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Public administration of the economic security system through the prism of human rights protection in a changing political and legal environment

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Abstract. In the context of rapid changes and a hyperdynamic external environment, the world economy and politics create new challenges and threats that actualise research on the effectiveness of public administration in the context of economic security through the prism of various legal fields. The purpose of the study is to present the author's vision of a methodological approach that will allow visualising the process of public administration in the context of ensuring a high level of economic security and evaluating its effectiveness, considering the legal aspect of the issue. The methodology involves using modern methods that combine and interact to achieve the goal. These include both general theoretical methods and specific ones: IDEF3 and the integral evaluation method. The approach to assessing the level of effectiveness of public administration in the system of ensuring economic security is defined. The importance of political and legal indicators is emphasised. The results of calculating the value of the integral indicator are presented, and the corresponding conclusions are drawn. The author's vision of the modern model of public administration implementation in the system of ensuring economic security with an emphasis on the protection of human rights is presented. All the key

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elements of the proposed model are identified through the presentation of detailed graphical diagrams for each of them. The innovativeness of the obtained results is in the proposed approach to assessing the level of effectiveness of public administration in the system of ensuring economic security, considering, to a greater extent, legal indicators. The study brings new views on assessing the effectiveness of public administration, especially in the context of ensuring economic security. The latest theoretical approaches and methodology are used, including integral assessment and political and legal indicators. The findings and recommendations obtained can be used by government agencies and political leaders to optimise management processes and increase their transparency and efficiency

Keywords: problems of economic security; efficiency of public administration; respect for human rights; modelling; IDEF3 model

Introduction

Ukraine in 2022-2023 received extremely negative but simultaneously very valuable experience on how to function under martial law. This environment is also characterised by substantial political and legal changes that directly affect all components of the modern system of ensuring the economic security of the state. The external environment under martial law brings changes that become a test for modern open socio-economic systems. Public administration is designed to create a safe environment in which even such changes will have a low negative impact. Under martial law, the issue of human rights protection has increased critically. This has become one of the tasks of the modern public administration system. Thus, the 2022-2023 years of war showed that this substantially impacts economic security. If this influence and connection needed to be described in just a few words, then it should be argued that they are complex and substantial in manifestation. The international community, which actively monitors the events in Ukraine, pays special attention to security and human rights issues. The international perception of how a state ensures respect for human rights during martial law can substantially affect its economic relations. Human rights violations and disregard for security will trigger a response that could seriously affect financial and economic assistance from partner countries. Therefore, the scientific-practical problem of forming an effective approach to modelling ways to improve the work of public administration in ensuring economic security through the prism of human rights protection is gaining relevance. These changes may include legislative reforms, political coups, elections, changes in international relations, and social and economic factors that affect political and legal structures.

B. Flanagan and I.R. Hannikainen (2020) conduct an in-depth examination of the internal morality of law. The authors delve into the concept of law and note the importance of implementing the prospects for the development of the concept of human rights, which is crucial for the democratisation of political and legal processes. A study by F.A.F. Alazzam and M.F.N. Alshunnaq (2023a) focuses on shaping the creative thinking of lawyers, especially in the unprecedented environment caused by the COVID-19 pandemic, which has substantially affected the legal framework and economic security. This is complemented by the paper of P. Pylypenko *et al.* (2023) on the legal security of land relations in the context of sustainable development, indicating the growing need for adaptive legal structures in changing socio-economic conditions, such as, for example, the political and legal environment. In addition, I. Dragan *et al.* (2023) discuss the improvement of administrative and legal mechanisms for ensuring the financial and economic security of the state, which directly intersects with the concept of economic security in the context of the changing political and legal environment. Similarly, Y.A. Svirin *et al.* (2019) explore the balance of interests as a principle of civil law, highlighting the nuances of legal consciousness in public administration. V. Jurkevičius and J. Šidlauskienė (2021) highlight the evolution of legal liability into the digital era, particularly in the context of online platforms, in their study on civil liability. A similar study on the development of an information model for e-commerce platforms was conducted by F.A.F. Alazzam *et al.* (2023b), emphasising the need to comply with legislation in the context of global digitalisation. I. Yefimova *et al.* (2018) provide an understanding of the economic and legal factors affecting public relations in the state, a critical aspect when considering human rights within the framework of economic security. Therewith, as the analysis and examination show, there are a number of gaps in the scientific-practical literature on the chosen problem. The main ones are: the lack of a unified vision to improve the effectiveness of public administration in the system of ensuring economic security; the lack of considerations to take into account the aspect of human rights protection in ensuring economic security at the state level; the political-legal environment rarely becomes the attention of the scientific community and modern research; gaps in the assessment of the effectiveness of public administration in the system of ensuring security.

The purpose of the study is to form a modern methodological approach to assessing the effectiveness of public administration in the system of ensuring economic security through the key principles of human rights protection. The object of the study is the system of ensuring the economic security of a particular country and its principles for protecting human rights.

Materials and methods

The study involved a deep and thorough investigation of the problems of the effectiveness of public administration in the system of ensuring economic security, while considering the protection of human rights and the changing political and legal environment. General scientific methods of analysis, synthesis, deduction, induction, and the abstract-logical method were used to identify basic theoretical aspects, review the literature, and form conclusions. Therewith, to calculate the indicator of the effectiveness of public administration in the system of ensuring economic security, the integral assessment method, which is based on the well-known methodology of 2003, was used. In 2003, experts from the National Institute of International Security Problems of the National Academy of Sciences of Ukraine developed important methodological recommendations for assessing the country's economic security. This assessment system included six key groups of indicators: demographic, energy,

investment and innovation, foreign trade, social, and financial security (Methodological recommendations for calculating the level of economic security of Ukraine, 2013). The developed approaches and methodology in 2003 laid the foundation for further methods implemented in 2007 and 2013 (Shevchyk, 2019). Additionally, the Harrington scale is used to determine the threshold value. The method of integral assessment, which is used to calculate the performance indicator of public administration in the system of ensuring economic security, is a comprehensive approach to data analysis and synthesis. The essence of this method is to aggregate a variety of indicators, which can include both quantitative and qualitative characteristics, into a single indicator that reflects the overall effectiveness of public administration. Further, a modelling method based on IDEF3 technology was used, which allowed describing in detail all key processes and operations, including their relationships, sequences, and execution conditions. Using IDEF3, it was determined how different elements of the public administration system interact with each other.

Before suggesting possible ways to improve the efficiency of public administration in the system of ensuring economic security, it is necessary to assess its current state. For this purpose, an integral assessment was applied, with the help of which appropriate calculations were made. According to the author's opinion and the opinion of experts who were also involved (30 experts in the field of security and law, 15 practitioners and 15 scientists from leading institutions of higher education in Ukraine), the emphasis is given to the political and legal group of indicators. All indicators were grouped, and their essence and measurement were characterised (Table 1).

Table 1. The essence of the selected groups of indicators for calculating the integral value of the level of public administration efficiency in the system of ensuring economic security

No.	Indicators	Characteristics
	Group of indicators of economic activity in the country	
1	Employment indicator	Number of employees working in the business sector during the reporting period (thousand people)
2	Indicator of economic activity	Number of business entities for the reporting period (Units)
3	Performance indicator	Value of the volume of business products sold for the reporting period (UAH billion)
4	Indicator of business innovation activity	Number of innovative and active business entities for the reporting period (Units)
	Group of political and legal indicators	
5	Indicator of coherence of state policy in the field of security and protection of human rights	The ratio of planned regulatory acts to the number of developed projects in the field of security and protection (%)
6	Indicator of tracking the effectiveness of state policy in the field of ensuring economic security	The ratio of the number of reports on monitoring the effectiveness of regulatory acts to the number of regulatory acts in the field of ensuring economic security (%)
7	Human rights index	The ratio of the number of human rights violations to the number of human rights violations that have reached the court (%)
8	Index of the rule of law	The index consists of several components, such as limiting government power, absence of corruption, transparency, efficiency of the judicial system, and protection of fundamental rights (%)
9	Governance performance indicator	Assessment of the quality of public services, the degree of independence from political pressure, the quality of policy formulation and implementation (%)
	Group of financial indicators	
10	Indicator of funding for human rights security activities	The ratio of the volume of security activities for the protection of human rights at the expense of budgetary funds to the volume at the expense of credit funds (%)
11	Indicator of the value of concluded public-private partnership agreements in the field of ensuring economic security	Cost of concluded public-private partnership agreements in the field of ensuring economic security for the reporting period (UAH billion)
	Group of infrastructure direction indicators	
12	Indicator of the number of infrastructure support facilities for security and protection	Number of objects (units)
13	Indicator of the effectiveness of the research sector in the field of economic security and human rights	The ratio of the volume of research work performed to the number of institutions in the field of security and human rights protection (Units)
	Group of information indicators	
14	Indicator of the provision of information and consulting services in the field of public administration to ensure economic security	Volumes of services provided (units)
15	Indicator of the number of information events held to ensure economic security and protect human rights	Number of events (units)

Source: compiled by the authors

For a clear example, an integral indicator of the level of public administration efficiency in the system of ensuring economic security is calculated for certain groups of indicators. After calculating the values for each indicator, the data should be standardised as follows (1):

$$\delta^s=\frac{I_i}{I_{max}};\ \delta^d=\frac{I_{min}}{I_i}, \quad (1)$$

where δ^s – relative assessment of the indicator that is a stimulant; δ^d – relative assessment of the indicator that is a destimulator; I – the value of the indicator for the reporting period; min/max – the minimum/maximum value for the analysed period. Therefore, it is advisable to consider the integral indicator of the level of public administration efficiency in the system of ensuring economic security as a weighted average of the integral components for each of the group (2):

$$I_f = \sqrt{I_{g1} * I_{g2} * I_{g3} * I_{g4} * I_{g5} * I_{g6}}. \quad (2)$$

The formed methodology allowed achieving the set goal and scientific tasks. The data for the calculation was taken for the period 2017-2021 (State Statistics Service, 2022) since, in 2022, under martial law, not all data were published, but this does not prevent visualising the functioning of the developed methodological approach.

Results

The results of standardisation of indicators for assessing the level of public administration effectiveness in the system of ensuring economic security for 2017-2021 were dismissed due to the high amount of data and the already defined integral indicators for each group are presented. This is calculated through the significance ratio of indicators for each group with the help of experts who determine this level of weight by the corresponding rank (for this purpose, the concordance ratio is additionally used to determine the degree of consistency, and if the concordance value is higher than 0.5, consistency exists. There was consistency for each group of indicators: 0.8; 0.7; 0.8; 0.9; 0.9; 0.7; 0.8. Then the coefficient value was multiplied by the standardised indicator value for each group (3):

$$I_{g1} = CW_1*I_{1s} + CW_2*I_{2s} + \ldots\ldots CW_n*I_{ns}, \quad (3)$$

where CW represents the consistency specified for each of the groups. The results for each of the indicator groups are presented in Table 2.

Table 2. Value of the integral indicator for certain groups

No.	Group	2017	2018	2019	2020	2021
1	Group of indicators of economic activity in the country	0.6	0.6	0.4	0.4	0.4
2	Group of political and legal indicators	0.5	0.5	0.5	0.6	0.5
4	Group of financial indicators	0.6	0.7	0.6	0.5	0.5
5	Group of infrastructure direction indicators	0.6	0.7	0.6	0.6	0.5
6	Group of information indicators	0.7	0.8	0.9	0.9	0.9

Source: compiled by the authors

Thus, the indicator is almost always in the range of 0.51-0.7; that is, it is a critical level on the scale, which means that the industry has clear signs of problems and obstacles of a managerial and regulatory nature for the effectiveness of public administration in the system of ensuring economic security, which requires new changes and directions for improvement (Fig. 1).

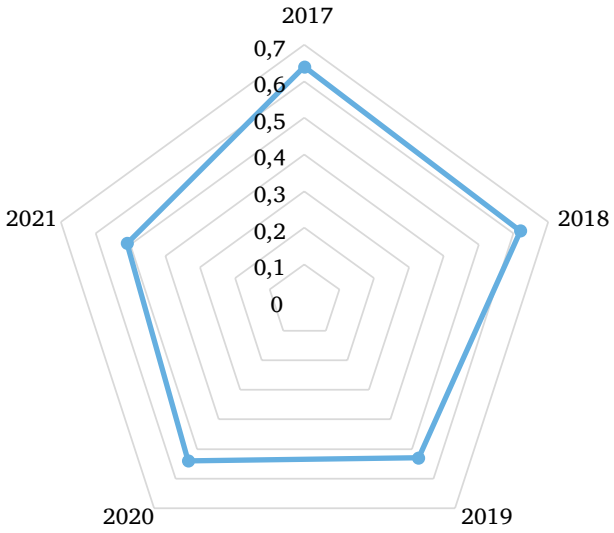

Figure 1. Dynamics of the value of an integral indicator of the level of public administration efficiency in the system of ensuring economic security

Source: compiled by the authors

Therefore, the gradual decrease in the effectiveness of modern public administration in the system of ensuring economic security can be clearly traced according to the specified indicators during the integral assessment. Effective ways to improve efficiency should be suggested. A model with three key directions is presented to do this. Each direction, according to the modelling procedure, is designated as J1-J3 (Fig. 2).

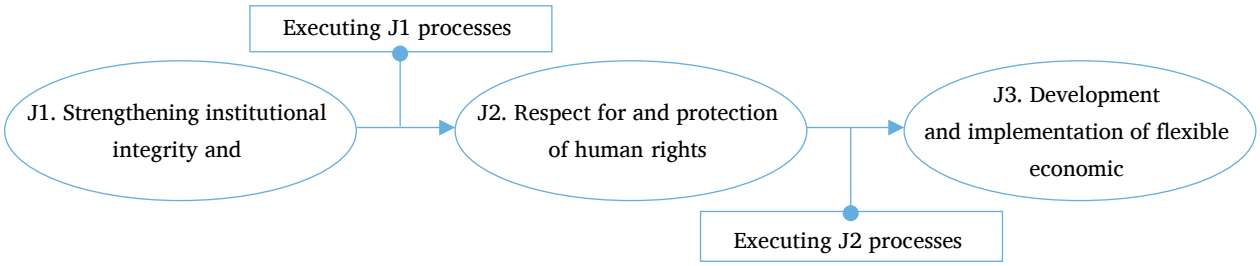

Figure 2. IDEF3 launch model for improving the efficiency of public administration in the system of ensuring economic security
Source: compiled by the authors

The IDEF3 model, aimed at improving the effectiveness of public administration in the context of ensuring economic security, covers several critical components that together form a solid foundation for a stable and prosperous society. The first aspect, strengthening institutional integrity and governance, is crucial for any effective governance system. This includes the creation of strong, responsible, and transparent institutions that can perform their functions effectively, supporting law and order and ensuring fair and equal treatment for all citizens. Strong institutions also help reduce corruption and increase public confidence in the government. The second important element – respect for and protection of human rights – is fundamental to building a stable and secure society. Respect for human rights promotes social cohesion and ensures that all citizens feel valued members of society. It also creates a favourable environment for economic growth, as investors and businesses usually look for a stable and safe environment for their operation. The third aspect, the development and implementation of flexible economic policies, is key to adapting to rapidly changing global conditions. Flexible economic policies allow the country to respond quickly to economic challenges and opportunities, stabilising the economy in times of crisis and maximising growth in times of prosperity. Such policies should include elements that promote innovation, entrepreneurship, and job creation while providing social protection and support to the most vulnerable segments of the population. Below is a description of each of the identified areas of improvement in more detail:

- J1. Under martial law and political-legal instability, government agencies often face an increased risk of corruption, inefficiency, and mismanagement. Strengthening institutional integrity is critical to maintaining public trust and effective governance.
- J2. Respect for and protection of human rights. War and political and legal instability often lead to human rights violations that can exacerbate conflict and undermine public administration. The protection of human rights is essential for maintaining social cohesion and legitimacy.
- J3. Development and implementation of flexible economic policies. Economic policies in times of war and instability must be adaptive and sustainable. They must meet urgent needs without jeopardising long-term economic stability. Therewith, the results of modelling the processes of achieving J1 within the framework of the constructed starting model are clearly shown in Fig. 3.

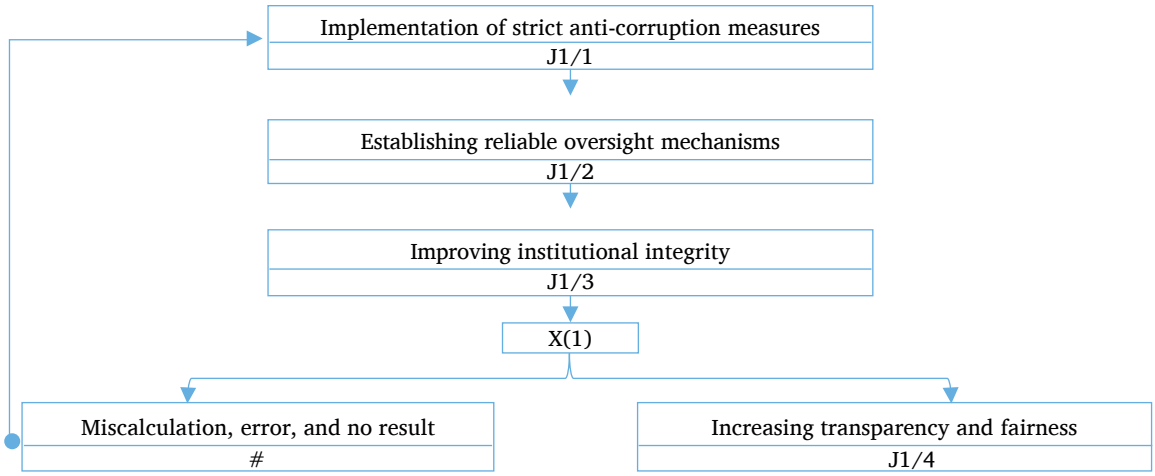

Figure 3. IDEF3 model for improving the efficiency of public administration in the system of ensuring economic security through achieving the J1 process
Source: compiled by the authors

Therefore, the IDEF3 model, which focuses on improving the efficiency of public administration to ensure economic security, has an important component – the J1 process. This process includes critical aspects that contribute to creating a stable and secure economic environment. The implementation of strict anti-corruption measures (J1/1) is fundamental to ensuring effective governance. Corruption undermines citizens' trust in the government and reduces the effectiveness of economic and political systems. Therefore, strict anti-corruption measures are crucial to strengthening the rule of law and trust in society. In addition, establishing reliable oversight mechanisms (J1/2) plays an important role in ensuring transparency and accountability in government structures. Effective oversight mechanisms ensure that government decisions and actions benefit the public and comply with legal norms. Strengthening institutional integrity (J1/3) is important for building public confidence in the government. Institutional integrity ensures sustainability and transparency in the work of government agencies, reducing opportunities for corruption and poor governance. Finally, increasing transparency and equity (J1/4) is critical to ensuring democratic governance and human rights. Transparency in government decisions and actions strengthens responsibility and allows citizens to effectively control the activities of their representatives. In general, these stages contribute to the creation of a reliable, fair, and transparent system of public administration, which is key to ensuring the economic security and stability of the state.

Notably, the X symbol indicates a transition combination in which it is possible to perform one of the stages (in this case, reaching J1 or a disappointing result and returning to the initial stage). In this case, to achieve process J2, the combination and is used, which indicates the critically mandatory execution of the next process and O, which assumes that the next two processes must be started simultaneously (Fig. 4).

