through nonverbal manifestations and understanding them complicated by the specific features of communication through the monitor, which became a new reality in the pandemic. Quite often teachers face the "emotional blockade" of higher education students in the process of distance learning (lack of emotional response due to passivity, image exclusion, emotional alienation) [15; 16].

Prevention of negative emotions and the emergence

of COVID-stress in distance learning will reduce the level of emotional burnout in teachers, a combination of psycho-physiological and somatic reactions such as chronic fatigue, insomnia, mental instability and more.

Therefore, the need to develop emotional competence becomes especially important, and the ability to subtly and accurately "read" the emotional reaction of students during classes becomes a particularly valuable skill of modern teachers. Because its task is primarily to reprogramme the emotional state of students in a positive and tuning in to creative interaction and emotional and value attitude to the learning process. The correct interpretation of the student's emotions helps in deciding on the correct construction of a dialogue with him, which is a guarantee of successful pedagogical interaction and communication.

The Results of an Empirical Study of Emotional Competence of Teachers in Terms of Distance Learning

The empirical study involved 50 university teachers from Lviv State University of Internal Affairs, Lviv Polytechnic National University, Ivan Franko National University of Lviv), 32 of them are men, 18 are women. The age of the subjects was 25-53 years. During 2020-2021, all of them conducted distance learning classes (with short breaks for offline learning). The following psychodiagnostic methods were used in the empirical study:

1) Methods of diagnosing emotionality by B.M. Rusalov [17, pp. 540-542].

2) Methods of assessing emotional intelligence by N. Hall [17, pp. 633-634].

3) Test of "characteristics of emotionality" by E. P. Ilin [17, pp. 549-550]

4) Questionnaire of "emotional expression" by L.E. Godina [17, pp. 592-596]

According to the results of the method of diagnosing emotionality by V.M. Rusalov, the insignificant dominance of communicative emotionality in the subjects can be noted (scale "communicative emotionality" 34.08%). The results of other scales are close to the indicators of the predominant scale (scale "psychomotor emotionality": 32.34%; scale "intellectual emotionality": 33.57%) (Fig. 1).

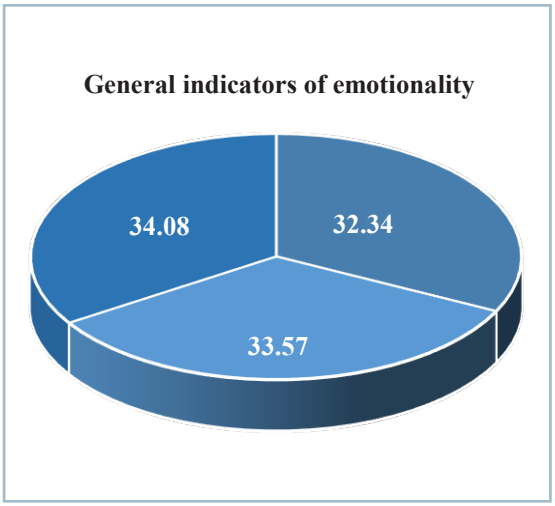

Figure 1. General indicators of emotionality according to the method of V.M. Rusalov

The dominance of communicative emotionality in teachers indicates a high level of vulnerability in a situation of failure, a sense of constant anxiety in the process of social interaction, some insecurity and irritability in the process of communication. In fact, during distance learning teachers tend to experience emotional stress and anxiety, conditioned upon the specific features of the organisation of the educational process and the difficulty in building communication with students in a way that involves building communication with technical means. The results of an empirical study using the method of assessing the emotional intelligence of N. Hall show that the subjects are dominated by the scale of emotional awareness (Fig. 2). Such indicators indicate the ability of teachers to understand their own emotions. Respondents have a good understanding of their emotions and the emotions of others (emotional awareness – 24.69%; managing their emotions – 11.85%; self-motivation – 22.28%; empathy – 21.52%; recognizing other people's emotions – 19.65%). These abilities are formed and acquired from research and teaching staff during their professional activities and are an important component in the organisation of the educational process, especially if it takes place in a distance format.

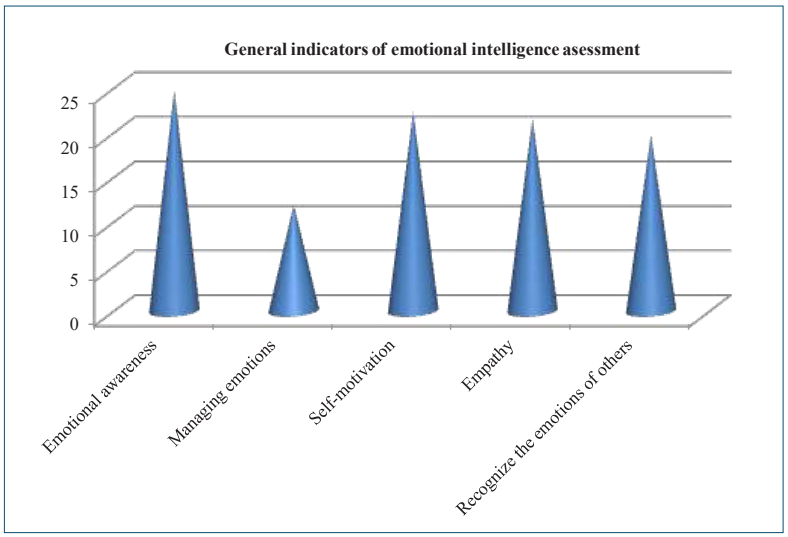

Figure 2. Indicators of emotional intelligence according to the method of N. Hall

This technique identified the ability to understand the relationships of the individual represented in emotions and manage the emotional sphere based on decision-making. According to the results of the test of emotional characteristics by E. Ilin, the severity of various characteristics of emotions, such as emotional excitability (34.75%), intensity of emotions (41.14%) and duration of emotions (24.1%) was determined. The highest indicator of the characteristics of emotionality – the intensity of emotions (Fig. 3). This indicator indicates a high degree of expression of emotions and the strength of their experience.

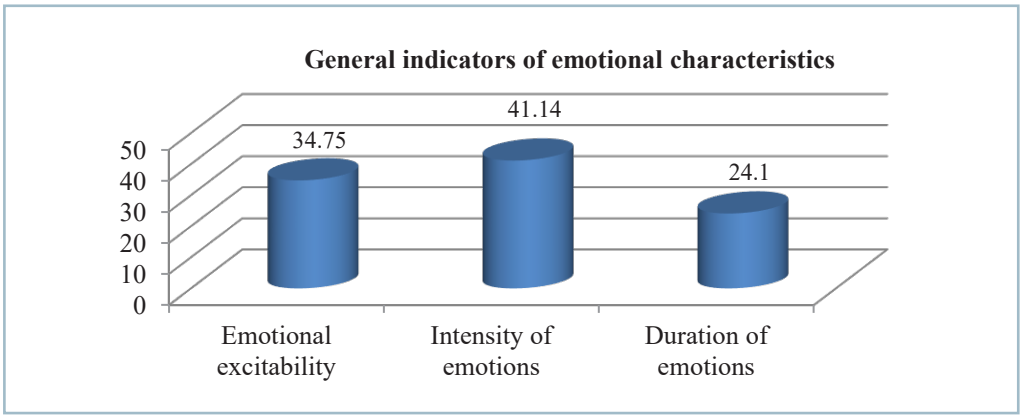

Figure 3. General indicators of emotional characteristics according to the method of E. Ilin

According to the method of emotional expression of L. Bogina, 8 expressive channels of expression of emotions were diagnosed, namely: volume of the voice – 11.93%; language rate – 8.02%; imagery of language – 12.78%; language errors – 8.28%; intonational expressiveness of language – 12.22%; motor activity – 10.88%; extra movements – 9.78%; facial expressions – 12.12%; expressiveness that is not differentiated by channels -13.96% (Fig. 4). The highest rate belongs to the expressiveness, which is not differentiated by channels, also, the highest rate belongs to the imagery of language (Fig. 4). The most complete figurative speech is realised in the artistic style of language, which is one of the features by which the expressiveness of linguistic communication is achieved.