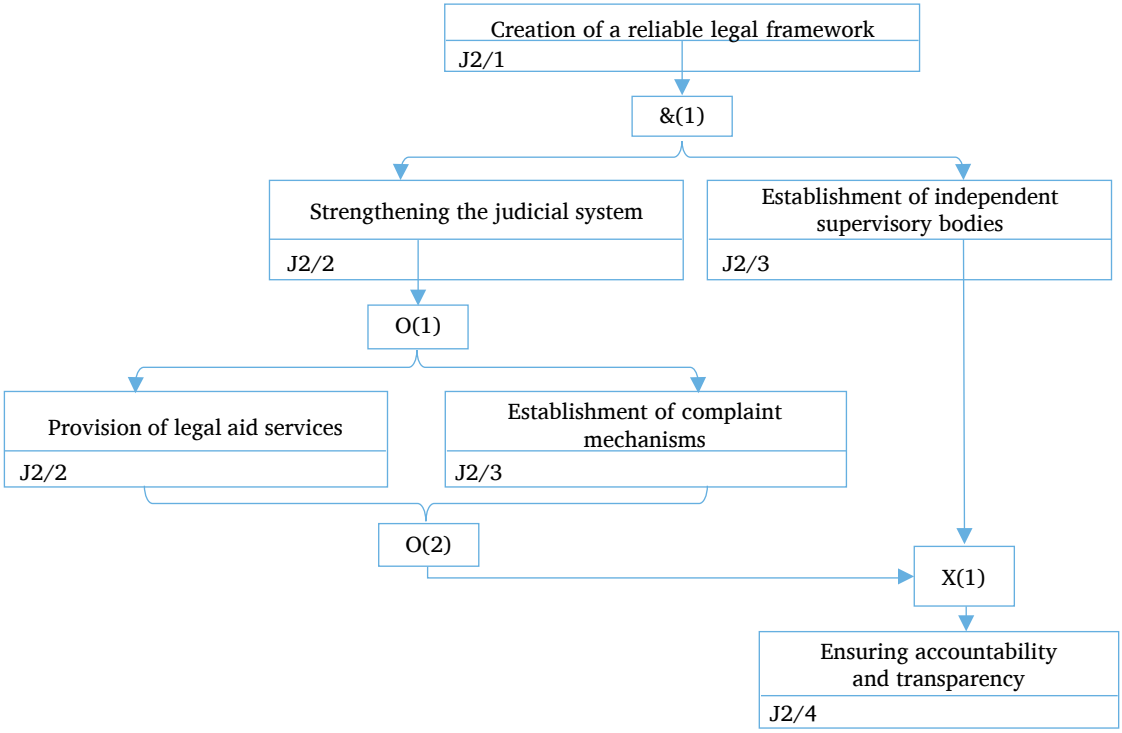

Figure 4. IDEF3 model improving the efficiency of public administration in the system of ensuring economic security through achieving the J2 process

Source: compiled by the authors

Therefore, the first stage, J2/1, "Creation of a reliable legal framework", is fundamental since legislation forms the basis for the protection of human rights. A strong legal framework ensures clarity, accessibility, and fairness of norms, which are an integral part of an effective governance system. The second phase, J2/2, "Strengthening the judicial system", is critical to ensuring that laws not only exist on paper but are also effectively applied. An independent and strong judicial system is the key to fair justice, which in turn supports public confidence in the government and its institutions. The third phase, J2/3, "Establishment of independent oversight bodies", promotes the prevention of abuse and corruption. Independent bodies ensure that civil servants and other persons in power act within the law and are responsible for their actions. The fourth phase, J2/4, "Ensuring accountability and transparency", is essential for building public trust. Transparency and accountability in government activities reduce the risk of corruption and abuse and promote more open and responsible governance. These stages form a sustainable basis for achieving J2, given that effective human rights are an integral part of the state's economic security and stability.

Thus, notably, each of these stages is interdependent and requires a coordinated approach. Institutional integrity lays the foundation for effective policy development, responsive economic policies are designed to meet immediate and long-term needs, and the protection of human rights ensures the preservation of the social contract between the

government and its citizens. In a situation of war and instability, these stages are crucial for economic security and the broader goal of sustainable peace and development.

When discussing the results obtained, they should be compared with similar ones in this area to clearly understand what their difference and innovations are. The study and its results in the author's vision complement the existing body of knowledge, representing a modern model of public administration with an emphasis on economic security and human rights using the IDEF3 methodology and integral assessment. This model contrasts with the views of M. Kryshtanovych *et al.* (2022) on sustainable regional development in the context of military operations. Although their study highlights the impact on the environment and regional development, the results obtained in the study are more focused on the systemic structure of public administration and its effectiveness in ensuring economic security and human rights.

Philosophical and political aspects, examined by S. Collins and H. Lawford-Smith (2021) and A. Harutyunyan (2022), resonate with this paper, especially in understanding the role of the state and the legal qualification of political rights. The study expands on these discussions by offering a practical framework for implementing these philosophical and legal principles in public administration, especially in an unstable political environment. A study by S. Kuosmanen (2021) on human rights in foreign policy discourse has common ground on human rights. However, the work conducted differs in that aspects of public administration are considered and not a rhetorical analysis of political discourse.

Notably, for example, the study on legal policy in the economic field by Y. Pereguda *et al.* (2022) and the philosophical-legal essence of control in the field of national security by R. Kolisnichenko *et al.* (2022) correspond to the study conducted on the subject. However, the author's research clearly combines legal indicators to assess the effectiveness of public administration, offering an innovative view of economic security management within the legal framework. Finally, one of the modern school of security studies founders, O. Sylkin *et al.* (2019) delve into crisis management in financial security, complementing the author's focus on economic security through IDEF0 modelling However, this study uniquely uses the IDEF3 model to conceptualise and implement public administration strategies in this area, eliminating the gap between theory and practical implementation.

The proposed methodological approach integrates legal indicators and the protection of human rights into the need to form a model, considering the complexities of the changing political and legal environment, thus enriching the academic dialogue in this area. Therefore, it is necessary to conduct a comprehensive comparison and opposition of the proposed methodological approach to public administration in ensuring economic security to the fundamental principles of human rights protection presented in the study against the background of existing literature. In particular, this comparison applies to the papers of G. Benigno (2013), N. Rushchyshyn *et al.* (2021), and O. Zybareva *et al.* (2022), each offering different views on economic security and public administration.

G. Benigno (2013) focuses on financial crises and macroprudential measures, offering insight into financial dynamics that substantially affect economic security. This standpoint complements this study, emphasising the importance of financial stability as a fundamental component of economic security. However, as more attention is paid to legal indicators and aspects of human rights in public administration, the proposed approach offers a holistic view of economic security beyond simple financial indicators. N. Rushchyshyn *et al.* (2021) examine the regulatory component of ensuring the state's financial security in detail. This study is closely related to the current one, especially regarding the legal framework. Their attention to the regulatory aspect emphasises the importance of legal structures in maintaining economic stability. This concept is extended by integrating these legal considerations into the broader context of the effectiveness of public administration, thereby offering a more comprehensive structure that not only recognises legal components but also places them in a broader concept of human rights protection. O. Zybareva *et al.* (2022) provide an analysis of spatial problems in the system of economic security of industrial enterprises. This study is particularly relevant for understanding the practical application of economic security assessments in specific sectors. Focusing on the industrial sector and spatial issues, this study takes a more general approach, considering public administration in general. This broader focus allows the results obtained to be applied to different sectors, which makes them adaptable to various contexts.

Thus, the discussions in this section provide a subtle understanding of the intersection of economic security, the legal framework, and human rights. Drawing parallels and differences with the mentioned paper, the investigation of the authors of the study provides a unique perspective, synthesising these elements into a consistent methodological approach. This approach not only evaluates the effectiveness of public administration in ensuring economic security but also does so through a prism that prioritises legal indicators and human rights, thereby filling a gap in the existing literature. The limitations of the study, primarily its focus on one country and the exclusion of certain indicators, open up opportunities for future research, especially in the study of financial aspects and expanding coverage by including a more diverse range of indicators and contexts.

Conclusions

Public administration in the system of ensuring economic security is a process that consists in performing functions by the government and state institutions aimed at protecting and developing the country's economy. This is especially true under martial law when the standard balance between governance, human rights protection, and economic activity is undergoing substantial changes due to the changing political and legal environment. It is proved that public administration plays a crucial role in shaping policies and implementing strategies that ensure economic security. Consequently, it was established that the protection of human rights is the most crucial element that the state administration should consider, even in the harsh conditions of martial law. The economic well-being of a nation is closely intertwined with the well-being and safety of its citizens.

As a result of the study, an approach to assessing the effectiveness of public administration in the system of ensuring economic security was presented, which provided for using a variety of indicators, among which the greatest emphasis was made on political-legal ones. A special feature of this approach is the emphasis on legal indicators, which allows analysing in more detail how legal regulation and legislative initiatives affect economic stability and

security. This helps to better understand the relationship between legislative changes and economic indicators, which is critical to developing more effective governance strategies and policies. It was determined that the level of efficiency is low, and therefore, an innovative approach to modelling the improvement of public administration efficiency in the system of ensuring economic security was presented with a visualisation of functional blocks related to the observance and protection of human rights.

The study has limitations in considering only one country's political and legal environment. The possibility of applying the methodological approach proposed by the authors in other countries, except Ukraine, will have a different effect and result. Prospects for further research can be aimed at reorienting towards the financial aspect of the system of ensuring the economic security of the state. It is necessary to conduct a comparative analysis of different countries and cultures, which will allow assessing how different governance systems approach challenges related to economic security and human rights while ensuring flexibility and effectiveness in the face of rapid change. It is also important to consider the role of international organisations and norms that affect national policies and practices in these areas, analysing the impact of international agreements, standards, and organisations.

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Conflict of interest

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Державне управління системою економічної безпеки через призму захисту прав людини в умовах мінливого політико-правового середовища

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Анотація. В умовах стрімких змін та гіпердинамічного зовнішнього середовища, світова економіка й політика утворюють нові виклики й загрози, які актуалізують дослідження ефективності державного управління в контексті економічної безпеки через призму різних правових сфер. Метою статті є представити авторське бачення методичного підходу, який дозволить візуалізувати сам процес державного управління в контексті забезпечення високого рівня економічної безпеки та оцінити його ефективність, враховуючи при цьому правовий аспект питання. Методологія дослідження передбачає застосування сучасних методів, які комбінуються, взаємодіють для досягнення поставленої мети. До них відноситься як загально теоретичні методи, так і специфічні: IDEF3 та метод інтегрального оцінювання. Визначено підхід до оцінювання рівня ефективності державного управління в системі забезпечення економічної безпеки. Наголошено на важливості політико-правових індикаторів. Подано результати розрахунку значення інтегрального показника і зроблено відповідні висновки. Представлено авторське бачення сучасної моделі реалізації державного управління в системі забезпечення економічної безпеки із акцентом на захисті прав людини. Розкрито усі ключові елементи запропонованої моделі через представлення деталізованих графічних схем по кожній із них. Інноваційність отриманих результатів розкривається через запропонований підхід до оцінювання рівня ефективності державного управління в системі забезпечення економічної безпеки із врахуванням в більшій мірі, правових індикаторів. Стаття привносить у науку нові погляди на оцінювання ефективності державного управління, особливо в контексті забезпечення економічної безпеки. Використано новітні теоретичні підходи та методологію, включаючи інтегральне оцінювання та політико-правові індикатори. Отримані висновки та рекомендації можуть бути використані державними органами та політичними лідерами для оптимізації процесів управління, підвищення їх прозорості та ефективності

Ключові слова: проблеми економічної безпеки; ефективність державного управління; дотримання прав людини; моделювання; модель IDEF3

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Administrative and legal factors influencing the formation of sustainable development of the region in a changing external environment

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Abstract. In the modern context of global changes, the study of the influence of administrative and legal factors on the sustainable development of regions is of particular relevance, which is also due to the hyperdynamics of the external environment. The main purpose of the article is to identify and streamline the main administrative and legal factors influencing the formation of sustainable development of the region in a changing external environment. Key research methods are the method of hierarchical analysis, paired comparison, expert analysis and the Delphi method. A scientific question has been formulated based on the results of a literature review, which is how to more effectively implement administrative and legal support for the formation of sustainable development of the region. Valid methods are disclosed due to their step-by-step application. An analysis of the dynamics of key indicators of sustainable development of one of the regions was carried out. A modern model for the formation of sustainable development of the region is proposed, considering the conditions of the changing external environment and focusing on administrative and legal principles, which is characterized by blocks and a schematic explanation. A methodological approach to modelling the definition and ordering of the main administrative and legal factors influencing the formation of sustainable development of the

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region in a changing external environment has been developed. Based on the results of the modelling, it was determined that the most significant factors of influence within the framework of administrative and legal support for the formation of sustainable development of the Lviv region in a changing external environment are martial law, administrative court proceeding and local self-government and decentralization. The effectiveness of the proposed method has been proven through the ability to satisfy all information needs of subjects of sustainable development in the region. The practical significance of the research results is revealed in the possibility of using the proposed model and methodological approach in the work of public services and the public administration system of the region

Keywords: administrative and legal factors; ensuring sustainable development; regional policy; modelling; unstable external environment; administrative and legal support; administrative court proceeding

Introduction

In today's development environment, with political uncertainty and technological innovations, the role of administrative and legal instruments in shaping an effective sustainable development policy is gaining new importance and relevance. Ensuring the harmonious development of regions requires a balanced approach that considers economic, social, environmental and cultural aspects. Administrative and legal mechanisms play a key role in this process, defining the framework within which resources are managed, citizens' rights and freedoms are exercised, and innovative solutions are implemented.

In the context of rapid changes and challenges faced by modern society, the issue of adapting the administrative and legal system to new conditions becomes particularly important. This includes not only responding to environmental threats and ensuring economic sustainability, but also creating conditions for social justice, gender equality and human rights protection. Ensuring sustainable regional development in this context requires a comprehensive approach and effective interaction between different levels of government, from local to international. Therefore, a thorough analysis of the administrative and legal factors that influence the formation of sustainable regional development is not only theoretically important, but also practically significant, especially for those territories with an extremely dynamic and changing external environment. This kind of research makes it possible to identify areas for the development of more effective management strategies and policies that can adapt to a changing environment and strike a balance between the needs of the present and the requirements of the future.

Thus, the aim of the study is to identify and organize the main administrative and legal factors that influence the formation of sustainable development of a region in a changing environment. The object of the study is to ensure sustainable development of the region taken for the research. For this purpose, the Lviv region and its changing external environment were chosen.

The issue of ensuring and shaping sustainable development in the region has always been the focus of attention of a significant number of scholars and practitioners. There have been various approaches to addressing this issue, including those of an administrative and legal nature. O. Sylkin *et al.* (2019) delve into modelling the process of applying crisis management to ensure the financial security of enterprises. Their ideas are crucial for understanding how robust governance models can address financial problems, which is an important aspect of sustainable regional development. This topic of effective governance in the context of increasing globalization is further explored by S. Kryshtanovych *et al.* (2022), who emphasize the importance of a SMART (specific, measurable, achievable, relevant, time-bound) management strategy in a globalized context, a key approach to managing regional development.

V.V. Vasconcelos (2021) emphasizes the critical role of social justice in sustainable regional development. The study emphasizes the importance of integrating social justice into public policy and budgeting to achieve sustainable outcomes. This perspective is crucial for understanding how administrative decisions and financial allocations affect the social aspects of sustainable development. Extending this discussion, L. Postnikova *et al.* (2023) explore the challenges and opportunities of public administration in the era of globalization. Their analysis highlights how global trends affect administrative and legal frameworks at the regional level, highlighting the need for governance models that are adaptive and responsive to the dynamic, interconnected challenges of our globalized world. Complementing these views, R. Kolisnichenko *et al.* (2022) explore the philosophical and legal aspects of control mechanisms in national security. This study adds depth to the debate by placing the concept of control in the philosophical and legal context necessary to maintain a secure and stable environment conducive to sustainable development.

N. Rushchyshyn *et al.* (2021) emphasize the regulatory and legal components that are crucial for ensuring the financial security of a state. Their findings play an important role in understanding the legal framework underlying regional economic stability. I. Yefimova *et al.* (2018) provide an analysis of how economic and legal factors affect social relations within a state, which is a critical factor for sustainable development from a social perspective. This social aspect is further complicated by corruption issues, as explored by N. Lytvyn *et al.* (2023). The study of administrative and legal mechanisms for combating corruption reveals serious obstacles to sustainable development, emphasizing the need for honesty and transparency in regional governance. The role of legal and administrative methods in ensuring economic security is further explored by Oliinyk *et al.* (2022), who examine the intersection of criminal law and administration in maintaining stability in a globalized and modernized economy.

The problem of corruption in public authorities and its impact on sustainable development is critically analysed by M. Blikhar *et al.* (2023). Their focus on the economic and legal aspects of anti-corruption measures emphasizes the importance of effective legal frameworks in the fight against corruption. Taken together, these studies highlight the complex interplay between administrative, legal and economic factors in promoting sustainable development. They emphasize the need for innovative governance strategies, robust legal systems, and adaptive governance in response to global challenges and changing economic conditions.

The main gaps in the scientific literature on the chosen research topic are as follows:

- Lack of object specification. Most studies do not consider a specific region as an object, but consider the issue in a general way.
- Lack of a modern model of sustainable development. Existing models may be outdated in a changing environment.
- Lack of a methodological approach to organizing the factors of influence. The current literature does not offer new approaches to identifying and organizing administrative and legal factors of influence.

Therefore, based on the results of the literature review, the following scientific question can be formulated: how to implement administrative and legal support more effectively for the formation of sustainable development of the region? To accomplish this, it is necessary to set the following scientific task: to present and substantiate a modern methodological approach to identifying and organizing the main administrative and legal factors of influence.

Materials and methods

The paper uses several methods that form a sustainable research methodology and contribute to obtaining a high result. It should be noted that the general theoretical methods of analysis and synthesis, abstract logical and graphical methods were used. These methods performed an auxiliary function in the presented research results. At the same time, more specific methods, such as hierarchical analysis and pairwise comparison, were used to focus on the main aspects, which together made it possible to organize the identified administrative and legal factors of influence.

The hierarchical analysis method consisted of structuring the decision-making into a hierarchy. At the top level was the decision objective, followed by the various criteria and sub-criteria, and finally, at the bottom level, the alternatives. This method helped to break down complex decisions into manageable parts. The pairwise comparison method involved comparing a set of options in pairs to judge which of each pair was better. The comparison of each pair was evaluated independently. It was used to prioritize options or choose between alternatives. However, for their effective application, certain variables are presented (in this study, these variables were administrative and legal factors). They were determined through the method of expert analysis. This method is based on the judgement and experience of people who have knowledge in a particular field. Experts evaluate a situation or problem and express opinions based on their experience and knowledge. To determine the most influential factors, 20 experts in the field of regional sustainable development, economic security, regional resilience and 20 employees in the field of administrative and legal support were involved. The survey was conducted online on the basis of anonymity, which prevents the names of organizations from being revealed. The tool used was a Google survey. To confirm their competence, the selected experts all have the appropriate education and scientific and practical publications on the given topic. The Delphi method was additionally used to structure the experts' opinions in a more weighty and professional manner. It relies on a group of experts answering questionnaires in two or more rounds. After each round, the moderator anonymously summarized the experts' predictions and reasons. Experts were then asked to reconsider their previous answers in light of the responses of other members of their group. This helped to reach a consensus among the group of experts. The anonymity of the responses allowed experts to freely express their opinions, reducing the bias caused by dominant individuals in face-to-face meetings. In general, the stages of applying the selected methods in this study are presented in Figure 1.

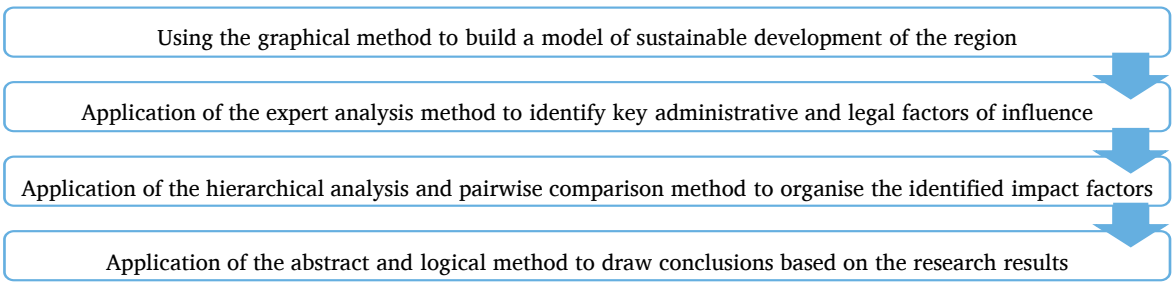

Figure 1. Stages of application of the proposed methods during the conducted research
Source: generated by the authors

The graph theory was used to build a corresponding graph of links between the identified administrative and legal factors of influence. By applying the graphical and modelling methods, the author's vision of the modern model of sustainable development of the selected region can be presented. The peculiarity of the author's approach is revealed in the multi-level approach to the issue of sustainable development. The selected methods provide structured approaches to making complex decisions and solving problems related to the issue of sustainable development in the regions, using expert knowledge and promoting consensus among different groups. Each method has its own unique advantages, making them suitable for different research scenarios and practical applications.