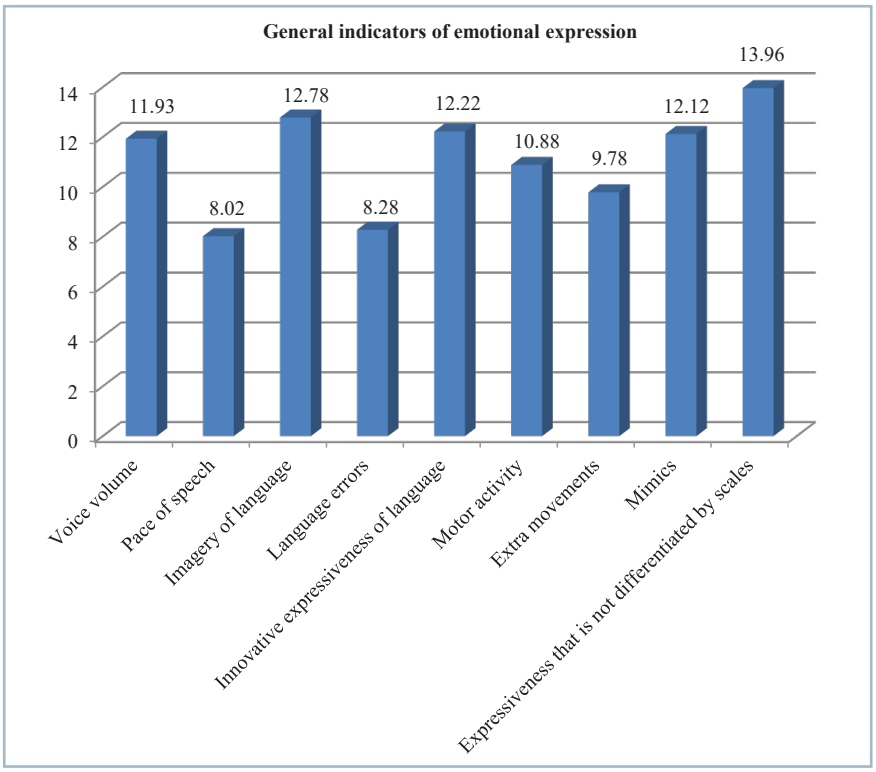

Figure 4. General indicators of emotional expression according to L. Godina

The channels "voice volume" and "facial expressions" are so important. These channels of expression certainly play an important role in pedagogical activities, especially in the context of distance learning. The use of these channels of expression during distance learning promotes concentration and saturates verbal communication with an important component – emotionality, which contributes to the involvement of students in the learning process and the effective assimilation of necessary information.

Conclusions

The acquisition of knowledge by students in the conditions of distance learning forced the participants of the educational process (teachers and applicants for higher education) to face various kinds of research. One of the most acute is the establishment of emotional connection and, accordingly, the development of socio-emotional skills during the new format of communication. This type of communication undoubtedly requires teachers to have the appropriate level of emotional competence in the teaching process. Emotional competence helps to realise and understand one's own emotions and feelings, and the feelings of others for self-motivation, to manage one's own emotions and in relationships with others, which is necessary during pedagogical interaction in the learning process.

The teacher with the formed emotional competence easily navigates in difficult pedagogical situations, constructively solves them, is friendly and positive about interaction with students, tries to avoid conflict situations and realistically evaluates situations of educational interaction.

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Емпіричне дослідження особливостей емоційної компетентності викладачів ВНЗ в умовах дистанційного навчання

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Анотація. У статті описано місце та значення емоційної компетентності педагога у професійній діяльності в умовах дистанційного навчання. Зокрема, звернено увагу на важливість емоційної компетентності як професійної якості особистості під час проведення навчальних занять в умовах дистанційного навчання. Метою дослідження є визначення за допомогою теоретико-емпіричного дослідження особливостей емоційної компетентності науково-педагогічних працівників під час дистанційного навчання. Охарактеризовано основні компоненти емоційної компетентності: рефлексію, саморегуляцію, емпатію та експресивність. Здійснено емпіричне дослідження особливостей та рівня їх прояву у викладачів під час проведення навчальних занять у процесі дистанційного навчання. Для проведення емпіричного дослідження використано методику діагностики емоційності В.М. Русалова, методику оцінки емоційного інтелекту» Н. Холла, тест «Характеристики емоційності» Є. Ільїна, опитувальник «емоційної експресії Л. Богіної. За результатами методик визначено несуттєве домінування комунікативної емоційності у педагогів, що свідчить про вразливість у ситуації невдач, відчуття постійного неспокою в процесі соціальної взаємодії, деяку невпевненість та дратівливість у процесі спілкування. Варто відзначити оцінку належного рівня сформованості емоційної обізнаності, тобто здатність педагогів до розуміння власних емоцій та емоцій інших. Щодо вираженості різних показників емоцій, то у педагогів найбільший рівень прояву спостерігається за характеристикою «інтенсивність емоцій». Щодо емоційної експресії то найвищий показник належить експресивності, що не диференційована по каналам та показнику образності мови, що є ознакою повноти та виразності мовної комунікації і важливою складовою успішності навчального процесу саме через сформованість емоційного компоненту і згаданих вище його характеристик

Ключові слова: емоційна сфера, емоційність, рефлексія, емпатія, експресивність, вища освіта

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The Right to Social Protection of Persons with Disabilities According to International Standards