Results

Sustainable development of a region is a complex process that encompasses the integration of economic, social and environmental aspects to achieve long-term, balanced progress in a particular geographical area. Administrative and legal support plays a key role in this process. It includes the creation of a legal and regulatory framework that governs the activities of all development agents (public, private, and civil society), ensuring their responsibility, transparency, and compliance with sustainability standards. The Lviv region is an extremely complex region with several dynamic processes that have both a positive and negative impact on sustainable development. In general, the region is not in the best condition today due to the martial law. The increase

in population was accompanied by an increase in administrative violations (Fig. 2), but despite this, its geographical location is also an advantage, as it is located in the rear and close to the borders with EU countries.

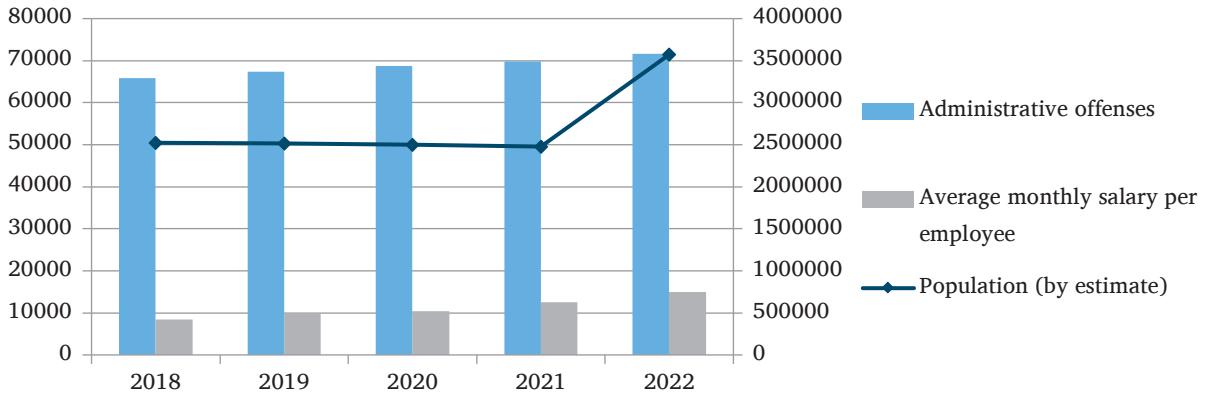

Figure 2. Analysis of the dynamics of key indicators of sustainable development of the Lviv region for the last 2018-2022, unit
Source: created by the authors based on data from the Official website of the State Statistics Service of Ukraine (1998-2023)

Three different, but at the same time interdependent blocks/levels of how to achieve sustainable development in the conditions of a changing external environment are proposed (Fig. 3).

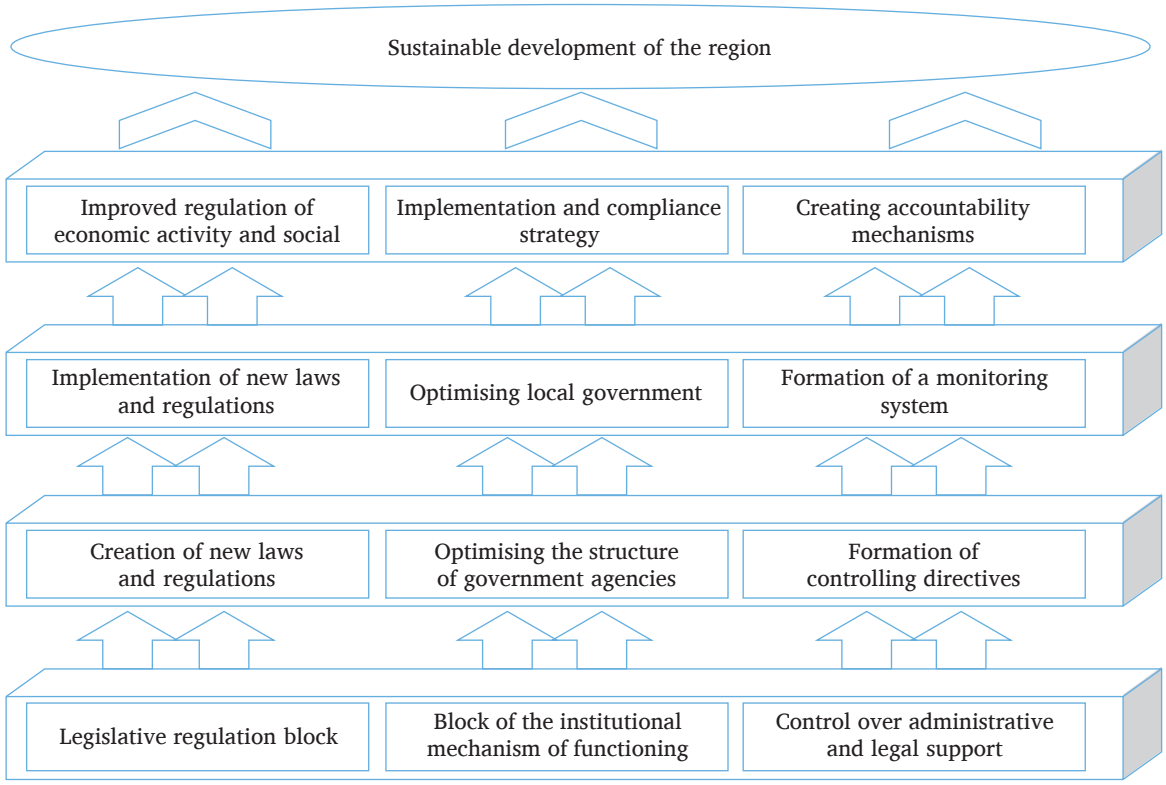

Figure 3. Model of the formation of sustainable development of the region in the conditions of a changing external environment
Source: generated by the authors

It is the level of administrative and legal support that plays the most significant role in shaping the sustainable development of the region. However, the key issue is the following: among numerous administrative and legal factors, there are those that should be implemented first. Sustainability is a very complex phenomenon, especially in a changing environment with limited resources. It is impossible to implement everything at once within the framework of administrative and legal support. The Delphi method was used to summarize and structure the experts' views and opinions in such a way that the following list of the most influential administrative and legal factors was obtained:

G1. Administrative proceedings. An effective administrative justice system that ensures justice and equality before the law is important for conflict resolution and legal certainty.

G2. Local self-government and decentralization. Decentralization policies and the strengthening of the role of local self-government contribute to more effective and responsible governance at the local level.

G3. Social legislation. Laws that define social policy, including healthcare, education, and social security, are important for ensuring social stability and equity.

G4. Public governance and transparency. Norms and procedures that ensure transparency and openness of public administration promote accountability and public trust, which is the basis for effective regional governance.

G5. Regulation of land use. Legislation on land use and land management that ensures the balanced and efficient use of land resources.

G6. Martial law and emergencies. Legal mechanisms for regulating martial law and emergency planning and response are important for ensuring stability and security in the region.

G7. Legislative regulation of economic activity. Laws and regulations that set the rules for business, industry, and trade are important for stimulating economic growth and investment in the region.

G8. Environmental protection and natural resource management. Legal frameworks that regulate the use of natural resources, pollution control and biodiversity conservation are critical to environmental sustainability.

The list of the set G = {G1, G2..... Gn} will constitute a certain connection that can be represented by graph theory (Fig. 4).

Next, the matrix of factor dependence and attainability is filled. Since there are eight factors, the matrix will be 8×8. Note that 1 is set if there is an influence and 0 otherwise. In the case of the attainability matrix, 1 is set diagonally (Table 1).

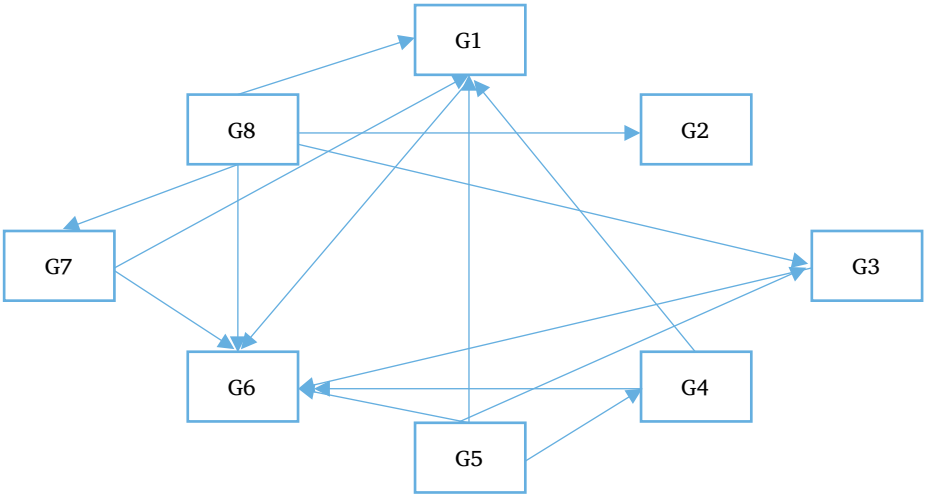

Figure 4. Graph of connections between defined administrative and legal factors of influence
Source: generated by the authors

Table 1. Matrix of dependence and reach of administrative and legal factors influencing the formation of sustainable development of the region

Dependencies								
	G1	G2	G3	G4	G5	G6	G7	G8
G1	=0	=0	=0	=0	=0	=1	=0	=0
G2	=0	=0	=0	=0	=0	=0	=0	=0
G3	=0	=0	=0	=0	=0	=0	=0	=0
G4	=1	=0	=0	=0	=0	=1	=0	=0
G5	=1	=0	=1	=1	=0	=1	=0	=0
G6	=0	=0	=0	=0	=0	=0	=0	=0
G7	=0	=1	=0	=0	=0	=1	=0	=0
G8	=1	=1	=1	=0	=0	=1	=1	=0
Attainability								
	G1	G2	G3	G4	G5	G6	G7	G8
G1	=1	=0	=0	=0	=0	=1	=0	=0
G2	=0	=1	=0	=0	=0	=0	=0	=0
G3	=0	=0	=1	=0	=0	=1	=0	=0

Table 1, Continued

Attainability								
G4	=1	=0	=0	=1	=0	=1	=0	=0
G5	=1	=0	=1	=0	=1	=1	=0	=0
G6	=0	=0	=0	=0	=0	=1	=0	=0
G7	=0	=1	=0	=0	=0	=1	=1	=0
G8	=1	=1	=1	=0	=0	=1	=1	=1

Notes: $S(G_i)$ – unit elements of the rows of the attainability matrix; $P(G_i)$ are unit elements of the columns
Source: generated by the authors

The so-called intersection of subsets forms a new subset according to equality (1):

$$R(Gi) = S(Gi) \cap P(Gi). \quad (1)$$

At the same time, the level of significance isestablished when the following equality (2) is achieved according to the calculation results:

$$R(Gi) = P(Gi). \quad (2)$$

The results of determining the importance of the influence of administrative and legal factors on the formation of sustainable development of the region are presented through an iterative table, presented in Table 2.

Thus, the lowest level of impact is related to administrative and legal factors G5 and G8. They are removed, and the process continues until the last and only one remains. Skipping the intermediate calculations to keep the research material light, it is worth noting that the highest level of influence was given to factor G6 (Fig. 5).

Table 2. Iterative table of calculation results

G_i	$S(G_i)$	$P(G_i)$	$R(G_i)$
1	1; 6	1; 4; 5; 8	1
2	2	2; 7; 8	2
3	3; 6	3; 5; 8	3
4	1; 4; 6	4; 5	4
5	1; 3; 4; 5; 6	5	5
6	6	1; 3; 4; 5; 6; 7; 8	6
7	2; 6; 7	7; 8	7
8	1; 2; 3; 6; 7; 8	8	8

Source: generated by the authors

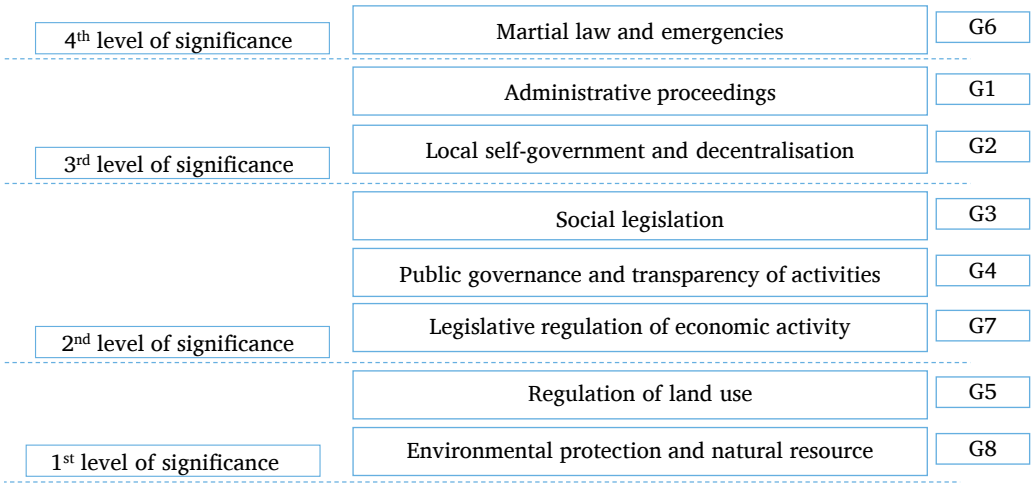

Figure 5. Scheme of hierarchical ordering of administrative and legal factors by the level of their influence on the formation of sustainable development of the region
Source: generated by the authors

The article further defines how to use (respond properly to) the most significant factors of influence within the framework of administrative and legal support for the formation of sustainable development of Lviv region in a changing environment:

G6. Under martial law or other emergency circumstances, the administrative and legal mechanism should be flexible and effective to ensure stability, security, and order in the region, as well as to minimize the negative impact of these circumstances on sustainable development. The

primary task is to develop and implement comprehensive emergency response plans. These plans should provide for rapid and effective crisis response, evacuation, distribution, and delivery of humanitarian aid, and post-emergency recovery measures.

G1. In the field of administrative justice, this may include the provision of environmental justice, for example, through the consideration of cases related to violations of environmental legislation, which helps to control illegal waste emissions by industrial enterprises. It can also include protecting citizens' rights in urban planning, especially in cases of illegal development of green areas, and resolving land use disputes, which ensures fair access to land resources.

G2. In the context of local self-government and decentralization, the role of local governments includes the development and implementation of local environmental programmes that contribute to the conservation of natural resources and improve environmental quality. This can also include initiatives to engage the public in local governance, including through public hearings, public discussions and referendums, which allow citizens to directly influence decisions affecting their lives and the environment. Such initiatives contribute not only to the environmental, but also to the social and economic development of the region, creating sustainable local governance that meets the needs and interests of residents.

Discussion

When discussing results, it is worth comparing them with similar studies in this area. For example, H.J.M. Shakhatreh *et al.* (2023) considered a methodological approach to the development of a legal framework for the protection of land relations in the context of national security. Their conclusions emphasize the importance of an integrated approach to legal regulation, which correlates with the model of sustainable development developed in this study, with an emphasis on administrative and legal principles. A. Giuliodori *et al.* (2022) studied the role of "smart governance" in achieving sustainable development goals in cities, which complements the concept of this work by identifying the importance of integrating innovative management practices in the context of sustainable development. P. Pylypenko *et al.* (2023) focused on the legal security of land relations in the system of sustainable development. Their conclusions point to the need to integrate legal aspects into the overall strategy of sustainable development, which is in line with the approach presented in this article to administrative and legal factors.

In addition to the results presented above, it is worth considering F.A.F. Alazzam *et al.* (2023), who developed an information model for e-commerce platforms, focusing on socio-economic systems in the context of global digitalization and legal compliance. This study reflects the importance of adapting to digital change, which is key to this study's proposal for modelling in a changing environment. D. Bednarska-Olejniczak *et al.* (2019) investigated the development of smart and sustainable cities with public participation. Their findings support the model published in this paper, which recognizes the importance of public participation in shaping sustainable development.

The findings of M. Kryshtanovych *et al.* (2022), who analysed the determinants affecting the engineering sector and its legal regulation system, reflect the importance of an integrated approach to legal regulation in key sectors of the economy, which is consistent with the model developed in this study. I. Dragan *et al.* (2023) focused on improving the mechanism of administrative and legal support for the financial and economic security of the state. Their research confirms the importance of the proposed model in the context of ensuring sustainable development through administrative and legal mechanisms.

It should be noted that the authors' focus on the integration of administrative and legal factors in the context of sustainable development of the region has its advantages. This approach stands out for its comprehensiveness and relevance, as it combines several key aspects: systematic analysis of administrative and legal factors, focus on sustainable development, and adaptation to changes in the external environment. Comparison with other studies, such as I. Yefimova *et al.* (2018) on economic and legal factors that affect social relations in the state, shows that the author's study has a more specific focus on the regional aspect and sustainability of development. Compared to the study by M. Kovaliv *et al.* (2023), which focuses on the methodological foundations of information security research, the author's study has a more practical application in the context of public administration and sustainable development. However, in contrast, the authors of the article here presented specific tools and techniques that can be used by public services to improve regional governance. Comparison with the study by W.M. Kowalska (2010), which addresses the issue of "regional identities" in the context of local, national and global levels, emphasizes that the authors' research goes beyond theoretical analysis of identity and focuses on practical aspects of administrative and legal regulation. The advantages of the author's research lie in its comprehensive approach to identifying and organizing administrative and legal factors, with a focus on sustainable development of the region. The work emphasizes the importance of adapting to changes in the external environment and proposes new methodological approaches for modelling these impacts. The study is also noted for its practical value for public services and the public administration system, which makes it an important tool for implementing sustainable development policies at the regional level. The results of the study have both similarities and differences in comparison with others. They are presented in Table 3.

Table 3. The main differences and similarities of the obtained research results in comparison with others

No.	Similarities	Differences
1	The opinion of other authors about the importance of the administrative and legal aspects in ensuring sustainable development is acceptable	A new modern model of sustainable development of the region has been formed, which, unlike others, focuses on administrative and legal support
2	An approach that involves modelling within the framework of sustainable development is acceptable	A methodical approach to the arrangement of administrative and legal factors influencing the formation of sustainable development of a specific region is proposed

Table 3, Continued

No.	Similarities	Differences
3	The opinion about the importance of regional development is acceptable	Based on the results of a critical analysis of the literature, the actual vision of the essence of the formation of the sustainable development of the region is proposed

Source: generated by the authors

Thus, to summarize the discussion, it is worth noting that other studies emphasize the importance of integrating administrative, legal, economic and social factors in shaping the sustainable development of a region. The proposed model and methodological approach reflects this need and provides specific solutions for use in the work of public services and the public administration system.

The chosen topic of the article combines two critical aspects of regional development: administrative and legal structure, and sustainability of development in the context of a rapidly changing external environment. Administrative and legal factors include the legal framework, policies and regulatory mechanisms that form the basis for regional development. They determine how resources are allocated, how decisions are made, and how these decisions are monitored. In a changing external environment that includes climate change, globalization, economic fluctuations and social shifts, the ability of regions to adapt and be flexible is becoming crucial. Sustainable regional development requires effective administrative governance and a strong legal framework that ensures stability, predictability, and the ability to respond quickly to external challenges.