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Abstract. The relevance of the subject under study is determined by the socio-economic state of the country and the long-term armed conflict in the Donbas, in particular, as a result of which thousands of people were injured and disabled. Insufficient funding for the healthcare system, lack of rehabilitation programmes for persons with disabilities, lack of housing and appropriate equipment for the movement and full functioning of the life of persons with disabilities in Ukraine lead to the fact that such people are discriminated against in society. Therefore, the purpose of this paper is to investigate the right to social protection of persons with disabilities in the context of compliance with international standards. Based on the monitoring study, available rehabilitation programmes, theoretical material, legislative analysis, and reports of international organisations, the authors came to relevant conclusions and made recommendations for the authorities, namely relevant ministries. The study discovered that the attitude towards people with disabilities is being transformed in the world, and their rights to a full-fledged, high-quality, non-discriminatory life in society are being consolidated. The need to reform national legislation and bring it in line with international standards was confirmed. It is proved that the main standards relate to the accessibility and adequacy of the right to social protection. The main elements of accessibility and adequacy of the right to social protection are highlighted. Key international regulations in the field of protection of the rights of persons with disabilities are analysed. The study investigated the term "discrimination for persons with disabilities". It was established that the integration of persons with disabilities is possible if the problems with focusing attention on the category of persons with disabilities due to war are thoroughly studied. The practical value of this paper is to provide recommendations for relevant ministries, considering the monitoring study conducted by the authors in 2019-2020, which will contribute to improving the right to social protection as such

Keywords: international standards, human rights, social security, social standards, elements of accessibility, elements of adequacy, armed conflict

Introduction

At the present stage, social protection in Ukraine is a priority for the country. This is primarily conditioned upon the forced internal displacement of persons from the east of Ukraine, which is the largest in Europe and the first large-scale displacement in the entire history of Ukraine. Due to the armed conflict in the Donbas, the percentage of people receiving disabilities is increasing. These factors are also influenced by the psychological state of people in connection with the eight-year armed conflict, and the proximity of territories to military operations in eastern Ukraine. Most people living on the contact line are injured. Most frequently, people who are injured, receive disabilities as a result. The problem of armed conflict in the country adversely affects the statistics of people with disabilities. In this connection, the problem of their social protection is particularly relevant.

In recent years, the work of a considerable number of Ukrainian researchers has been devoted to the investigation of the subject of legal protection of persons with disabilities and international standards in this matter. Thus, Doctor of Law V.L. Kostiuk noted that persons with disabilities require adequate support from society and the state, and accordingly they need to be provided with proper social protection on an equal basis with other members of society [1]. At the same time, the author justified the need for the development of an inclusive society, "the development and approval of a system of international social standards on the rights of persons with disabilities (considering the provisions of the UN Convention on the Rights of Persons with Disabilities [2]. It is worth agreeing with the candidate of legal sciences V.P. Melnik [3], who notes the need for international legal regulation of social protection of persons with disabilities in the field of rehabilitation and labour. This issue is particularly relevant today, especially during the period of economic instability of the country, which is in a state of armed conflict in the Donbas.

In his dissertation research, S.M. Prylypko [4] first developed new conceptual approaches to outlining the scope

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and defining the subject of social security law; the concept and content of social security law. At present, the issue of increasing guarantees for the implementation of the right to social security, which is discussed in the scientist's study, remains relevant. For their part, researchers Yu.O. Voloshyn, O.V. Martseliak and A.O. Yanchuk [5] conclude that the introduction of the Commissioner for Healthcare in Ukraine will allow identifying certain legislative gaps in national legislation and supervising the elimination of these issues. In particular, researchers draw attention to the special role of the Ombudsman as the main figure in guaranteeing human rights in the context of medical reform. Finally, L.M. Sinova notes that the activity of social protection of the entire population is a mandatory component of any modern state [6]. Furthermore, the author concludes that the issues of strengthening social protection of both elderly and disabled citizens are crucial in modern conditions of implementing a strategic course for building a socially oriented market economy and integrating into the global economic and legal space. Accordingly, the authors of this paper join this conclusion, since the majority of persons who have received a disability are unemployable or elderly people in particular.

The issue of social protection of persons with disabilities should be considered in accordance with international standards for the protection of human rights. Nowadays, there are already developments of researchers, lawyers, and practitioners, which are indicated above and are relevant for scientific research [7; 8]. The imperfection of domestic legislation, insufficient financial resources in the country, as well as the duration of the armed conflict in the Donbas determine the necessity of harmonising the national legislation with international standards, considering international practices in dealing with such issues. One of the essential tasks is to develop an efficient model of adaptation of persons with disabilities in the conditions of Ukrainian society.

The purpose of this paper is to analyse the right to social protection of persons with disabilities, factoring in the international standards.

Materials and Methods

The study is based on the results of monitoring the right to social protection of civilians who have received disabilities as a result of military operations on the territory of the ATO/JFO [9], investigating scientific publications on related topics. The study was conducted based on an analysis of Ukrainian and international law. To achieve the scientific objectivity of the research results, a complex of general scientific and special methods of cognition of legal phenomena was applied. The main one is the general scientific dialectical method, which allowed determining the essence of the right to social protection of persons with disabilities according to international standards. During the analysis of theoretical works, categories, and techniques of formal logic (concepts, definitions, judgments, analysis, synthesis, analogy, comparison, generalisation, etc.) were used. One of the leading methods is the structural and system analysis, which allows shedding the light on the right to social protection of persons with disabilities, ensuring the right to rehabilitation. This method helps justify the need to bring the Ukrainian legislation in the field of social protection of persons with disabilities into accordance with international standards. Dogmatic analysis of the legislation of Ukraine, the right to social protection of persons with disabilities, regulations contributed to the identification of their shortcomings and the development of proposals to the corresponding ministries of Ukraine to improve legal norms according to international standards. The method of analogies allowed discovering ways to improve the right to social protection of persons with disabilities. A systematic analysis suggested that it is worth focusing on guaranteeing the rights and freedoms of persons with disabilities without discrimination.

Using structural-functional and formal-legal research methods, the study analysed the Ukrainian legislation and international standards in the field of social protection of persons with disabilities. Furthermore, upon processing the theoretical framework of this study in the form of scientific papers of Ukrainian and foreign researchers, methods of analysis, synthesis and generalisation were applied. Other methods of scientific research were also employed to identify gaps and other shortcomings in the current legislation of Ukraine and provide proposals to the relevant ministries of Ukraine on its improvement. These methods were used comprehensively.

Results and Discussion

Universal characteristics of the right of persons with disabilities: Ukrainian and European contexts

The protection of the rights of persons with disabilities is highlighted in international instruments, such as the Declaration on the Rights of Persons with Disabilities of December 9, 1975 [10], UN Standard Rules on the Equalization of Opportunities for People with Disabilities of December 20, 1993 [11] and several other acts. Article 22 of the Universal Declaration of Human Rights specifies every person as a member of society [12] as having "the right to social security and to exercise the rights necessary for its dignity and for the free development of its individual in the economic, social, and cultural spheres through the domestic resources of countries and international cooperation".

Just like in the advanced countries of the European Union, Ukraine pays a lot of attention to the social protection of the rights of persons with disabilities. This is a national priority for the country, as indicated in the Ministry of Social Policy of Ukraine. According to statistics from the official website of the Ministry of Social Policy, at the end of the 20th century, the total number of people with disabilities was 3% of the total population of the country, today – about 6% of residents of Ukraine [13]. The statistics are impressive, especially notable is the improvement of material support for persons with disabilities, maintaining the psychological state of such persons, and access to appropriate services. Many problematic issues arise precisely with access to the appropriate range of services, such as access to state authorities in the frontline territories of eastern Ukraine, the arrangement of ramps for enterprises, organisations, and institutions that provide services for people with disabilities.

To create an equal environment for people with disabilities in society, it is necessary to take appropriate actions to implement the national policy [14]. At this stage, the protection of persons with disabilities in Ukraine is quite low, and further integration of such persons is impossible without a thorough study of the problems, monitoring the system of social services and providing recommendations to state bodies to improve the situation with the protection of the rights of these persons. Within the Council of Europe, there is a special committee of experts on the rights of persons with disabilities, which provides recommendations and support to some other

Council of Europe bodies and Member States. To date, the Special Committee has been tasked with preparing the Council of Europe's Disability Strategy for 2017-2023 [15, p. 157-158].

Ukrainian legislation raises issues of social protection of persons with disabilities, considering international social standards. International law has a considerable impact on the establishment and development of national law norms, imposing on states the performance of obligations undertaken by them when signing various international legal treaties (previously they were obliged by the 1989 CSCE Vienna Document [16]). Therefore, understanding the functional role of the principles of conscientious compliance with international treaties and sovereign equality of states legally justifies the influence of international law on domestic law, notes N.V. Proniuk [8]. V.P. Melnik emphasises that according to the provisions of the Constitution of Ukraine [17], international treaties form part of the legislation of Ukraine. These international treaties are to be performed and have pre-emptive legal force [3]. In this context, the authors of this paper would like to focus the attention of readers on the studies of researchers Yu.O. Voloshyn, O.V. Martseliak, A.O. Yanchuk, who note that "the trend of constitutional and legal development of the modern Ukrainian state is the further process of recognising international standards in the field of human rights, improving national legislation in this area" [5]. The authors of this paper believe that the above is absolutely the right way to develop in the current situation in Ukraine, which is in a state of war and requires compliance with international standards on the rights of persons with disabilities, protection of human rights in armed conflict. Notably, Yu.O. Voloshin [18] draws attention to regional security as a component in international security within a certain part of the world, region, or continent. The researcher points out that regional security refers to the state of relations within and between socio-territorial communities of a certain region, wherein all its states and peoples, public institutions and groups are protected from their vital interests. This statement is relevant in the context of the security of a part of the territory of Ukraine that is currently temporarily beyond the control of the Government of Ukraine.