Conclusions

Shaping and ensuring sustainable development is an extremely complex process, especially in a changing external environment. Effective administrative and legal frameworks play a key role in this process, but one of the challenges is to determine which factors have the most significant impact and which do not. Administrative and legal frameworks set clear rules and standards for economic activity, which helps to create a stable investment climate and attract the capital needed for sustainable development. They also guarantee the observance of citizens' rights and freedoms, which is the basis for the development of civil society and active participation of citizens in local issues. In conclusion, it should be noted that the concept of sustainable development itself is closely linked to regional issues. In this context, administrative and legal structures play a key role. They provide the necessary framework for adopting policies, enforcing regulations and supporting initiatives that promote sustainable development. Understanding the impact of administrative and legal factors is crucial, as they often determine the success or failure of sustainable development initiatives at the regional level.

As a result of the study, a modern model of formation of sustainable development of a region has been developed, which focuses on administrative and legal support. A modern methodological approach to identifying and streamlining administrative and legal factors influencing the formation of sustainable development of a region is proposed. For the most significant ones, specific actions for the public administration have been proposed. Such modelling results will allow satisfying all the information and methodological needs of the key actors in ensuring sustainable development of the region. However, like any other study, this one has its limitations. The study has a limitation in the form of considering the specifics of only one region, which was selected for analysis and modelling. Prospects for further research will be aimed at expanding the modelling and considering more regions and administrative and legal factors. Other scholars who want to continue researching the problems of administrative and legal support for the formation of sustainable regional development are recommended to pay further attention to the problems of administrative proceedings and the identification of key threats that significantly impede this process. It is important to recommend that researchers in this area use a more integrated approach to analysis and evaluation, in which legal norms and administrative procedures are presented through cooperation together to support sustainable development goals, including environmental balance, economic prosperity and social justice. This approach should include not only the development of effective laws and policies, but also ensuring their implementation, monitoring, and adaptation to respond to external changes. It also involves active public participation and the creation of partnerships between different sectors of society to achieve common sustainable development goals.

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Conflict of interest

None.

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Адміністративно-правові фактори впливу на формування сталого розвитку регіону в умовах мінливого зовнішнього середовища

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Анотація. У контексті глобальних змін вивчення впливу адміністративно-правових факторів на сталий розвиток регіонів набуває особливої актуальності, що зумовлено також гіпердинамічністю зовнішнього середовища. Основна мета статті – визначити й упорядкувати основні адміністративно-правові фактори, що впливають на формування сталого розвитку регіону в умовах мінливого зовнішнього середовища. Ключові методи дослідження –ієрархічний аналіз, парне порівняння, експертний аналіз і метод Дельфі. Сформовано наукове питання за результатами огляду літератури, яке полягає в тому, як ефективніше реалізовувати адміністративно-правове забезпечення формування сталого розвитку регіону. Обґрунтовані методи розкрито через поетапне їх застосування. Проведено аналіз динаміки ключових показників сталого розвитку одного із регіонів. Запропоновано сучасну модель формування сталого розвитку регіону з урахуванням умов мінливого зовнішнього середовища та акцентуванням на адміністративно-правових засадах, яка характеризується блоками та схематичним поясненням. Розроблено методичний підхід до моделювання визначення й впорядкування основних адміністративно-правових факторів, що впливають на формування сталого розвитку регіону в умовах мінливого зовнішнього середовища. За результатами проведеного моделювання визначено, що найбільш вагомі фактори впливу в межах адміністративно-правового забезпечення формування сталого розвитку Львівської області в умовах мінливого зовнішнього середовища – це воєнний стан, адміністративне судочинство й місцеве самоврядування та децентралізація. Доведено ефективність запропонованого методу через спроможність задовільнити всі інформаційні потреби суб'єктів забезпечення сталого розвитку в регіоні. Практичне значення отриманих результатів дослідження розкривається в можливості використовувати запропоновану модель та методичний підхід у роботі державних служб і системи публічного управління регіону

Ключові слова: адміністративно-правові чинники; забезпечення сталого розвитку; регіональна політика; моделювання; нестійке зовнішнє середовище; адміністративно-правове забезпечення; адміністративне судочинство

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The impact of the relocation of enterprises in Ukraine and abroad on the realization of socio-economic, cultural and labour rights

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Abstract. The relevance of the article is determined by the fact that the consequences of the relocation of the company (enterprise) in Ukraine affect the realization of human rights and the activity of the enterprise as a whole. The purpose of the article is to study the current state of legal regulation of enterprise relocation, human rights (employee, family members, etc.). One of the main methodological techniques of research is a comparative approach. The legislation of different countries of the world, which regulates the issue of company relocation, is analysed in a comparative legal direction. The relationship between the norms of international law and the legislation of Ukraine regarding the implementation of international principles of human rights, enshrined in international legal acts, into the legal system of Ukraine, in particular regarding the relocation of the enterprise, was revealed. The practice was studied and the consequences of the relocation of the enterprise were revealed. The advantages and disadvantages of enterprise relocation are considered. Special attention is paid to the psychological consequences of the relocation of enterprises in Ukraine and abroad. The peculiarities of the impact of the relocation of enterprises on socio-economic, labour, and cultural aspects have been determined. It is noted that the value idea of "preserving their rights" is the foundation of the observance of human rights. It is emphasized that the implementation of outlined human rights must be considered in

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the process of strategic relocation planning. The practical significance of the study is that the conclusions and proposals formulated in the scientific article will contribute to the improvement of the mechanism of human rights protection due to the consequences of the relocation of the enterprise, the need to consider the needs of vulnerable segments of the population – employees of pre-retirement age, disabled people, children of employees. The generalization of the results of the work is designed to improve Ukrainian legislation in the field of human rights, as well as to implement into Ukrainian practice foreign norms and standards for the protection of human rights, such as socio-economic, cultural, and labour rights

Keywords: relocation; enterprise; company; human rights; Ukraine; EU; responsible business behaviour; business; incentives in law

Introduction

With the growing importance of the international role of business in economic development, the issue of business's impact on society is becoming increasingly important. This has led to companies demanding responsible business behaviour from themselves. Responsible Business Conduct (RBC) expects all companies (businesses), regardless of their legal status, size, ownership, or sector, to avoid and address the negative impacts of their activities while contributing to sustainable development in the countries where they operate (Responsible Business Conduct…, n.d.).

Businesses can create jobs and livelihoods, provide products and services, support community development, and generate tax revenues for governments to invest in people's well-being (World Benchmarking Alliance, 2023). States are the primary bearers of human rights obligations. However, businesses have a responsibility to ensure respect for human rights in their operations, for example, in the context of business relocation. Accordingly, it is critical to study the consequences of enterprise relocation and their impact on the realization of human rights, considering the socio-economic and cultural rights that most affect the employee in the process of enterprise relocation.

The scientific literature (Lopatta *et al.*, 2023) analyses the current state and determinants of corporate human rights disclosure among the 500 largest business enterprises worldwide. Multivariate analysis shows that corporate visibility, sector sensitivity in terms of higher risk of litigation, and institutional pressure in the form of soft law are positively related to corporate human rights disclosure.

N. Kovalenko *et al.* (2022) theoretically substantiated and systematized the economic and legal aspects of relocation and doing business in the context of war in Ukraine. The works of I. Zapuhliak and O. Krasniak (2022), who studied in detail the features of each type of relocation, in particular the relocation of a person – community – employee – enterprise, outlined the benefits of relocation for both employees and enterprises, and provided problems and measures to facilitate the adaptation of employees in the process of relocation. I. Khymych *et al.* (2019) focused on relocation processes in relation to employees, identified certain factors that contribute to the support of relocation processes. V. Panchak and S. Hrabskyi (2021) provide their thoughts on possible algorithms for responding to changes in the level of threats and critical risks to business operations, as well as consider the main algorithms for preparing a company for hibernation, relocation, and evacuation.

Foreign researchers have also been interested in relocation issues, in particular K. Tsubouchi *et al.* (2021) identified the prospects and limitations of community-based relocation planning, which requires a more profound understanding of its limitations to develop more practical discussions about its potential. C. Lyu *et al.* (2022) investigated the mediating effect of cross-border knowledge seeking on the relationship between social capital and firm innovation performance, the consistent mediating effect of cross-border knowledge seeking and absorptive capacity between social capital and innovation performance. L. Korobka *et al.* (2019) in their monograph highlighted the results of a study of psychological strategies for community adaptation to the conditions and consequences of military conflict in various spheres of life, the content of which is determined on the basis of models of public health promotion and value understanding. M. Bahl *et al.* (2021) offered their vision of the trade-offs associated with the relationship between internationalization and innovation as two important factors in business growth and the efficiency of entrepreneurial firms.

However, given the topic of enterprise relocation and the need to stimulate competitiveness, it is worth noting the insufficient coverage of the analysis of the impact of enterprise relocation on socio-economic and cultural human rights. The purpose of the article is to study enterprise relocation in Ukraine and in foreign countries through the prism of protection of socio-economic and cultural human rights.

The main tasks of the study include: researching the approaches to understanding human rights in the context of enterprise relocation that have developed in the world practice; analysing the prerequisites for enterprise relocation; studying the consequences of enterprise relocation in Ukraine and in foreign countries, as well as their impact on the realization of socio-economic and cultural human rights. Most of the existing studies are conceptual in nature, and each of the scholars in their research uses their approaches to the problems of enterprise relocation and the consequences of its impact on the realization of human rights.

In carrying out scientific research, the author used a set of general scientific and special research methods. Based on the analysis of several publications relating to the peculiarities of enterprises as legal entities, the article uses the methods of analysis and synthesis to reveal the advantages and disadvantages of the process of their relocation and the prospects for the effective development of the economy of Ukraine and other countries.

The use of classification methods has become the basis for generalizing the current legislation of Ukraine and the legislation of foreign countries, considering the practice of legal regulation in the field of human rights protection. The methods of analysis and synthesis used in the study made it possible to critically assess the provisions of legal acts from the standpoint of human rights regulation and the status of enterprises (firm, company, corporation). The method of comparative legal analysis used helped to identify the main indicators by which it is advisable to continue the transformation

of regulation of an enterprise's activities when it is relocated in accordance with the standards established in the EU, including those relating to human rights regulation. At the same time, this method made it possible to distinguish between scientific approaches to the relocation of enterprises in certain foreign countries.

Organizational and economic aspects of the relocation of the enterprise in terms of ensuring socio-economic and cultural human rights

In the area of responsible business behaviour, international documents have been developed that address business activities, for example: the 1976 Guidelines of the Organization for Economic Co-operation and Development for Multinational Enterprises operating in the countries that have joined the organization, calling on enterprises to voluntarily engage in expected responsible business behaviour (OECD, 2023); issued in 1977. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Organization, which is a direct guide for enterprises on social policy and inclusive, responsible, and sustainable practices in the workplace (ILO, 2022).

However, this extension of the international human rights regime to companies has not changed the state-centred nature of the regime. The analysis focuses on three recent United Nations initiatives: (1) the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises regarding Human Rights, (2) the Global Compact, and (3) the work of the UN special representative on business and human rights (Inter-Ministerial Committee for Japan's National Action Plan on Business and Human Rights, 2020). Despite these initiatives, states are the primary duty-bearers for human rights obligations and play a key role in decision-making and enforcement. As the impact of business on human rights has become recognized as part of its impact on society, attention to human rights in business operations has increased. The UN Global Compact called on businesses to respect ten universal principles in four areas, of which two areas (covering six principles) include human rights and labour (The Ten Principles…, n.d.). Every organization conducts business as a legal entity because its activities require legal personality to exercise certain rights and fulfil certain obligations. If a business is considered as an enterprise or a firm, it is an organization that is involved in the trade of goods or services to consumers.

Relocation processes in business are not uncommon. This phenomenon is widespread in the modern business environment. After all, well-organized business relocation by Ukrainian companies allows solving several problems with parallel imports, simplifying logistics schemes, as the opening of offices, representative offices, and recently production facilities contributes to the expansion of business in Ukraine and abroad. At the same time, large companies also carry out relocation actions in relation to employees hired for managerial positions (Khymych *et al.*, 2019). However, the process of planning, organizing, and implementing a relocation programme is much more complicated when it is implemented in international companies. Considering this, it is important to organize international relocation in a rational way to prevent high costs and to obtain the most favourable result of the staff relocation.

The most important reasons for relocating an enterprise are: reorganization, rationalization of products/services, and other alternative aspects (factors) that lead to relocation, which have both internal and external aspects. Internal aspects are, for example, the expansion of a new range of services, the expansion of space for new equipment or the introduction of efficient shift work. External aspects that can lead to relocation are technological changes, new government restrictions and regulations that vary from industry to industry in a dynamic business world.

Considering the relocation of a company (enterprise) in the study, it is worth concluding that it is a certain shock for the enterprise. Relocation is a format of the level of external threat to business, which activates the processes of moving offices and/or activities from a dangerous area to a safer place, usually on a temporary basis and within the same country (Panchak & Hrabskyi, 2021). The opinion of researchers who emphasize that relocation is always a manifestation of a company's response to external and internal challenges related to the success of its business is to be supported (Temel & Forsman, 2022).

Business relocation can be carried out without assessing various capitals, operational expenses, and business plans of the company. Reasons for the relocation of such companies may include government restrictions on development, business growth, labour shortages, etc. Other reasons could be a decline in GDP, worsening macroeconomic imbalances, destabilization of the banking system due to defaults of business entities and individuals – borrowers who are left unemployed, increased unemployment, and a rise in debtor and creditor indebtedness (Heiko, 2020). Thus, to ensure the continued operation of enterprises, if necessary, from areas where hostilities are taking place and/or there is a threat of hostilities, businesses (production capacities of economic entities) can relocate to a safe territory within Ukraine. Therefore, the situation is evident where, upon successful relocation of a business, it can become competitive again.

The actions of businesses can impact the realization of human rights both positively and negatively. Experience shows that businesses can violate human rights where they do not pay sufficient attention to this risk. Businesses can violate the rights of workers, clients, consumers of products or services, directly or indirectly affecting the entire spectrum of human rights.

Human rights are part of an individual's everyday life, encountered in one form or another at every step, regardless of whether it involves their recognition and guarantee, means of ensuring their realization, or violation, as well as actions related to such violations. Human rights are a legal institution, meaning that without regulation by law, they would not exist. Although this regulation and related mechanisms exist at the domestic level (in the legal systems of states), the focus of research is mainly on human rights as part of international law. Contemporary human rights encompass the entire range of internationally recognized rights, including civil and political, economic, social, and cultural rights. These include workers' rights, the right to privacy, equality and non-discrimination, freedom of expression, and the right to health. Other rights mentioned in the Charter of Fundamental Rights of the EU relate to consumers and the environment (European Union Agency for Fundamental Rights, 2019).

The UN Framework "Protect, Respect and Remedy" (Ruggie, 2008) classifies the relationship between businesses and human rights into three main principles: (1) the state's

duty to protect against human rights violations by third parties, including businesses; (2) corporate responsibility to respect human rights; and (3) access to remedies. Although the UN Framework clarifies the state's duty and corporate responsibility related to the impact of business activities on human rights, it also emphasizes the need for mechanisms ensuring access to effective remedies, listing specific areas and cases where relevant entities must fulfil their duties or be held accountable.

In 2011, ministers of OECD countries adopted updated Guidelines for Multinational Enterprises, including recommendations on human rights based on the UN Framework and Guiding Principles. The UN Human Rights Office has a mandate to manage business and human rights in the UN system, providing guidance on the implementation of the UN Guiding Principles on Business and Human Rights and updates on countries and human rights issues (OHCHR and business and human rights, n.d.).

Human rights are one of the fundamental principles of justice and equality in society. They define the basic freedoms that should be guaranteed to every individual without discrimination (Veprytskyi, 2008). Human rights are considered inalienable and fundamental, widely recognized as universal values that exist to ensure human dignity and meet basic human needs. They are characterized as universal and non-negotiable (everyone is entitled to them); indivisible (all human rights have equal status and cannot be ranked); and interdependent and interconnected (the realization of one right often depends on the realization of others) (Human Rights-Based Approaches Portal, n.d.). From the perspective of the modern development of society, human rights are inseparable from the economic foundation. Each state's budget includes special funds to meet people's needs, including the provision of guaranteed rights – the right to elections, education, culture, etc. The catalogue of human rights also includes special economic rights, such as the right to work, the right to earnings, and other rights within labour relations, the declaration of an adequate standard of living, the declaration of social security, etc. The importance of these rights is unquestionable. When there is an immediate threat to human existence, other rights, such as the right to privacy, minority rights, etc., take a back seat (van der Ploeg & Vanclay, 2017).

It is worth agreeing with Yu. Razmetaeva (2006) that human rights can be considered from a general, group, and individual perspective. Some rights belong to "all" (their holder is humanity), while others belong only to particularly vulnerable groups and their members. Additionally, compliance with fundamental human rights is considered an undeniable ethical imperative. Thus, only by considering all aspects of the legal dimension of human rights, along with other relevant factors, is it possible to understand the modern concept of human rights, its essence, advantages, disadvantages, and expected directions of development.

Social and economic rights are human rights aimed at ensuring a basic standard of living for all members of society in terms of satisfying their basic human needs. They differ from traditional civil and political rights, such as the right to equality, personal freedom, property, freedom of speech, etc. As R. Veprytskyi (2008) points out, "they are necessary for society to regulate relations between people and at the same time create the most favourable conditions for the development of each member of society".

Social rights are normatively enshrined and state-recognized sets of rights and freedoms of a person and a citizen, enabling individuals to realize the norms of social law, possess a corresponding social status, claim the satisfaction of their needs necessary for normal existence and development through lawful methods and means.

Economic rights of humans include rights related to the production, distribution, and exchange of material values. Every individual is entitled to freely dispose of their abilities and property, including engaging in entrepreneurial activities. However, it is essential to remember that the right to private property is protected by law. Additionally, every individual is entitled to choose a profession and field of activity, and wage discrimination is prohibited by law (Turuta, 2014). O. Turuta (2014) emphasizes the significant role of socio-economic rights of humans in modern society. Every person is guaranteed the right to social security upon reaching a certain age, in case of illness, disability, loss of a breadwinner, raising children, etc. Special attention is given to the protection and material support of motherhood and childhood. The right to education is also of great importance.

Cultural rights constitute a set of human rights guaranteed by the Constitution and legislation of a particular country, allowing individuals to claim the realization of their cultural needs, such as acquiring education, the right to participate in the cultural life of society, use cultural institutions, and the right to access cultural values.

Therefore, constitutional human rights in the social and economic spheres are designed to guarantee freedom of personal development and a dignified standard of living. The realization of socio-economic and cultural rights is possible only if the state reliably guarantees the personal rights of citizens. In this regard, one of the main factors contributing to the realization of socio-economic rights is the presence of socio-economic policies aimed at creating equal opportunities for all members of society. Effective policies in the socio-economic sphere should include measures to reduce inequality in society, create jobs, ensure access to education and healthcare, etc.

It is worth noting that the unanimous adoption of the United Nations Guiding Principles on Business and Human Rights (UNGP) by the United Nations Human Rights Council in 2011 (United Nations, 2011) led to an increase in awareness among businesses regarding human rights.

Modern businesses are facing increasing pressure to respect human rights in their everyday activities. Not only is the number of critical consumers growing, but also the number of legislative acts obliging businesses to act and report on their involvement in human rights (Lopatta *et al.*, 2023). These issues significantly affect the employees of companies as well. Participation in violations and abuses of workers' rights is now a business risk for companies. Many companies, especially multinational enterprises, acknowledge this, as evidenced by their adoption of policy statements and procedural guidelines, and sometimes instructions on human rights. Business contributes to the suppression of power and injustice in the law. J. Schrempf-Stirling and F. Wettstein (2017) note that these processes lead to a sharp increase in the number of potential human rights violations by large corporations. As a result, modern businesses are facing increasing pressure to respect human rights in their everyday activities. Not only is the number of critical consumers growing, but also the number of legislative acts obliging

businesses to act and report on their involvement in human rights (Lopatta *et al.*, 2023).

Protecting the rights of employees and encouraging them to work productively and creatively can be achieved by creating conditions for innovative development through digital transformation, investment, and the introduction of technology. With limited internal resources, many digital companies are starting to use social capital to access external resources. Corporate social capital is generally regarded as an effective guarantee for companies to gain knowledge, stimulate innovation, and increase productivity (Zhang *et al.*, 2020). Companies with higher social capital can acquire relevant knowledge by establishing close ties or reaching consensus with collaborative actors. Accordingly, if a company uses innovation, it increases its innovation efficiency and competitiveness because active interaction with stakeholders will increase social capital. Thus, innovation plays an important role in ensuring sustainable growth and competitive advantage of firms in emerging markets (Fu *et al.*, 2022). However, to maintain a sustainable competitive position, firms need to develop dynamic capabilities and acquire critical resources.

In this way, international companies can utilize their innovation potential. Among the advantages of such potential are: mobility and adaptation in crisis market conditions, focus on innovation to achieve effective results, etc. A. Priyono *et al.* (2020) recommend that such companies undergo digital transformation to cope with changes, in particular, during the pandemic. However, lack of resources has become a major obstacle for businesses to create social capital (Cruri *et al.*, 2021) and digital transformation (Chen & Tian, 2022). At the same time, the creation of social capital also requires the depletion of corporate resources, so not all enterprises will be able to innovate through the strengthening of social capital.

However, enterprises constantly interact with each other. Therefore, as noted in the foreign literature (Lyu *et al.*, 2022), social capital, as a link formed by the joint actions of all parties in a network of interests, helps stakeholders to exchange knowledge, information, and value. At the same time, cross-border knowledge spillovers are measured in two ways: cross-border technological knowledge spillovers and cross-border market knowledge spillovers. Hence, there are potentially strong interrelationships between social capital, cross-border knowledge seeking and innovation performance.

G. Santoro *et al.* (2020) found that heterogeneous knowledge sources and absorptive capacity can optimize collaboration patterns between firms to increase innovation productivity, and the quantity and quality of knowledge creation in international collaboration depends on these capabilities, such as absorptive capacity and managerial capacity.

A new trend in the labour market is smart work, a multitasking activity aimed at creating new technologies, products, services, and jobs in innovative areas. An analysis of current trends indicates that a significant number of current professions and even businesses are at risk of disappearing, while employment in smart enterprises will grow.

That is why, to prevent the enterprise from disappearing or falling into a stage of decline, the management implements a flexible enterprise strategy through digital transformation, technological improvement, production, and export of high-tech products with high added value and the introduction of technologies themselves, and carries out establishment relocation if necessary.

The impact of enterprise relocation on socio-economic and cultural human rights: foreign experience

Given that the purpose of the study is to examine the impact of relocation on socio-economic human rights, the main subject in this process is the employee. Given this, it is advisable to analyse the positive and negative effects of the relocation process on the employee's socio-economic rights, in particular the right to work.

A person is entitled to earn a living by work that they freely choose or agree to, the right to fair remuneration and equal remuneration for work of equal value. That is why the process of enterprise relocation should ensure the protection of the right to private and family life. In this regard, UNICEF (2012) has developed a guide on children's rights and business principles to help businesses understand where and how their activities may affect children. All business activities should respect the right to protection and security of the child, as articulated in the Convention on the Rights of the Child.

Depending on the circumstances, businesses may need to consider additional standards. For example, according to foreign researchers G. Pachoud & S. Milatović (2022), businesses should respect the rights of persons belonging to certain groups or segments of the population that require special attention if they may have a negative impact on human rights.

The relocation of the enterprise in the context of martial law in Ukraine may exacerbate existing tensions, but this does not reduce the responsibility of the enterprise, as the aggravation of existing problems may have consequences that lead to a deterioration in the psychological state, anxiety, and instability of the enterprise. This is especially true for employees from certain (vulnerable) groups, such as disabled people, people with disabilities, people of pre-retirement age, whose needs may differ from those of employees from other groups. Employees should not only restore their socio-economic, cultural and labour rights, but also restore their social relations, psychological state and living conditions.

The consequences of the relocation of an enterprise should be consistent with respect for the right to work, which is established at the international level. A negative impact on the right to work can occur when access to existing jobs is denied or employment opportunities are hindered. Respecting this right means that people's access to jobs (e.g. in a nearby town), shops or other business activities should be restored in the new place of resettlement. Significantly increased transport expenses may prevent a person from going to work, to the market or seeking employment, which negatively affects the right to work. In addition, a person may lose their job due to stress or because of the time required to reorganize their life after resettlement, which negatively impacts the right to work. The impact on the right to work may lead to restricted access to adequate food and water, which may subsequently have a negative impact on other fundamental human rights, such as the right to health. Therefore, after relocation, the management of the enterprise should be able to establish effective budgeting of the enterprise through planning, accounting, and control of money and financial results.

The advantages of relocating businesses in the event of a crisis or unstable situation for the company are: the opportunity to obtain more favourable working conditions (workspace, modern equipment, high wages, changes in

work hours, etc.), simplified mechanisms for obtaining visas and new residence for employees, legal support, and state financial assistance.

The process of business relocation can be accompanied by many problems, such as construction delays, delayed delivery promises and schedule delays, staffing issues, e.g., qualified staff may not want to move to a new location, etc. Thus, the elements that impede relocation, which can be defined as disadvantages of relocation, may include: economic, transport, political, linguistic, cultural differences between regions. Accordingly, failure to relocate the company may result in the following risks for the company: business interruption, reduced demand for goods/services offered by the company and loss of both domestic and foreign markets, large-scale layoffs, etc.

Currently, there are five main factors that can influence the decision to relocate production abroad: costs, infrastructure, labour force characteristics, government and political factors, and economic factors. Ten key drivers have been identified as follows: quality of labour force, availability of transport, quality, and reliability of transport, availability of labour force, quality, and reliability of utilities, wage rates, employee motivation, telecommunication systems, government stability and industrial relations laws.

The current conditions of many enterprises are characterized by high levels of stiff competition, dynamic market conditions, significant changes in the macroenvironment represented by trends in scientific and technological progress, rapid knowledge growth, emergence of new economic sectors, changes in production methods, etc. For example, Germany can be termed a coordinated market economy, emphasizing coordination, collaboration, and explicit recognition of a broad range of stakeholders.

Business relocation to this country is quite common and significantly affects the level of highly skilled workers. However, when relocations and business transfers occur to Germany from other countries, only those employees belonging to the respective transferred organization automatically transition to the new employer.

In accordance with the EU Directive on acquired rights, in the case of asset agreements or changes in service conditions, employees must receive detailed written information before the transfer and can object to the transfer within a month of receiving the information (Council Directive 2001/23/EC…, 1977). There is an obligation to inform and consult the works' council. There are substantial restrictions on changing terms and conditions after relocation. Any dismissal related to relocation is considered unfair; other reasons for termination are possible. Section 613a of the German Civil Code (1986), BGB, broadly covers agreements related to changes in the entity responsible for the business (or part of the business), leading to a change in the employer (such as sales and transfer of assets), and applies in cases of mergers, divisions, and asset transfers under the German Transformation Act (Umwandlungsgesetz). Section 613a of the German Civil Code requires that the relevant business (or its part) be an "economic entity". In a broad sense, this requires resources (material and/or immaterial) intentionally organized to carry out any economic activity. Section 613a of the German Civil Code does not deviate from the provisions of the Directive in this regard.

Business transfer results in the legally mandatory transfer of all employment contracts from the former employer to the new owner of the company. According to Section 613a (1) BGB, the new owner assumes the rights and obligations arising from employment relationships that existed at the time of the transfer. This generally means that employment relationships continue with the same rights and obligations as before the business transfer. Even rights and obligations in collective agreements and employment contracts fundamentally cannot be changed by the new owner to the detriment of employees until one year after the transfer of the business (Section 613a (1) sentence 2 BGB). However, such collective agreements and employment contracts can be replaced by existing or newly negotiated agreements within the same regulatory scope. Additionally, notice of termination of the transferred employment contracts provided by the new owner through the business transfer is void (Section 613a (4) BGB). After completing the business transfer, the former owner remains responsible for obligations towards transferred employees if the claim arose before the business transfer (Section 613a (2) BGB).

According to Section 613a (5) BGB, the former employer or the new owner must inform the affected employees in writing about the transfer of their work. This information should include the date or expected date of transfer, the reason for the transfer, legal, economic, and social consequences of the transfer for employees, and proposed measures to be taken concerning employees.

If the information provided to employees is complete and accurate, employees have one month to decide whether they want to transfer their work to the new owner or not. If an employee decides not to transfer, they are entitled to remain with the former employer. However, in such a case, the former employer may be allowed to terminate the employee if they cannot continue to employ their former employee (for example, because their entire business has been transferred). If the former employer ceases to exist, an employee who chooses not to work for the new owner is entitled to early termination.

On the other hand, the United Kingdom is characterized by a liberal market economy where firms coordinate their activities mainly through hierarchies and competitive market mechanisms. This doesn't imply that one system is better than the other, but rather that different types of companies may find advantages in different systems. In the UK, when an employer moves, employees with mobility clauses in their contracts must move unless they can prove that the request is unreasonable. If an employer changes the location of its business, employees must check their employment contracts for a "mobility clause". A mobility clause requires that employees move within certain limits. This means that employers can generally compel their employees to move to places allowed by the clause, if it is not absolutely unreasonable. There are different dispute resolution options (mediation, conciliation, and arbitration) regarding what is considered unreasonable. Employees without a mobility clause in their contract can choose whether to move or not. Employers can dismiss employees who decide not to move. All existing employee rights, including contractual rights and protection against unfair dismissal, remain unchanged. The fact that the relocation is carried out by a new owner does not make any difference (Employer relocation: Your rights, n.d.).

The importance of Mobility Provisions for Employers and Quebec (Canada). When it comes to the relocation of an employee's workplace, a significant change is defined by a

move that involves a relatively long distance and affects the daily life of the employee. Typically, courts assess this by calculating the time it would take for the employee to commute to and from work. They will try to determine whether a reasonable person would consider the relocation a substantial change. Employees subject to termination due to a workplace relocation have the right to advance notice or payment in lieu of notice. Employees can also file a complaint under Article 124 of the Act respecting labour standards (Quebec's Act Respecting…, 1980) to challenge the relocation if the conditions of the complaint under Article 124 of this Act are met.

However, employers can overcome the legal consequences mentioned above by including mobility provisions in the employment contracts of their workers. In such cases, an employer can introduce changes to the employee's workplace, provided that these changes align with the conditions set in the employment contract. For an employer to utilize this option, the mobility provisions must meet specific requirements to be valid. Precedent law has established, among other things, that the mobility provision must be communicated to the employee, who must voluntarily agree to it, and be sufficiently specific by providing examples of locations where the employee may be required to work.

Therefore, in most large companies, relocation processes are outlined in employee contracts, meaning that employees are aware of such potential changes. Moreover, relocation, in this case, serves as a motivating factor for self-development and the overall development of the employee as a competent professional who understands the intricacies of the company's operations from within. Such professionals have a better understanding and can provide more accurate improvements in various aspects of the company's development. They can identify weaknesses, foresee and mitigate risks, propose qualitatively new methodologies for improving both tactics and the company's overall strategy, develop more modern measures to maintain competitive positions in the market, and contribute to entering new market segments, among other things (Khymych *et al.*, 2019).

The conclusion of scientists that businesses should develop strategies for mitigating the consequences is entirely logical, as the suspension or cessation of economic activities often has significant effects on communities, including broader economic and social impacts. These strategies may involve providing advance notice to communities, suppliers, employees, and other partners who may be affected by future cessation of activities; ensuring that staff continues to receive income during a crisis, in case of temporary suspension of activities or training, and building capacity to mitigate the consequences of job loss; ensuring the safety of remaining staff who cannot be evacuated (Pachoud & Milatović, 2022).

However, there is currently no "one-size-fits-all" corporate governance system. Instead, two systems have different comparative advantages. British corporate governance systems better support companies in sectors that require quick entry and exit into new markets, demanding significant flexibility in workforce utilization. On the other hand, the German system better supports companies in sectors that require long-term commitments and investments from employees, suppliers, and other stakeholders.

Decisions on the relocation of companies depend on the sector, and the migration behaviour of firms in high-tech sectors noticeably differs from that in less high-tech sectors. Predominantly low-tech and medium-low-tech manufacturing and less high-tech service firms that pay a high average wage are more likely to move from their current location. For less high-tech service companies, the average municipal wage negatively affects their propensity to relocate, while those located in municipalities with high wages for specific sectors have an increased likelihood of relocation. Companies that relocate typically attract densely populated municipalities with high wage levels, and service firms, in particular, are drawn to municipalities specializing in their industry and appealing to specific individuals. The wage level in specific industries can either attract or deter firms, indicating that this variable can reflect both the cost and quality of available labour at a location.

Regarding Ukraine, business relocation to parts of Ukraine where active hostilities are not taking place or are near foreign countries is a new measure to preserve assets and restore production, as well as maintain jobs. In mid-March 2022, the Cabinet of Ministers adopted a resolution titled "On the Peculiarities of the Work of the Joint-Stock Company "Ukrposhta" in the Conditions of Martial Law" (2022) regarding the free transportation of property for Ukrainian business entities according to a list compiled by the Ministry of Economy and transmitted to the Ministry of Infrastructure. To assist Ukrainian enterprises in resuming operations and enabling them to continue paying taxes and providing jobs, the Government launched a unified digital interaction platform to facilitate business relocation (Rozghon, 2022). The platform for business relocation assistance was launched on the SE "Prozorro.Prodazhi" at the initiative of the Ministry of Economy and with the support of the Ministry of Digital Transformation and Diia.Business.

Choosing a location for business relocation is the most challenging decision to make during the moving process, starting with the priorities of the company and its requirements for its operations. Human rights, which will be affected by the relocation process, should take precedence. Companies moving over long distances expect that the new region provides better (market) opportunities than the previous location.

The transitional period of corporate relocation is problematic because it requires setting priorities. For example, economic human rights may take precedence over social ones, and the resumption of business activities in the location where the business was relocated may be a long-term process, creating obstacles to guaranteeing economic and social rights.

Therefore, a conclusion can be drawn: to ensure conditions for the realization of human rights and the development of the enterprise after relocation, the following principles must be considered:

- the principle of priority of human rights – based on which attention should be focused on creating necessary conditions for the adaptation of individuals to the new location, identifying the material and non-material needs of employees, and creating conditions for social activity of employees;
- the principle of proportionality – based on which compensation for the harm caused to a person regarding the benefits of business relocation (flexible pay systems, more favourable and safe working conditions, etc.) should be provided;
- the principle of employee motivation – based on which there will be a stimulation of the effective activity of the relocated enterprise.

Conclusions

Based on the analysis of national and foreign experience, the article examines the issue of human rights observance in the context of enterprise relocation. It is noted that relocation is a process that requires an enterprise not only to prioritize competitiveness in its activities, but also to respond to the restoration of the rights of employees and their families in cases of violation of their socio-economic and cultural rights.

Using the results of the theoretical analysis, the article examines the impact of the process and consequences of enterprise relocation on socio-economic and cultural human rights. The positive experience of Germany, the United Kingdom and Canada in this area is analysed. Based on several important international human rights documents, the article outlines an approach to enterprise relocation based on the need to respect human rights, in particular, socio-economic and cultural rights. The author defines human rights in the context of enterprise relocation in terms of their protection and implementation during the enterprise relocation procedure and in the context of negative consequences of impact on this process. It is emphasized that in the process of relocation, human rights risks may arise and that the management of an enterprise must fulfil its constitutional obligations to protect human rights. In addition, the process of enterprise relocation leads to a deterioration in the psychological state of a person, which, accordingly, requires the provision of technical, legal, psychological, and financial support.

In the case of relocation of an enterprise or its separate subdivision, care should be taken to ensure the proper implementation of human rights, legal regulation of all possible encroachments by other entities and, in fact, by the management itself. The company's management should take care of improving the living standards and working conditions of its employees, etc. To this end, companies should create a strategy that includes: a decision on the need for the planned relocation of the company; preparation and development of a plan for the planned relocation of the company; prospects for minimizing adverse social and economic consequences during the relocation procedure, etc. The inability of an employee to perform his/her labour duties at the place of residence causes social and cultural displacement of a person and actual loss of attachment to the place of residence, which leads to psychological and cultural losses.

The novelty of the article lies in the author's view on the effective ensuring of socio-economic and cultural human rights in the process of relocation of enterprises. After all, the inability to ensure socio-economic and cultural rights in accordance with international standards leads to a violation of human security in general. The results obtained show that the relocation of an enterprise and employees can be a component of an employee development programme within the framework of international cooperation, as it stimulates the movement of innovations, creative activity of employees, cross-border knowledge search, creation of social capital, and has an impact on the achievement of the innovation productivity effect. Despite the existence of research in the field of business relocation, it is still necessary to study the interpretation of business relocation, identify the peculiarities and problems of human rights regulation due to the consequences of business relocation for a more complete understanding of their activities in terms of the pace of innovation development.

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Conflict of interest

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Introduction

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Вплив релокації підприємства на реалізацію соціально-економічних прав людини: національні тенденції та зарубіжний досвід

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Анотація. Актуальність статті зумовлено тим, що наслідки релокації компанії (підприємства) в Україні впливають на реалізацію прав людини та на діяльність підприємства загалом. Мета роботи – вивчити сучасний стан нормативно-правового регулювання релокації підприємства а аспекті прав людини (працівника, членів його сім'ї тощо). Один з основних методологічних прийомів дослідження – компаративний підхід. Порівняльно-правовий метод дав змогу зіставити законодавство Німеччини, Великобританії та інших зарубіжних країн, яке регулює питання релокації підприємства. Досліджено проблему формування соціально-економічного та правового потенціалу інституту релокації. Виявлено співвідношення норм міжнародного права та законодавства України щодо імплементації міжнародних засад прав людини у правову систему України, зокрема щодо релокації підприємства. Досліджено практику та окреслено наслідки релокації підприємства. Розглянуто переваги та недоліки релокації підприємства. Особливу увагу приділено загрозливим наслідкам релокації підприємств в Україні та інших країнах. Визначено особливості впливу релокації підприємств на соціально-економічні та культурні права людини. Зазначено, що в основі дотримання прав людини – ціннісна ідея збереження їхніх прав. Підкреслено, що реалізація окреслених прав людини має бути врахована в процесі стратегічного планування релокації. Практичне значення дослідження полягає в тому, що сформульовані в ньому висновки і пропозиції сприятимуть покращенню механізму захисту прав людини в процесі релокації підприємства, тобто урахуванню потреб вразливих верств населення: працівників передпенсійного віку, людей з інвалідністю, дітей працівників тощо. Узагальнення результатів наукової роботи спроєктовано на удосконалення законодавства України у сфері прав людини, а також на імплементацію в українську практику зарубіжних норм і стандартів щодо захисту прав людини, зокрема соціально-економічних та культурних

Ключові слова: права людини; бізнес; відповідальна бізнес-поведінка; працівник; соціальна політика; Україна; ЄС

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Abuse of the right to prosecution in criminal proceedings: The experience of Ukraine and the United States

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Abstract. Unfair use of the prosecutor's discretionary powers leads to violations of the rights, freedoms, and legitimate interests of a person. Examining the main ways of abusing the right to prosecution will help prevent negative manifestations in criminal proceedings that hinder the performance of its tasks. The purpose of the study is to identify specific examples of unfair behaviour by prosecutors in Ukraine and the United States during criminal proceedings. The paper uses a set of methods of scientific knowledge: abstraction, analysis, synthesis, comparative legal, formal legal, modelling methods. Some aspects of the implementation of criminal prosecution as the main procedural function of the prosecutor are examined. The main structural elements of the prosecutor's activity in the implementation of criminal prosecution and methods of abuse of discretionary powers in the implementation of this function are analysed. Examples of abuse of the right to prosecution are given both in Ukraine and in the United States. Separate criminal cases were considered, in which higher courts concluded that the prosecutor was abusing their right to prosecution (criminal prosecution). The legislation and legal positions of the highest court of the United States were used to compare and consider best practices. It is noted that although the American and Ukrainian models of criminal justice differ in many (primarily, formal) ways, they are based on numerous joint democratic and humanistic principles that serve to achieve justice in the field of countering crime. The need to take legitimate response measures when the prosecutor exercises their discretionary powers is justified. It is concluded that abuse of the right to prosecution exists by public prosecutors in criminal proceedings both in Ukraine and in the United States. It is demonstrated that the methods of such abuses are virtually the same and lead to violations of the rights, freedoms, and legitimate interests of participants in criminal proceedings, harm justice, and lead to a loss of public confidence since the discretionary powers granted to the prosecutor are often directed to convict and punish a person instead of searching for the truth, establishing justice. The conducted study will contribute to the development of measures to prevent the prosecutors from abusing the rights granted to them

Keywords: prosecutor; discretionary powers; criminal prosecution; the "spirit" of the law; the task of criminal proceedings

Introduction

One of the participants in the criminal proceedings on the part of the prosecution is the prosecutor, who is charged with the duty of proof in criminal proceedings. The legislator has given the prosecutor broad discretionary powers to conduct criminal prosecution to implement it, which is the main activity of the prosecutor in criminal proceedings and, in a broad sense, begins with the start of entering relevant information about the commission of a criminal offence in the Unified register of pre-trial investigations (hereinafter referred to as the URPI) and ends with the application of a criminal penalty to the convicted person. The content of such activities is determined by the nature of criminal prosecution, since, according to the requirements of Part 2 of Article 37 of the Criminal Procedure Code (hereinafter referred to as the CPC of Ukraine) (2012), the prosecutor's powers are exercised in criminal proceedings from its beginning to its completion. Under US law, the prosecutor is also the main representative of the prosecution, who is charged with

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the duty of proof in criminal proceedings; for this, they are endowed with broad discretionary powers. Therefore, the study is based on a comparative analysis of law enforcement practices in Ukraine and the United States. According to the criminal procedure policy of the United States, a crime is mainly committed against society, and not against a person, so only the prosecutor, as a representative of society, has the right to decide whether to bring a person to criminal responsibility or not. Despite the different legal systems of these countries, prosecutors use the discretionary powers granted equally, contrary to the tasks of criminal proceedings, which negatively affects the established fairness in criminal proceedings.