Modern international law fully regulates the rights of persons with disabilities. International UN documents recognise the right to social security and prescribe it in Article 9 of the International Covenant on Economic, Social, and Cultural Rights [19], which states as follows: "Member States to this covenant [19] recognise the right of everyone to social security, including social insurance". The UN Convention on the Rights of Persons with Disabilities [2] has expanded this rule. Persons with disabilities include persons with persistent physical, psychological, intellectual, or sensory disabilities. Attention is drawn to the fact that in ordinary society these persons may be discriminated against, and this affects their full and effective involvement in the life of society, comparing to other persons [15, p. 156-157]. The right to social protection for persons with disabilities is contained in the convention [2, Article 28]. In particular, Article 11 of the Convention refers to the right to an adequate standard of living [2] and Article 28 of the Convention [2]; the right to the most attainable level of physical and mental health in Article 12 of the Convention [2]; the right to an independent lifestyle and involvement in the local community in Article 19 of the Convention [2]; Prohibition of discrimination based on disability in Article 5 of the Convention [2]; the right to rehabilitation in Article 26 of the Convention [2].

The state is obliged to take measures to provide persons with disabilities, namely persons with disabilities acquired as a result of armed conflict, with the possibility of independence, as well as any opportunities for social life, professional development, retraining if necessary and all other aspects of a full life without discrimination. This purpose is contained in the Preamble of the Convention [2], as well as in the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights of the Committee on Economic, Social, and Cultural Rights [19], the UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities [11]. Apart from these international documents, this purpose to avoid discrimination against persons with disabilities is contained in the report of the UN Special Rapporteur on the rights of persons with disabilities Catalina Devandas Aguilar [20]. Catalina draws attention to the impact of the Convention on the Rights of People with Disabilities [2]. The report highlights the importance of listening to people living with disabilities and what United Nations agencies can do to support their further empowerment [20]. According to the official UN website, people with disabilities make up 15% of the world's population, which is 1.2 billion people with disabilities [21]. UN High Commissioner for Human Rights Michelle Bachelet emphasises the importance of "the principles and provisions of the Convention on the Rights of Persons with Disabilities [2], which help all of humanity by helping us in the fight against isolation and segregation" [21].

The fundamental standards of the right to social protection of persons with disabilities

In the context of the issue of adapting the right to social security for persons with disabilities, it is necessary to refer to the best practices of Ukrainian researchers. In particular, V.P. Melnik notes that the social protection system should ensure the adaptation of persons with disabilities in society, their quality of life [3]. V.L. Kostiuk emphasises that "international social standards are closely related to fundamental social human rights" [1]. S.M. Prylypko notes that social security is "one of the fundamental rights of citizens, it is guaranteed by the corresponding legal forms, the introduction of which should ensure a standard of living not lower than the subsistence minimum" [4]. This is something to be agreed upon, especially regarding the fundamental nature of the right to social security. Finally, in 2019-2020, the Helsinki Foundation for Human Rights of Poland conducted a monitoring study where the authors refer to the main standards concerning the accessibility and adequacy of the right to social protection. The authors determine that the accessibility and adequacy of the right to social protection constitute fundamental elements of the right to social protection [9]. It is through the lens of these two mentioned elements – accessibility and adequacy – that the right to social protection of persons with disabilities is evaluated [9]. According to the above, the accessibility of the right to social protection includes the following elements:

- conditions entitling to benefits. Conditions should be reasonable, commensurate, and transparent. It is necessary to develop simplified procedures, for example, disability due to injuries for civilians with disabilities, received as a result of the armed conflict in eastern Ukraine. It is necessary to think through mechanisms for protecting persons with disabilities in the territory that nowadays, according to the current legislation,

is not controlled by the government of Ukraine. Provide support from the state for access to social benefits to such persons;