In the field of legal literature, P.D. Guivan (2018) analysed the use of discretionary powers. The author devoted his paper to the analysis of the effectiveness of judicial discretion in the implementation of law enforcement activities. The criteria and main factors determining this area were considered in detail, and the need to develop approaches to judicial assessment of the proportionality of interference with citizens' rights was confirmed. Therewith, S. Kakhnovets (2021) examined the essence and importance of the prosecutor's view in criminal proceedings and the discretionary powers of the prosecutor in criminal proceedings in detail. This study delineates these concepts and defines the boundaries of prosecutorial review, draws parallels and identifies discrepancies between the discretionary powers of the prosecutor and judicial discretion in criminal proceedings. A. Voitenko (2023) noted the need for prosecutors to maintain political neutrality.

I. Malekh (2022) examined the theoretical and practical aspects of judicial discretion in criminal proceedings, defined the limits of judicial discretion, and characterised the manifestation of judicial discretion at different stages of criminal proceedings. These studies were used to confirm the need to limit the discretion of the prosecutor in the application of their discretionary powers and establish judicial control over their use. O. Torbas (2020) conducted important studies of the prosecutor's discretion, which led to the conclusion that it is wrong to limit the role of the prosecutor's discretion in criminal proceedings only to the function of prosecution. He considers discretion the power to make a decision, which the prosecutor uses throughout the entire criminal proceeding.

A.D. Sklansky (2017) highlights that in the criminal context, the state interest in ensuring the rules of professional conduct of the prosecutor is essential. The author examines examples of misconduct by prosecutors, in particular, the decisions they make when bringing charges and plea agreements. The author emphasises that the most remarkable feature of these important, sometimes vital decisions is that they are completely discretionary, and the most remarkable feature of these important, sometimes vital decisions is that they are completely discretionary. Therefore, plea agreements that are concluded by the prosecutor and violate the rights of a person cannot be concluded.

C.R. Skylar (2019) highlights the main problems in the work of prosecutors, including: the great power they possess, the powers they use, to the illegality of which they often resort, the punitive ideology that forms many of their actions, and their frequent organisational inertia. Considering these conclusions, the authors of this study analyse individual decisions of prosecutors that they make in the course of exercising their powers and highlight the main ways of prosecutors' powers abuse.

A thorough investigation of the problem of abuse of the prosecutor's authority was conducted by B.J. Casey (2023), who, using basic concrete examples, proved that the abuse of power by prosecutors leads to judicial errors, and the integrity of the US criminal justice system lies on the shoulders of the most influential players – prosecutors. The author researched the problems of prosecutors' use of their powers and mechanisms for taking response measures in case of abuse. The shortcomings of the prosecutor's discretion, which are not in its existence, but in the randomness and arbitrariness of its application, were emphasised. Therefore, it remains relevant to clarify the use of discretionary powers by the prosecutor at different stages of criminal proceedings since the criminal procedure legislation contains a considerable number of evaluative concepts and gaps in criminal regulation, which is the basis for possible abuses by the prosecutor. However, the amendments and additions to the legislation proposed in the literature aimed at eliminating the shortcomings of such regulation do not improve law enforcement.

As a rule, the prosecutor's exercise of discretionary powers is not given due attention because such powers are generally not controlled. It is considered that in the specified legal field, the prosecutor acts at their own discretion within the permitted limits and, therefore, cannot perform any actions that contradict the law. However, both in scientific circles and among the community of legal practitioners, there is concern about the lack of legal means of responding to the manifestations of the prosecutor's use of the right in their favour and the inability to control such manifestations of the prosecutor. As noted by J. Cox *et al.* (2021), prosecutors may be influenced by non-legal factors, in particular, when they decide how to proceed with criminal prosecution.

Therewith, as judicial practice shows, when a prosecutor exercises discretionary powers, these powers may be abused – the prosecutors act contrary to the assignment of the right granted to them, while not violating any established prohibitions. Thus, the purpose of this study is to analyse the activities of prosecutors to identify possible ways of abuse of their discretionary powers.

Materials and methods

The choice of scientific methods is primarily determined by its subject matter and the place of the analysed legal phenomenon in the system of related social phenomena. Abuse of the right to prosecution is assessed as a deviation from the civilised principles of justice and a violation of the rights not only of the accused and other participants in the process but also of society and the state in general.

The basis for the application of general and special scientific methods is dialectics. The dialectical approach to the analysed legal phenomenon consists in analysing the abuse of the right to accuse as a dynamic phenomenon that is in constant motion and change and is characterised by a complex of interrelated elements that together constitute a complex and systemic phenomenon. This approach involves considering many factors that determine the existence of abuse on the part of the prosecution. Therewith, attention is focused both on the determinants of abuse that are common to the legal systems of Ukraine and the United States and on those that are different and specific in the compared models of criminal justice. Abuse of the right to prosecution

is investigated using a number of general scientific methods. Among them are the following: abstraction (for an imaginary departure from insubstantial differences in legislation and law enforcement practice of Ukraine and the United States), analysis and synthesis (the use of this method allows considering this phenomenon as an integral and relatively separate phenomenon and simultaneously as a component of a broader concept of abuse of law), systematic (the use of which allowed considering elements of abuse of the right to accuse and the relationship between such elements), modelling (to build an optimal model of countering the abuse of the right to accuse, which includes positive features taken for comparison and examination of national means of preventing this abuse).

The authors also used special scientific methods of research, which is legal in its content. Among them: the dogmatic method (through which the content of legal norms and law enforcement positions was established), the method of comparative law (to compare common and different in the legislation and law enforcement practice of Ukraine and the United States), legal forecasting (using this method, it was assumed that the proposed measures to counteract the abuse of the right to accuse would be applied in practice and ensure respect for human rights and ideals of modern justice), formal-legal (to establish the characteristic features and the legal consequences of abuse of the right to accuse from the standpoint of respect for human rights). These and other methods were used in their relationship to process the source database. The current Ukrainian legislation, Criminal Procedural Code of Ukraine (2012), Law of Ukraine "On the Prosecutor's Office" (2014) and the legal positions of the U.S. Supreme Court in the Brady v. Maryland (1963), United States v. Giglio (1972), United States v. Agurs (1976), United States v. Bagley (1985) are analysed to compare and consider best practices.

Results and discussion

An analysis of the current legislation and judicial practice has established that when a prosecutor exercises discretionary powers to conduct accusatory activities, hypothetically, there are opportunities to abuse their right to make the following decisions on: 1) initiating the issue of starting a charge; 2) sending criminal proceedings to the court (including appealing decisions to a higher instance); 3) changing and rejecting the charge; 4) applying an alternative to criminal prosecution: concluding a plea agreement or releasing a person from criminal liability. Further, the most common ways of abuse of the prosecutor's right to charge are analysed.

Initiating the issue of starting a pre-trial investigation

According to the legislation of Ukraine, the prosecutor must enter information in the unified state register of legal entities and initiate a pre-trial investigation based on the submitted application for a criminal offence or their own identification of circumstances that may indicate the commission of such an offence from any source. According to Paragraph 1 of Part 2 of Article 36 of the CPC of Ukraine (2012), the prosecutor's powers include the right to initiate a pre-trial investigation if there are grounds provided for in the CPC of Ukraine. The adoption of this particular decision affects the further development of criminal procedural legal relations, the application of measures to ensure criminal proceedings, and the restriction of constitutional human rights.

Consequently, the legislator grants the prosecutor the right to independently initiate criminal proceedings, both in relation to the fact of the committed criminal offence (in rem) and in relation to a specific person (*in personam*). The granted right allows the prosecutor, at their own discretion, to determine the sufficiency of data confirming the commission of a criminal offence and thus initiate criminal prosecution. Therewith, an application for a criminal offence, based on which information is entered in the unified state register of legal entities, may be filed by a person (applicant) who may make a mistake in assessing the act or know in advance that a potentially suspected person cannot be brought to criminal responsibility due to the absence of their guilt. Despite this, the applicant insists on the need for their criminal prosecution.

In such a case, the prosecutor must ensure that they have good reasons to start criminal proceedings and reasonable expectations that the suspicion (accusation) can be proved in the future. However, such criminal proceedings can also be initiated for the purpose of future deliberate violation of procedural rules, improper use of legal instruments with the intention of scaring someone using a summons; restrict the freedom of the free press, encouraging the court to apply a particular measure of restraint; create restrictions on the use of property by seizing, etc. Therefore, the initiation of criminal prosecution, which provides for the possibility of using the criminal process for a different purpose than that determined by the objectives of criminal proceedings, is an abuse of the process and is subject to termination. The use of the judicial and legal system for inappropriate or illegal purposes is considered an abuse of process or an abuse of procedure and indicates the baselessness of criminal prosecution. Therefore, the concept of preventing the use of the process provides for preventing the use of the judicial system in a way that contradicts its fundamental values, goals, and principles. They can be divided into the following categories:

- proceedings that would lead to an unfair charge;
- legal actions that are offensive or abusive and therefore may be unfair in a broad sense;
- proceedings initiated for the purpose of arrest;
- proceedings that otherwise lead to the creation of a negative reputation in relation to the administration of justice.

Under US law, one of the elements of the right to charge is the right of the prosecutor to start (initiate) criminal proceedings. In the case of Pellegrino Food Products Co v. City of Warren (2000), it is stated that misuse of judicial procedure is considered an inappropriate use of civil or criminal proceedings due to an unintentional, malicious, or erroneous purpose. Malicious and deliberate abuse constitutes the use of civil or criminal proceedings that are not related to the proceedings initiated. Abuse of judicial procedure includes procedural actions committed with malicious intent and aimed at delaying the administration of justice. An example of such actions is the initiation of criminal proceedings in the absence of any legal basis to obtain a certain benefit through intimidation, the use of legal tricks, or an unfair, illegal advantage. Recognition of what exactly is unfair or wrong is conducted by the court on the basis of the factual circumstances of each case. The key components of the abuse of judicial procedure are the malicious and knowingly incorrect use of criminal proceedings, which does not correlate with the initiated legal proceedings, and the person who commits

such abuse is only aiming to achieve a certain goal through legal proceedings. Therefore, abuse of the judicial procedure is a deliberate violation of the legal rights of other persons.

For example, a case when a district judge in the United States decided that Donald Trump should pay almost USD 1 million fine for providing unconfirmed allegations of rigging the 2016 presidential election by former Secretary of State Hillary Clinton can be considered. The court identified that the lawsuit was meaningless and believed that Trump used the court for political purposes, demonstrating abuse of the rights. The case was evidently inadequate as a legal requirement and should not have been dealt with. No reasonable lawyer would have brought such a claim because it was clear from the very beginning that it was aimed at achieving political goals (Lowell, 2023). This case is a vivid example of the use of a judicial procedure contrary to its purpose and should be considered when determining certain actions as an abuse of process.

Bringing a criminal charge by a prosecutor as the moment when a person is brought to criminal responsibility

One of the important stages of criminal proceedings is the moment when the prosecutor, on the basis of the collected evidence, decides whether to bring the person who, in their opinion, committed a criminal offence to criminal responsibility. This point is important because, after its procedural registration (notification of suspicion), the corresponding legal consequences occur for a person. In addition, according to the provisions of Part 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), at the time of notification of suspicion, a "criminal charge" is brought. It is not for nothing that this special decision is given to the prosecutor since, according to the concept of the CPC of Ukraine, it is the prosecutor who exercises procedural management of all pre-trial investigations and further (during the trial) assumes the role of the sole representative of the state and responsibility for the legality and validity of bringing a person to criminal responsibility (Criminal Procedural Code of Ukraine, 2012).

Given that the prosecution is based on the evidence collected and on the prosecutor's internal conviction as to their belonging, admissibility, reliability, and their totality – sufficiency to convince that the accused is guilty, such powers are nevertheless characterised by substantial discretion. In addition, to inform a person about suspicion of committing a criminal offence or not to report it is one of the most substantial of the many important powers of the prosecutor and, at the same time, something that prosecutors often abuse. This belief follows from the fact that the decisions of the procedural prosecutor are relatively unlimited and subject to slight supervision by the Supreme prosecutor and control by the investigating judge due to complaints from participants in the proceedings. The procedural prosecutor directs the entire course of the pre-trial investigation and, at their request, makes a decision on reporting and bringing charges.

The announcement of suspicion marks the beginning of legal prosecution of a particular person, and according to Article 246 of the CPC of Ukraine, this must necessarily happen if a person is detained where a criminal offence is committed or immediately after it is committed. This also applies when choosing one of the preventive measures provided for by the CPC of Ukraine against this person and if there is sufficient evidence indicating the possible involvement of this person in the commission of a criminal offence. It is the latter basis that gives the prosecutor power, which is the basis for monitoring the entire system of criminal proceedings during a pre-trial investigation. The prosecutor, at their own discretion, can manage the entire outcome of the process already through the possibility of notifying or not notifying a person of suspicion at a particular stage of the pre-trial investigation. Therefore, there is a lack of transparency when it comes to making this decision (Criminal Procedural Code of Ukraine, 2012).

According to J.B. Casey (2023), the decision on charges is made at the discretion of the prosecutor and is not subject to review. This power results in prosecutors having more influence than any other official in the criminal justice system. The factors that are the basis for making such decisions are behind "closed doors". There are absolutely no requirements for the prosecutor to substantiate their arguments. Most prosecutor's offices do not even have uniform standards that guide such decisions. Often, decisions on bringing charges are made considering special circumstances (if any). For example, the prosecutor discovered that the accused has a criminal record or other information that can be used.

Former U.S. federal prosecutor P. Bharara (2019) believes that a criminal charge changes lives forever, even if a person is found not guilty or acquitted on appeal. It is not enough just to get a fair trial in court – during this time, the defendant may become an outcast, bankrupt, unemployed, or unable to be hired. Therefore, the decision to bring charges should be as fair and honest as possible. As a consequence, notably, only for the result of a full, comprehensive and impartial investigation, on the basis of appropriate, permissible, and sufficient evidence, the prosecutor should make a decision on bringing a person to criminal responsibility.

It is impossible to underestimate the importance of this discretion because the prosecutor can manage the entire outcome of the process at will already through a report of suspicion. However, in the current criminal procedure legislation (Article 94) (Criminal Procedural Code of Ukraine, 2012), the legislator sets the limits of the prosecutor's discretion. The prosecutor, guided by an internal conviction based on a thorough, complete, and impartial investigation of all aspects of criminal proceedings and adhering to the law, analyses each piece of evidence in terms of its relevance, admissibility, and reliability. The totality of the collected evidence is evaluated from the standpoint of its sufficiency and interrelation for making an appropriate procedural decision. Thus, it is reasonable to agree with A. Lapkin (2020), stating that expanding the discretion of law enforcement agencies can increase the risks of abuse and corruption. Such freedom must be limited, and these restrictions are determined by: 1) the law, which sets out possible options for alternative actions and criteria for their choice; 2) the tasks to which the prosecutor's activity is aimed; 3) reasonableness and common sense, which, combined with the professional experience of the prosecutor and other factors, ensure the use of discretion within the limits that determine the most optimal behaviour; 4) professional ethics, which forms the internal attitude of the prosecutor, according to which they exercise their discretion.

Procedure and conditions for concluding a plea agreement

The legislation of Ukraine gives the prosecutor the right to apply alternatives to criminal prosecution of a person who

has committed a criminal offence, in particular: release of the person from criminal liability, closure of criminal proceedings on the grounds defined by law, the refusal of charges; conclusion of a plea agreement.

In general, the institution of agreements in national and US legislation aims to speed up the criminal process and promptly resolve criminal proceedings at minimal economic costs. However, the desire for such savings leads to human rights violations, which are allowed in the conclusion of agreements, in particular plea agreements between the prosecutor and the suspect, the accused. Initiating the issue of concluding a transaction prosecutors quite often use the opportunity to avoid the obligation of comprehensive, complete and objective proof of the guilt of the suspect (accused) before the court due to insufficient evidence or lack of it for the undoubted formation of a conclusion about their guilt. Thus, the prosecutor uses the authority to conclude a transaction as an effective way, if not to deprive, then at least to simplify the prosecutor's obligation to prove the guilt of the suspect (accused) under the procedure established by law. As an auxiliary means for this, the following provisions of the CPC of Ukraine are used: 1) depriving the suspect (accused) of the right to a trial, during which the prosecutor is obliged to prove every circumstance in relation to criminal proceedings, including ensuring the appearance of questioning prosecution witnesses during the trial, filing a petition for their summons and providing evidence testifying in their favour (Part 2 of Article 473); 2) prohibiting the prosecutor, including a higher-level prosecutor, from appealing the court verdict adopted based on an agreement (Part 4 of Article 393, Part 2 of Article 473) (Criminal Procedural Code of Ukraine, 2012).

Prosecutors at the first stages of the investigation or even during the entry of information into the unified state register of legal entities deliberately overestimate (aggravate) the qualification of the committed criminal offence with the hope of bargaining about "underestimating" the qualification or making concessions to the suspect (accused) to admit guilt in the commission of the offence to avoid the obligation to prove the guilt of the suspect (accused), due to insufficient evidence. Thus, prosecutors make a field of retreat for themselves for future tactics of Investigation and prosecution. Such behaviour is inappropriate and unacceptable for any reason, but at first glance, there are no violations of the provisions of the CPC of Ukraine. Most importantly, it allows such behaviour of prosecutors to remain hidden from view.

The analysis of law enforcement practice gives grounds to identify a number of ways for a prosecutor to abuse the right when concluding a plea agreement, using manipulations with the criminal legal qualification of the committed act. These include, in particular, the following: incriminating a suspect (accused) of an article of the Criminal Code of Ukraine (2001) for a more serious offence than the suspect (accused) actually committed; incriminating a part of the article of the Criminal Code of Ukraine that contains qualifying or especially qualifying signs of an offence; non-application of norms that provide for circumstances that exclude criminality of an act; the use of various forms of complicity, etc.

On the one hand, such actions of the prosecutor do not go beyond the limits of the granted right to conclude a plea, and on the other hand, such a right is used not for the purpose of procedural economy but for freeing oneself from the obligation of comprehensive, complete, and objective proof, and encouraging the suspect (accused) to conclude a deal, which is a clear abuse of such a right since it is not used for the purpose for which it is granted. Such abuses by prosecutors when qualifying an act at the first stages of the investigation are not a clear violation of the rights of a suspect or accused, but they lead to certain consequences that affect the violation of their rights and freedoms in the future, in particular: the correct definition of jurisdiction depends on the correct qualification; depending on the severity of a criminal offense, the term of pre-trial investigation changes; the type of application of a preventive measure and its term depends on the qualification of an offense in severity; the dependence of qualification on the severity of a criminal offense and the severity of punishment.

"Qualification with a margin" deserves an exceptionally negative assessment, when the legal assessment of the act allows "exaggeration" of qualification under a more serious article. This situation runs counter to the fundamental principle of criminal law qualification – its accuracy. Therefore, the accuracy of qualification is an independent value. It is precisely with accuracy that its legality and correctness are connected. Ultimately, even an inaccurate qualification made at the initial stages (even if the final court decision is still correct, corresponding to the factual circumstances of the case), in particular, one in which the act is qualified in the wrong structural part of the rule of law, can by no means be considered either correct or fair. As already noted, qualification has an impact on the resolution of many legal issues, and irregularities in it affect both the position of the suspect (accused) and the position of their accomplices. In the end, the accuracy of criminal law qualification is the accuracy of both social and legal assessment of the committed crime. This means that the approach of those prosecutors who consistently defend the need to achieve what practitioners call "purity of qualification" is morally and professionally mature (Khitro *et al.*, 2019). A similar problem of prosecutors abusing their right to enter into transactions is one of the most acute in the United States. As noted by the former assistant prosecutor of the United States in New Jersey, American professor W.T. Pizzi (1999), a prosecutor can add new charges to an indictment to "raise the stakes" and increase the risk of an adverse outcome in court for an accused who wanted a full trial. For example, sometimes, a prosecutor can dramatically increase the range of punishment for an accused person by adding additional charges for committing a violent crime or for committing a crime against an elderly person, against a person who was in a dependent or helpless state, or against a disabled person. Such points dramatically increase the penalty imposed on them if they are convicted by a court, which is one of the ways to put pressure on the accused to conclude plea agreements. Thus, the prosecutor convinces the accused that this way, they can avoid a more severe sentence. Therewith, W.T. Pizzi (1999) notes that in the United States, the prosecutor's wide margin of discretion and plea practices have led to constant complaints that prosecutors overstate charges to gain some leverage to negotiate before a plea is concluded and thus encourage a suspect to plead guilty.

U.S. federal prosecutors are using coercive plea deal tactics to scare people and force them to make a decision they wouldn't otherwise have made. For example, prosecutors have set up specific procedural mechanisms for pleading guilty by further failing to fulfil a promise to delay a sentence or treat drug addiction and improve mental health in

the hope that their cases will remain pending (Casey, 2023). Most of these charges in such cases would never stand up to the scrutiny of the adversarial process. Such behaviour can be qualified as a factor in the pathology of a plea bargain. Despite this, the US Supreme Court , in the case of Chaffin v. Stynchcombe (1973), noted that threats may force some defendants to withdraw from the trial, but "imposing these difficult decisions is an unavoidable attribute of any legitimate system that tolerates and encourages negotiation to make deals". It is difficult to agree that Ukrainian society would accept such an approach in the criminal proceedings of Ukraine.

Such side effects of the institution of plea agreements and the abuse by prosecutors of their rights at their conclusion carry public despondency towards the state in the context of protecting their rights, freedoms, and legitimate interests since, in this way, justice would be conducted not by the court but by the prosecutor. The decision of an innocent defendant to plead guilty in exchange for a less severe sentence entails losses for society, even if the defendant prefers such an outcome, as it undermines the focus of the guilt determination process and public confidence in the meaning of the criminal conviction.

The negative consequences for criminal justice in the United States are also palpable due to prosecutors' use of their broad powers, which are directed to convicting a person instead of achieving justice. As noted by A.J. Davis (2012), wealthy defendants often enjoy more lenient plea agreements than low-income defendants; potential suspects in cases involving rich victims are harassed more harshly than poor ones. This daily practice of prosecutors leads to unfairness in criminal justice and abuse of their rights in implementing criminal prosecution.

One example of a prosecutor's abuse of their right to be charged when entering into a plea agreement may be, in particular, situations where the prosecutor refuses to enter into a plea agreement despite the fact that the suspect/accused offers and, most importantly, fulfils obligations that are beneficial in view of satisfying the public interest (for example, informs law enforcement officers about their role in the criminal offence under investigation, perhaps by telling them about such substantial facts and circumstances that they were not previously aware of, indicating their accomplices, telling them about their role in the act under investigation, helping to uncover other criminal offences), hoping, in return, for certain concessions on their part (in particular, the appointment of a penalty agreed by the parties on the basis of an agreement submitted to the court). In fact, the legislator provides prosecutors with such opportunities for abuse because: a) the prosecutor does not have an obligation to conclude such an agreement, even if all the circumstances indicate the expediency and possibility of its conclusion, b) a large number of facts that can be considered when making a decision to conclude an agreement are formulated using evaluative (and in fact, "elusive", "gutta-percha") concepts, their interpretation depends entirely on the prosecutor (Kislitsyna, 2018; Kakhnovets, 2021).

It appears that to defend the interests of the suspect/accused, it is necessary to proceed as follows: this decision of the prosecutor (to refuse to satisfy the request for an agreement) can be appealed to a higher prosecutor. The latter, having concluded a transaction, can cancel the decision of the lower prosecutor, giving the subordinate instructions to conclude a plea agreement. One of the conditions for concluding an agreement (according to the provisions of Part 6 of Article 474 of the CPC of Ukraine) is its voluntary nature (Criminal Procedural Code of Ukraine, 2012). The voluntary nature of such agreements is traditionally discussed due to the presence or absence of coercion (including psychological) against private participants in criminal proceedings who take part in it on an unprofessional basis. However, the question of the voluntary nature of the transaction may arise due to the fact that such a decision will be made by the lower prosecutor due to the influence of the power of their head, in fact, not according to their personal desire but under the influence of the appropriate procedural control of the chief.

Such a situation (when a higher-level prosecutor orders the procedural head to conclude an agreement in criminal proceedings) should not be assessed as not voluntary in its conclusion. The fact is that the prosecutor, being a party to a plea agreement, is also a representative of the state, an official. Representatives of state bodies do not have the rights in their "pure" form, those rights are mandatory for their use. Therefore, in such situations, the court should not refuse to approve the agreement only because the parties allegedly acted involuntarily when concluding it.

The plea agreement institution has vital advantages in procedural economy, but it is essential to consider its shortcomings, such as: the possibility of manipulating the judicial system and breaching legal and constitutional principles; the risk of stimulating abuse of power by prosecutors and judges; the creation of a situation where a lawyer may be tempted to serve their own interests rather than the interests of the accused; the possible imposition of lenient penalties on the offender; the increased risk of unlawful conviction (Potrebic Piccinato, 2004).

These examples allow the decision that a plea agreement should be concluded considering a comprehensive, complete, and unbiased study of all the circumstances of criminal proceedings as one of the important elements of the basis for the legality of criminal proceedings (Part 2 of Article 9) (Criminal Procedural Code of Ukraine, 2012). Limiting the appeal of a court verdict on the basis of a plea agreement does not contribute to the effective protection of the rights of the suspect (accused), as discussed in more detail in the paper by H.D. Boreiko (2022). In addition, limiting such an appeal is one of the prerequisites for abuse by the prosecutor when entering into the relevant agreement.

Concealment (failure to provide) by the prosecutor of exculpatory evidence

One of the main principles of criminal proceedings is the principle of legality, which requires accurate and unwavering implementation of laws by pre-trial Investigation, inquiry, prosecutor's office, and court bodies. Among other definitions of this principle, it should be considered that the prosecutor, the head of the pre-trial investigation body, and the investigator must conduct a comprehensive, complete, and impartial investigation of the circumstances of criminal proceedings. They must identify both circumstances that indicate the commission of a crime and those that can justify the suspect or accused. In addition, they must consider circumstances that may mitigate or aggravate the punishment, provide them with a proper legal assessment and guarantee the adoption of legal and impartial decisions (Part 2 of Article 9) (Criminal Procedural Code of Ukraine, 2012). In addition, this principle is reflected in special laws, in particular,

in Article 3 of the Law of Ukraine "On the Prosecutor's Office" (2014), it is established that fairness, impartiality, and objectivity are among the foundations of the prosecutor's office's activities.

The completeness and impartiality of the establishment of all the facts and circumstances covered by the subject of proof (Articles 91, 485, 505 of CPC of Ukraine) is the first and foremost procedural means of establishing material (objective) truth, and the corresponding duty of the subjects conducting criminal proceedings is its procedural guarantee (Pikh, 2021). Therewith, impartiality is characterised primarily by the prosecutor's lack of a pre-formed vision and any stereotypes about the participants in criminal proceedings and the process in general. Objectivity in the investigation of the circumstances of criminal proceedings implies that the investigator and the prosecutor should perform procedural actions and make decisions only based on criteria defined by the CPC and factual data, avoiding accusatory evasion and personal interest in resolving the case (Hlynska, 2017). In other words, it implies their duty to identify both circumstances that indicate the commission of a crime and those that can justify the suspect (accused), including those that can mitigate or aggravate their punishment (the principle of accusatory bias).

One of the main reasons for the prosecutor's bias is the unwillingness to bear responsibility in the future for violations of human rights and freedoms during criminal proceedings in the event of improper performance of their official duties, in particular, unjustified detention of a person, illegal notification of suspicion, gross violation of human rights during investigative actions, which results in the recognition of evidence as inadmissible, and, in some cases, an acquittal, etc. As a result, the prosecutor is not interested in collecting evidence that can justify a person because this will confirm incompetence and violation and possibly the need to compensate for damage caused to a person by illegal actions. Such possible hypothetical negative consequences for the prosecutor are one of the reasons for the factual refusal to collect evidence justifying the person or failure to provide them for review to the defence if they are received. However, failure to reveal (if any) or to provide (conceal) the specified evidence usually contributes to the formation of a false belief about a person's guilt. Exculpatory evidence is an obstacle to proving a person's guilt, so the prosecutor is not interested in providing it because this can destroy their charge. In general, failure to comply with this requirement and the tasks of the prosecutor's activity ruins the criminal justice system and hinders the achievement of the tasks of criminal proceedings (Article 2) (Criminal Procedural Code of Ukraine, 2012). A similar problem of unfair behaviour exists in the activities of prosecutors in the United States. The duty of the prosecutor to provide the defence and the court with evidence that justifies the accused is enshrined in the Criminal Justice Standards of the US Bar Association (Criminal Justice Standard, 2017), which have been in force since 1968. They provide that the primary duty of the prosecutor is to seek justice within the framework of the law and not just to achieve a conviction. The prosecutor serves the public interest and must honestly and carefully form their judgments to enhance (ensure) public safety, both by prosecuting appropriate criminal charges with due severity and by applying discretionary powers, refusing to hold a person criminally liable in appropriate circumstances. The prosecutor must seek a legitimate opportunity to protect the innocent and convict the guilty, considering the interests of victims and witnesses and respecting the constitutional and legal rights of all persons, including suspects and accused persons.

According to American lawyers, the adversarial nature of the American criminal justice system is based on the concept that the parties to the proceedings – the prosecution and the defence – will argue facts and law from different points of view (Casey, 2023). However, the role of a prosecutor is more complex than just a one-sided lawyer. The prosecutor is a representative of a sovereign government, and it is their duty under oath to seek justice, not to win cases or convict every defendant. However, a prosecutor who verifies potentially exculpatory evidence should review the evidence not from the prosecutor's standpoint but from the lawyer's point of view. Thus, back in 1963 in the United States, in the case of Brady v. Maryland (1963), the accused required prosecutors to share with a lawyer any evidence that was "potentially exculpatory" and "essential" to establish the defendant's guilt or innocence. The decision of the Supreme Court of the United States sets out specific instructions for prosecutors to transfer "all favourable information" to the defence party if they have it (Table 1). Therewith, it is noted that society benefits not only when the perpetrators are convicted but also when the criminal process is fair. As the practice of the US Supreme Court shows, this is not the only case in which the court held a position on the duty of the prosecutor to provide the defence with the exculpatory evidence it received (Table 1).

Table 1. Cases in which the US Supreme Court expressed its position on the duty of the prosecutor to provide the defence with the exculpatory evidence it received

Year	Case	Resolution
1963	Brady v. Maryland	The U.S. Supreme Court, in this case, ruled that the prosecution's concealment of evidence in favour of the accused upon request violates due process if the evidence is essential either for a guilty plea or for punishment, regardless of the good faith of the prosecution
1972	United States v. Giglio	The Supreme Court ruled that the obligation to hand over exculpatory evidence extended to all prosecutors in the office, not just the prosecutor who was examining (conducting) a particular case.
1976	United States v. Agurs	The Supreme Court ruled that the prosecutor must hand over exculpatory evidence, even if the defence does not request it

Table 1, Continued

Year	Case	Resolution
1985	United States v. Bagley	The Supreme Court determined that physical evidence as those for which there is a "reasonable probability that, if the evidence had been disclosed", the outcome of the proceedings would have been different, so it should be handed over (read) to the defence party
1995	Kyles v. Whitley	The Supreme Court ruled that the obligation to hand over exculpatory evidence extended to all prosecutors in the office, not just the prosecutor examining (conducting) a particular case

Source: compiled by the author based on the decisions of the US Supreme Court in the cases Brady v. Maryland (1963), United States v. Giglio (1972), United States v. Agurs (1976), United States v. Bagley (1985), Kyles v. Whitley (1995)

Thus, despite the statutory duty of the prosecutor to establish and present to the court all the evidence that is the subject of proof (indictment and acquittal), still prosecutors in both Ukraine and the United States use the procedural opportunities to provide only those evidence that support the position of the prosecution. However, the establishment of the truth in the case does not take place and, accordingly, fair justice is not conducted.

Conclusions

One of the subjects of these legal relations is the subject of power – the prosecutor, whose main procedural function is to conduct criminal prosecution. The prosecutor has a wide range of discretionary powers, the scope of which is insufficiently controlled by procedural means to exercise this function. This leads to the abuse by prosecutors of their powers, in particular: the right to prosecution by unjustifiably initiating the commencement of a pre-trial investigation (commencement of criminal prosecution); raising suspicion and charges; concluding a plea agreement; the prosecutor's concealment of exculpatory evidence. According to judicial practice, such abuses are conducted by both Ukrainian and US prosecutors. The nature of the professional deformation of criminal justice officials, the goals they are trying to achieve in the course of abuse of their professional rights, and the public interest in preventing such abuse in Ukraine and the United States are, to some extent, identical. Some criminal procedure institutions recently introduced in Ukraine, such as the Institute of plea agreements, are relatively new for Ukraine, but for the United States – on the contrary- are traditional and well-established. Therewith, the use of such an institution leads to manipulation of the process, and it is used not to establish the truth in the case but for quick decision-making. Despite the comments made by researchers of the last century, the Institute of plea agreements still remains unresolved.

The analysis of the prosecutor's discretionary powers showed that it is possible to use them contrary to the assignment of the powers granted without going beyond the limits defined by law. Such powers are exercised through the prosecutor's discretion, which is applied arbitrarily and accidentally, not for the purpose of performing the tasks of criminal proceedings. Thus, it is determined that the abuse of the right in criminal proceedings provides for the exercise of the right by the subject of criminal procedure relations contrary to the content of this right and its purpose while simultaneously acting within the limits defined by law.

One of the measures to prevent the prosecutor from abusing their rights in these procedural situations would be to provide for a legislative definition of the concept of "abuse of the right" and legitimate opportunities to respond to its manifestations. Further research on the problem of abuse by the prosecutor of the right to charge will consist of identifying the shortcomings of the regulatory regulation of the prosecutor's powers, which create hypothetical opportunities for abuse of the right, clear powers of the court and other bodies regarding the legal response to the prosecutor who abuses this right.

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None.

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Зловживання правом на звинувачення у кримінальному провадженні: досвід України та США

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Анотація. Недобросовісне застосування дискреційних повноважень прокурора призводить до порушень прав, свобод та законних інтересів особи. Вивчення основних способів зловживання правом на звинувачення допоможе запобігати негативним проявам у кримінальному провадженні, які перешкоджають виконанню його завдань. Мета статті – визначити конкретні способи недоброчесного поводження прокурорів в Україні та США під час кримінального провадження. У роботі використано комплекс методів наукового пізнання: абстрагування, аналіз, синтез, порівняльно-правовий, формально-юридичний, метод моделювання. Досліджено окремі аспекти здійснення кримінального переслідування як основної процесуальної функції прокурора. Проаналізовано основні структурні елементи діяльності прокурора в здійсненні кримінального переслідування та способи зловживання дискреційними повноваженнями під час реалізації цієї функції. Наведено приклади зловживань правом на звинувачення як в Україні, так і в США. Розглянуто окремі кримінальні справи, у яких вищі судові інстанції зробили висновки про те, що прокурор зловживає своїм правом на звинувачення (кримінальне переслідування). Для порівняння та врахування передового досвіду використано законодавство та правові позиції вищої судової інстанції США. Виснувано, що хоча американська та українська моделі кримінальної юстиції, зовні й відрізняються за багатьма (насамперед, формальними) ознаками, проте базуються на численних спільних демократичних та гуманістичних засадах, які служать досягненню справедливості в сфері протидії злочинності. Обґрунтовано необхідність вжити легітимних заходів реагування, коли прокурор реалізує свої дискреційні повноваження. Зроблено висновок, що зловживання правом на звинувачення допускаються публічними обвинувачами (прокурорами) у кримінальних провадженнях як в Україні, так і в США. Продемонстровано, що способи таких зловживань фактично однакові та призводять до порушень прав, свобод та законних інтересів учасників кримінального провадження, шкодять правосуддю і призводять до втрати довіри громадськості, оскільки надані прокурору дискреційні повноваження нерідко спрямовуються на засудження і покарання особи замість пошуку істини, встановлення справедливості. Проведене дослідження сприятиме розробленню заходів щодо запобігання можливостям з боку прокурора зловживати наданими йому правами

Ключові слова: прокурор; дискреційні повноваження; кримінальне переслідування; «дух» закону; завдання кримінального провадження

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Business criminal investigation: Foreign experience and legal regulation in Ukraine

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Abstract. The research relevance is determined by the need to reveal effective methods and strategies for investigating business-related criminal offences to ensure an effective fight against corruption and legal security in the economy. The study's objectives are to identify optimal strategies and tools, as well as to develop recommendations for improving legal regulation in Ukraine. The hermeneutic method, comparative legal method, and case study method were used in the study. The analysis of the Criminal Code of Ukraine, in terms of crimes in economic activity, revealed the main difficulties that exist in the investigation of economic crimes in Ukraine, such as gaps in criminal legislation and insufficient level of efficiency of investigations due to corruption of law enforcement agencies and business representatives. An analysis of the experience of investigating criminal offences in business activities in Germany, the USA, the UK, and the Republic of Lithuania has made it possible to conclude that there are similarities and differences in the legal acts on the investigation of criminal offences in the business sphere, the structure of specialised bodies and the powers of persons involved in the investigation of such offences. This analysis helped to identify the specifics of foreign approaches to certain aspects of investigations, such as anti-corruption bodies and financial monitoring. The effectiveness of investigation systems in other countries is significantly different, as they have more systematic legislation, and a clear structure of law enforcement agencies and special agencies dealing exclusively with economic crimes, which in turn increases the percentage of solving the relevant crimes. The author suggests possible ways to improve the legislation and practice of investigating relevant crimes. The research on this topic brings new approaches and practical conclusions to science, contributing to the improvement of investigation strategies strengthening the legal framework for combating economic crime and increasing the effectiveness of law enforcement measures in the context of the business sector

Keywords: business activities; corruption offences; tax and fee evasion; monopoly; money circulation; investigative search operations

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Introduction

The economy is the main sphere of human activity, as the basic principles of the economic system enshrined in the Constitution of Ukraine (1996) are developed through the definition of economic rights. The Basic Law of Ukraine includes a limited list of such rights, in particular, highlighting the importance of the right to entrepreneurial activity that is legal. The research necessity is expressed in the importance of studying and determining the optimal methods and strategies for investigating criminal offences committed in the field of business activity to effectively combat corruption and guarantee legal stability in the economy. The research problem includes several complex aspects and issues, such as ineffective investigation, corruption risks, and the need to improve legislation. The study of criminal offences in the field of entrepreneurship may face the problems of ineffective investigation methods and strategies, which leads to a low level of detection of such offences. It is worth noting that the business sector often faces corruption challenges, and ineffective investigation increases the risks of corruption and impunity. In addition, the study identifies problems and gaps in the legislation related to the investigation of criminal offences in the field of business and identifies the need for its improvement.