• persons with disabilities should have access to information about the procedures for applying for participation. For most people with disabilities, information is either inaccessible or incomprehensible to the average citizen. Therefore, in this case, a person with a disability does not have sufficient material resources to contact lawyers, advocates for protection of their rights and explanation of procedures to get correct reliable information regarding the procedure for applying for the relevant legislatively established benefits. A separate category that was noticed during the study is residents of the contact line and the frontline territories of eastern Ukraine. It is worth focusing on access to information, namely for people with disabilities who live in frontline zones, on the contact line, and who do not always have access to internet resources and receive information from local state authorities (military-civil administrations of Donetsk and Luhansk Oblasts);

• social security programmes should be available to people with disabilities, as far as cost is concerned. Costs, both direct and indirect, cannot jeopardise the exercise of the rights of such persons;

• state social support should be paid on time, and beneficiaries should have physical access to social security services to receive benefits and information. As noted above, especially those persons with disabilities resulting from the armed conflict in the Donbas and those who live on the contact line, in the frontline zone of Donetsk and Luhansk Oblasts, deserve attention. The issue concerns access to such special state bodies that provide social support, the Department of Social Protection of the military-civil administration of the eastern regions of Ukraine;

• a separate category should include migrants who are persons with disabilities, and provide comprehensive support from the state, especially for children with disabilities, namely, studying in schools, universities, and other educational institutions;

• beneficiaries of social security programmes should be given the opportunity to take part in the management of social programmes, namely they should be involved in the development, implementation, and monitoring of programmes of organisations that protect the rights of persons with disabilities. Special attention should be paid to the permanent advisory forms of work with the beneficiaries of these programmes.

Informing about the rights of persons with disabilities and implementing their rights is the main task of the state. In particular, state bodies should provide recommendations on the development and implementation of programmes aimed at understanding people with disabilities their rights and opportunities, expanding the scope of information measures in the field of implementing the rights of such persons.

Apart from the concept of accessibility, this paper analysed the concept of adequacy of the right to social protection as a necessary element. Therefore, adequacy should include, first of all, adequate support, which, in terms of the size and duration of reception by a person with a disability, could meet all the basic needs of a person [9]. This adequate support should be such that every person with a disability can fully exercise their right to an adequate standard of living, access to medical services and rehabilitation (if necessary). Adequate social support should be such that persons can provide themselves and their family with a minimum standard of living. Secondly, adequate social support should cover any additional expenses of persons with disabilities, as well as those who are engaged in them. Additional expenses include rehabilitation equipment, vehicles, auxiliary devices, or other possible technologies for the life of people with disabilities. To meet basic human needs, it is necessary to ensure access to services at the home level at the community level involving additional personnel of social services, patronage services, and other latest technologies of modern life (using the example of leading European countries). A person with a disability needs to be in an adequate psychological state and feel part of society and take part independently in the life of society. In this context, it is advisable to refer to the opinion of international experts in this area. In particular, the authors of this paper believe that the report of the UN Special Rapporteur on the protection of the rights of persons with disabilities Catalina Devandas Aguilar states the main thing: people with disabilities do not have basic access to medical care: “in some places, people with disabilities cannot even access medical centres. Admittedly, barriers are not just physical. Misconceptions about people with disabilities are an important issue, and this affects their interaction with healthcare systems” [2]. Accordingly, the right to social support should also be implemented without discrimination. In the monitoring study of the right to social protection of civilians with disabilities obtained as a result of the military conflict in the Donbas [9], the authors identified that:

1) “discrimination based on disability” includes any exclusion, restriction or preference, or refusal to create reasonable conditions based on disability; disability may complicate the exercise economic, social, or cultural rights;

2) Member States should also eliminate discrimination at the level of the law”.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms [22], which refers to “the enjoyment of the rights and freedoms recognised in the Convention [22], the right must be secured without discrimination on any grounds”. The concept of discrimination includes cases where a person or group, without proper justification, is treated worse than another, even if the convention [22] does not require a more favourable attitude.

On February 9, 2006, the Law of Ukraine No. 3435-V was signed, which ratified two protocols to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms – Protocol No. 12 and Protocol No. 14 [23]. Article 14 of the Convention [22], like Article 1 of Protocol No. 12 [24], contains an indicative list of grounds for which discrimination can occur. Protocol No. 12 to the Convention [24] establishes a general prohibition of any discrimination. This applies not only to the rights defined in the Convention [22]. Protocol No. 14 to the Convention [25] changes the Convention’s control system [25], makes provision for the reform of the Convention’s control mechanism [25] by improving the efficiency of the functioning of the European Court of Human Rights.

According to the fundamental principles of the UN Convention on the Rights of Persons with Disabilities [2], there is also non-discrimination, and therefore one should focus on guaranteeing the rights and freedoms of persons with disabilities without discrimination. “Changing attitudes towards people with disabilities should be a priority”, – Ms. Catalina [20], the UN Special Rapporteur on the rights of persons with disabilities, said in the report.

Regarding the issue of eliminating discrimination against persons with disabilities, M.V. Kravchenko noted that the modern system of social protection of persons with disabilities in the country covers not only state social support, a system of benefits and compensations, but also includes healthcare, as well as social and professional rehabilitation and social integration into society [7], which the authors of this paper consider correct due to a necessity of increasing funding for social support to persons with disabilities and rehabilitation opportunities at the expense of public funds. Since the armed conflict continues in Ukraine, it is also worth considering the category of civilians with disabilities as a result of the armed conflict in the eastern Ukraine. "Victims of war are also subject to international protection if one of the warring states does not recognise a state of war" [26]. Regardless of the official state in the country, the Anti-Terrorist Operation (ATO), the Joint Forces Operation (JFO) or the declared war, people must be protected upon declaring any state in the country.

Thus, it can be concluded that the full life of people in society requires full protection of the state according to the international standards, support for persons with disabilities not only financially, compensation and benefits according to the legislation of Ukraine. Notably, any person, and especially a person with a disability, requires socialisation, providing comprehensive support from the state to adapt such people.

Conclusions

Thus, this study addressed the need to improve the national legislation of Ukraine on the protection of the rights of persons with disabilities according to the international standards. It was found out that the effectiveness of international partners' assistance in ensuring the right to social security for persons with disabilities in Ukraine depends on the proper regulatory framework, on the level of state activity to implement initiatives for international partners. The study confirmed the necessity of long-term decisions of Ukraine to protect the right to social security for persons with disabilities, and appropriate funding for solving complex issues of this category of persons. Accordingly, it was concluded that the recognition of international human rights standards contributes to improving the effectiveness of ensuring human rights and freedoms, namely the rights of persons with disabilities. Furthermore, it was revealed that the problem of building a modern system of rehabilitation of such persons and financing with all the necessary resources to ensure the full and high-quality functioning of the life of these persons is relevant for social security of persons with disabilities. It is noted that the requirement of persons with disabilities to adapt today is rather acute and requires immediate resolution at the legislative level. It is proposed to draw on the practices of leading European countries and reform Ukrainian legislation according to the international standards. The following recommendations are given to public authorities:

- to conduct regular monitoring of the availability and efficiency of existing programmes for persons with disabilities;
- to develop an assessment of social services, its development based on modern latest technologies;
- to coordinate the system of social protection of persons with disabilities, promote the sequence of introduction of rehabilitation programmes for these persons.

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Право на соціальний захист осіб з інвалідністю за міжнародними стандартами

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Анотація. Актуальність обраної теми дослідження визначається соціально-економічним станом країни і тривалим збройним конфліктом на Донбасі зокрема, внаслідок якого тисячі людей отримали поранення та інвалідність. Недостатність фінансування системи охорони здоров'я, відсутність програм із реабілітації осіб з інвалідністю, незабезпеченість житлом і відповідним обладнанням для переміщення та повноцінного функціонування життя осіб з інвалідністю в Україні призводять до того, що такі люди зазнають дискримінації у суспільстві. Відтак метою наукової статті є дослідження права на соціальний захист осіб з інвалідністю в контексті дотримання міжнародних стандартів. На основі проведеного моніторингового дослідження, наявних програм реабілітації, теоретичного матеріалу, законодавчого аналізу, звітів міжнародних організацій автори дійшли відповідних висновків і надали рекомендації для органів влади, зокрема профільних Міністерств. З'ясовано, що у світі трансформується ставлення до людей з інвалідністю, закріплюються їхні права на повноцінне, якісне, без дискримінації, життя в суспільстві. Підтверджено необхідність реформування національного законодавства і приведення його у відповідність до міжнародних стандартів. Обґрунтовано, що основні стандарти стосуються доступності та адекватності права на соціальний захист. Виділено основні елементи доступності та адекватності права на соціальний захист. Проаналізовано ключові міжнародні нормативно-правові акти у сфері захисту прав осіб з інвалідністю. Досліджено поняття «дискримінації для осіб з інвалідністю». З'ясовано, що інтеграція осіб з інвалідністю можлива за умови досконалого вивчення проблем з фокусом уваги до категорії осіб з інвалідністю внаслідок війни. Практична цінність наукової роботи полягає в наданні рекомендацій для профільних Міністерств з урахуванням проведеного моніторингового дослідження авторами у 2019–2020 роках, що сприятиме вдосконаленню права на соціальний захист як такого

Ключові слова: міжнародні стандарти, права людини, соціальне забезпечення, соціальні стандарти, елементи доступності, елементи адекватності, збройний конфлікт

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