V. Sysoieva (2020) noted that the market economic system of Ukraine has its peculiarities, which are due to the remnants of administrative command management in the modern economy and the lack of relevant experience in state regulation of economic processes. The differences between market conditions and political and legal regulation of business create gaps that facilitate criminal behaviour in economic activities and complicate the national fight against crime. This problem has arisen as a result of an unfavourable market-oriented economic system. In addition, the very process of transformation, which is typical for Ukraine's transitional economy, included mechanisms for the formation of the shadow sector, which led to the widespread spread of this phenomenon. However, the author does not provide any proposals and/or strategies for combating crime in the economic sphere.

S. Cherniavskyi (2023) notes that significant levels of criminalisation and corruption in economic relations pose a serious threat to the national interests and security of the country. The relevant risks have an impact on the nature of crimes committed in business activities, changing the structure, structure, and style of crime. This issue is primarily relevant in the context of long-term law enforcement reforms, decriminalisation of business sectors, large-scale military invasion, and the expansion of the territories under the temporary control of the Russian army. The situation is complicated by the outdated scientific and advanced methods of investigating crimes in the field of economic activity, insufficient interaction between law enforcement agencies, the backwardness of the legislative framework and sectoral (intersectoral) regulations, including limited access. It is worth noting that the author does not provide methods for combating crime in the business sector.

S. Trach (2019) determined that the most effective way to investigate criminal offences in business activities is to cooperate with all bodies conducting pre-trial investigations and groups providing expert opinions. The author substantiates that effective cooperation in the study of criminal acts in the course of business involves the necessary participation of security structures with the allocation of mandatory material and financial resources. However, the author does not provide any examples of investigation of criminal offences in business activities in other countries.

O. Dudorov and R. Movchan (2020) devoted their research to the study of trends in the development of Ukrainian legislation in the field of liability for economic criminal offences since 2015. It is worth noting that the legislator continues to unreasonably favour special (temporary) criminal law restrictions and exaggerate the repressive effect of these restrictions, considering them as factors that worsen the business environment and impede the normal development of economic relations. However, scholars have not provided a comparative analysis of the application of the relevant legal provisions in the international space.

V.K. Zherdiev and T. Yatsyk (2023) analysed forensic information on criminal offences in the field of economic activity committed with forged documents. The study of the investigation practice of the National Police of Ukraine showed that the most common fact is the forgery of documents regarding the commission and concealment of criminal offences. The author's general conclusion is that the typical ways of concealing illegal economic activity are lack of mandatory documentation required by law for certain types of economic activity and keeping unofficial records. However, the author does not provide any strategies for eliminating legislative deficiencies to facilitate the successful investigation of criminal offences in economic activity.

The research aims to study the international experience in the field of investigation of criminal offences in the field of entrepreneurship to identify optimal strategies and tools and to develop recommendations for improving legal regulation in Ukraine. The study on the investigation of criminal offences in the field of entrepreneurial activity has the following objectives. The first objective of the study is to thoroughly analyse the current legislation of Ukraine aimed at investigating criminal offences in the field of entrepreneurship to identify gaps, shortcomings, and opportunities for further improvement. The second objective is to conduct a detailed review of international experience in the investigation of business-related criminal offences to identify best practices and successful strategies. The objective of the third task is to develop recommendations for the implementation of best practices, which is to develop specific steps to improve the system of investigation of criminal offences in the field of business in Ukraine based on the findings of international experience and analysis of Ukrainian legislation.

Materials and methods

The subject matter of the study is the investigation of criminal offences arising in the field of entrepreneurial activity. The following materials were used in the study: Ukrainian legislation relating to criminal aspects of business activity, namely: Criminal Code of Ukraine (2001), Criminal Procedure Code of Ukraine (2012), Law of Ukraine "On Licensing of Types of Economic Activity" (2015), Law of Ukraine No. 698-XII "About Entrepreneurship" (1991), Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Regarding Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" (2015), Law of Ukraine "Bureau of Economic Security of Ukraine" (2021), Law of Ukraine "On the National Agency of Ukraine for Identification, Search and

Management of Assets Obtained from Corruption and Other Crimes" (2015), Law of Ukraine No. 2447-VIII "On the Supreme Anti-Corruption Court" (2018), Law of Ukraine "On the State Bureau of Investigation" (2015), as well as the Order of the Prosecutor General's "On Approval of the Regulation on the Specialized Anti-Corruption Prosecutor's Office of the Office of the Prosecutor General" (2020). Statistical data on the number and nature of criminal offences in the field of entrepreneurship were also used.

The hermeneutic method, comparative legal analysis, and case study method were applied in the study. The hermeneutic method consisted of a thorough study of the texts of legislative acts, such as the Criminal Code of Ukraine (2001), in part of Section 7 "Criminal Offences in the Field of Economic Activity", and other legal documents related to the investigation of criminal offences in the business sphere. This method was also used to interpret legal terms and concepts, which is a key element in disclosing the content of legislation and clarifying its application. In addition, the method was used to study the legislation and practices of other countries in the field of investigation of criminal offences in business activities.

Comparative legal analysis was used to compare in detail the legislation, court practice and human rights mechan isms related to the investigation of criminal offences in the business sector in Ukraine and other countries. This method was used to compare the articles of the criminal code and other laws regulating criminal liability for business-related offences in different countries and to study court decisions in similar cases to identify trends and approaches to case consideration. The effectiveness of human rights institutions and mechanisms in the field of entrepreneurship was also assessed. The comparative legal analysis was used to understand the differences and similarities between the legal systems of different countries, which served as the basis for recommendations for improving legal regulation and practices of investigating criminal offences in Ukraine.

The case study method was used in the study to examine specific situations related to criminal offences in the business sector. Real-life situations were selected to illustrate the diversity and complexity of criminal offences in the business sector in Ukraine and other countries. A thorough analysis of the circumstances of each case, including details of the offences, participants, circumstances of the offences, as well as the consequences, consideration of different approaches and strategies used in the investigation of each case, determined the results of the application of various legal and criminal enforcement measures in resolving each case. The case study method allowed for an in-depth study of specific scenarios and cases to understand their features and highlight key aspects that may be useful for formulating recommendations and improving the practice of investigating criminal offences in business activities.

Results and discussion

General characteristics of the investigation of business crime in Ukraine

Ukraine is at the stage of the European integration process, which includes the revision of national legislation relevant to the European community, the implementation of international law standards, and the improvement of state institutions (economic, legal, and political) to achieve European standards. One of the key areas of European state formation is economic restructuring and development, considering modern approaches and trends (Witbooi *et al.*, 2020). Ensuring the fair functioning of the economy is recognised as the main goal of the state. The Basic Law states that public life in Ukraine is based on the principles of political, economic, and ideological diversity. In addition, the Constitution of Ukraine (1996) states that everyone has the right to engage in entrepreneurial activity that is not prohibited by law. These norms demonstrate the importance for the state of achieving effective economic regulation. The economy is a crucial area without which no country can exist.

In Ukraine, there is only one systematic regulatory act that defines criminal liability – the Criminal Code of Ukraine (2001). Chapter VII of the Special Part of the Criminal Code of Ukraine deals with "Crimes in the field of economic activity", which includes business crimes. Law enforcement agencies use different terms to describe "crimes in the sphere of economic activity", such as "economic", "commercial" or "crimes in the sphere of entrepreneurship", all of which aim to protect the national economy. Due to the various formulations and interpretations of this legal term in law enforcement documents, significant difficulties arise in classifying various offences in the field of economic activity. Therefore, the term "economic offences" refers to violations of the rules on the circulation of money, securities, and other documents, as well as violations of the taxation system, budgetary and currency control, and customs border crossing rules. It also includes the impact on the procedures for engaging in business and entrepreneurial activities, compliance with the principles of fair competition and antitrust laws, as well as participation in the privatisation process.

A. Repchonok and V. Romaniuk (2022) point out that for further research on the investigation of economic crimes, it is important to obtain a clear definition of the term "economic crimes". The authors note various approaches to the interpretation of this concept in the literature. The authors cite the opinions of various scholars on the definition but conclude that there is no single approach to the definition and scope of criminal offences in the field of economy, which indicates the value of additional research in this area. It is worth agreeing with the authors, as the relevant study also noted the absence of a single definition that would be used by scholars, law enforcement agencies and courts.

The complexity of combating criminal offences in the field of economic activity is primarily determined by the high level of their concealment, which, according to statistical estimates, ranges from 70% to 90% (Office of the Prosecutor General…, n.d.). This high level of concealment makes it difficult to detect and investigate economic crimes and hinders the effective fight against crime in the economy. An urgent task in the fight against criminal behaviour in the economic sphere is to ensure that Ukraine's legislation is in line with the current economic situation, which will guarantee the protection of the economic sector and consider the efforts of international partners in this regard. The subjects of economic crimes are individuals who are directly engaged in business activities and/or represent the interests of business entities or the state in the economic sphere. It is important to note that a company's CEO not only acts as a representative of the company to other legal entities but is also responsible for violations that may lead to legal, including criminal, consequences.

During the proceedings, the entrepreneur is held legally liable for deliberately committing various crimes in the business sector. These crimes can be systematised into several categories: "Crimes with money, securities and other documents" (production, distribution and sale of counterfeit money or securities); "Crimes aimed at the taxation system" (intentional evasion of taxes/duties or one-off donations); "Crimes related to violation of the rules of movement across the customs border" (transportation of goods); "Crimes against the rights and legitimate interests of creditors" (fraud with financial resources); "Violations against the competitive system" (illegal use of trademarks or disclosure of secret information); "Crimes aimed at causing harm to consumers" (placing dangerous products on the market).

The practice of courts considering cases of economic crimes may sometimes be accompanied by mistakes resulting from the lack of a unified approach to defining and distinguishing these offences from administrative violations and other similar offences. To ensure fair and uniform application of the rules on liability for specific economic violations, the Plenum of the Supreme Court of Ukraine adopted a significant list of amendments, additions, and proposals for legal regulation of these issues. In its resolution, the Supreme Court of Ukraine (SCU) made the following significant changes (Resolution of the Plenum…, 2003). The first thing that the SCU draws the courts' attention to is the description of criminal liability for offences listed in Articles 202-205 and Article 222 of the Criminal Code of Ukraine, which is an additional measure designed to ensure the effectiveness of state laws on the regulation of economic relations and protection of constitutional rights of a person in the course of economic activity. It is also intended as a means of stabilising the national economy. The second thing that the court recognises is that when considering criminal cases, the courts must examine the specific use of the words "economic activity" and "entrepreneurial activity" following the articles of the Criminal Code of Ukraine and their derivatives. The decision on the presence or absence of elements of a crime is based on the precise interpretation of these terms in certain parts of the Criminal Code of Ukraine. Within the framework of carrying out and operating without obtaining a licence for the necessary economic activity, which necessarily depends on a permit, following the provisions of Law of Ukraine "On Licensing of Types of Economic Activity" (2015), and Law of Ukraine "On Entrepreneurship" (1991) assumes that this type of economic activity is carried out without obtaining a licence by individuals registered as participants in entrepreneurial activity, as well as legal entities.

Additional clarifications of the Supreme Court of Ukraine, which are important for the legal regulation of offences in the economic sphere, show that these crimes are very common and at the same time insufficiently studied. In general, this aspect requires more detailed research to ensure the effective work of the state in the field of business. The impact of military factors, especially after the Russian full-scale invasion on 24 February 2022, contributed to the increase in crime in general and in the area of economic activity in particular. Figure 1 shows the statistics of detected economic offences between 2014 and 2022, according to the Prosecutor General's Office.

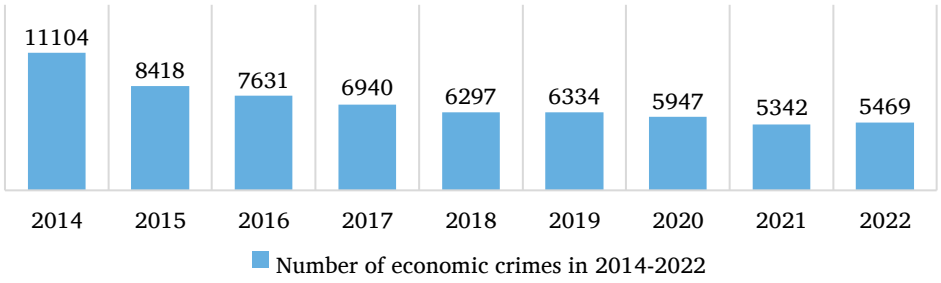

Figure 1. Statistics of detected criminal offences in the economic sphere
Source: Office of the Prosecutor General of Ukraine: Statistics (2023)

According to the analysis, the number of detected criminal offences in the field of economic activity decreased by half between 2014 and 2022. This can be viewed as the result of effective preventive and preventive activities of the law enforcement system. It is also possible to consider the possible influence of military factors that may change the behaviour of criminals towards abandoning economic crimes during the period of military conflict. However, it should be noted that this statistical trend began long before the outbreak of the war, which indicates that military factors are not the only reason for the decrease in the number of economic crimes. In general, it is possible to determine that not only military factors but also other criminogenic factors in their interaction have influenced the dynamics of crime in the field of economic activity, economy, and management of economic processes in general.

The downward trend in the volume of detected offences in the economic sector highlights the data on naturally latent phenomena available in the statistics of criminal offences, which may not accurately reflect the real level of crime in this area. This may give rise to ideas about the need to develop indirect, indirect methods of determining the real level of naturally latent criminal offences in the economic sphere. In this context, it becomes clear that the number of criminal offences committed in the area under study is unknown, as it is obvious that it is much higher. However, the key challenge is how to increase the detection, prevention, and counteraction of these invisible, naturally latent criminal offences (Albanese, 2021). Since establishing the true level of investigation of economic crimes does not affect the effectiveness of crime detection, prevention and counteraction, all efforts should be directed at identifying and eliminating the root causes that led to the commission of the crime. It is also necessary to identify and eliminate the factors that lead to difficulties in detecting, preventing and counteracting efficiency in the economy in general and business activity in particular.

It is worth noting that many experts do not consider the difference between the detection of explicit criminal offences that can be detected on their own and the detection of indirect, naturally latent offences that do not tend to be self-detected (Di Pillo *et al.*, 2022). This is confirmed by the introduction of Article 41 of the Criminal Procedure Code of Ukraine (2012) in the course of the criminal procedure reform, which prohibits operatives from initiating the detection and collection of evidence of crimes without the instructions of the investigator. This applies to the detection of obvious thefts, robberies, murders. The fact that such crimes have been committed is obvious, as they are discovered through the statements of victims or as a result of the discovery of a corpse. These criminal offences are immediately registered and referred to the investigator, who issues directives to the operatives to establish traces of the crime and identify the perpetrator.

The situation with criminal offences in the business sphere is different, especially in cases of non-obvious, naturally latent criminal offences committed in conditions of secrecy and under the guise of apparently legitimate business activities (Kertész & Wachs, 2020). In such cases, the victimised business owner is unaware that financial and production employees are using hidden transactions under the guise of legitimate operations to misappropriate company funds and falsify official documents. In these circumstances, the owner does not make any statements or reports as it is unclear as to what is going on. Without systematic operational and investigative work, investigators, or prosecutors, who are required by Article 41 of the Criminal Procedure Code of Ukraine (2012) to issue an official document to employees engaged in operational activities, are unable to obtain the necessary data on the commission of latent criminal offences. It should be noted that an investigator may receive such information accidentally while investigating other cases under investigation. However, the systematic operational and investigative work to identify such criminal offences remains a challenge for operatives (Rusanov & Pudovochkin, 2021). According to the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Regarding Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" (2015), this situation was somewhat alleviated by removing penalties for violation of this requirement. However, these amendments did not solve the problem related to the restriction set out in Article 41(1) and (2) of the CPC of Ukraine. The analysis of the highlighted problematic situation demonstrates that ignoring the difference between explicit criminal offences, which may sometimes be artificially latent, and implicit, non-manifest, naturally latent offences may lead to complications in the detection of criminal offences. The situation would be different if the statistics concerned overt, self-manifesting general criminal offences. The decrease in the number of detected obvious, self-manifesting general criminal offences indicates great achievements of the country's law enforcement agencies in the context of preventing and avoiding the recurrence of crime. This sometimes forces law enforcement to conceal cases of obvious general criminal offences, which leads to their classification as artificially concealed criminal offences.

However, economic violations, which by their nature are not obvious and self-manifesting, but latent, can usually be detected only through qualified operational and investigative activities (Calamunci & Drago, 2020). The sharp decline in the number of detected criminal offences indicates that the roots of these negative processes should be sought in aspects other than the usual causes. One of the circumstances that reduce the effectiveness of consideration, prevention, and avoidance of criminal offences in the field of business is the reform of criminal procedure legislation. The relevant changes cancelled the mechanisms for preliminary verification of information on the commission of a criminal offence and refusal to open criminal cases, which resulted in almost 3.5 million applications remaining unverified (Office of the Prosecutor General..., 2023). Another circumstance that harms the prevention, avoidance and recurrence of hidden crimes is the incomplete reform of law enforcement in Ukraine. Initially, the relevant changes led to the destabilisation of the prevention, avoidance, and recurrence of latent economic crimes. The next stage of the reform was the liquidation of two institutions that dealt with economic crimes, namely The Department for Combating Organised Crime (DCOC) and the State Service for Combating Economic Crime (DSBEZ), which, in turn, resulted in the absence of a specialised service that investigates, prevents, avoids, and combats economic crime in general, and in business activities in particular.

According to the statistics of the Prosecutor General's Office, the National Anti-Corruption Bureau of Ukraine (NABU) (Law of Ukraine No. 2447-VIII..., 2018), which was created to replace the disbanded services, recorded the results shown in Figure 2. Instead, in the year of the DSBEZ liquidation, this service detected more than 17 thousand criminal offences.

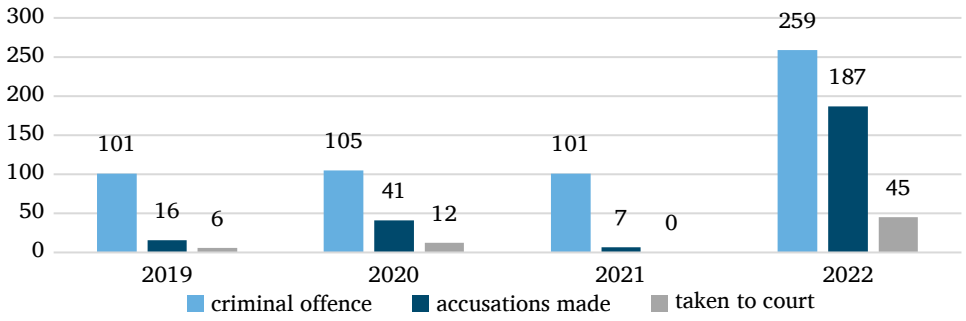

Figure 2 . NABU statistics on the detection of criminal offences
Source: Office of the Prosecutor General of Ukraine: Statistics (2023)

Several other factors complicate the process of detecting, preventing, and combating criminal offences in the field of economic activity. These include the unjustified decriminalisation of actions that do not lose their social danger, the gap between tax accounting and financial accounting, as well as the cumulative taxation system based on the principles of "property taxation" and "cost taxation" (Klimczak *et al.*, 2021). These aspects contribute to the transition of economic activity into the shadow economy, which can then be linked to corruption, the accumulation of illicit capital and the laundering of proceeds of crime. However, the main reason for this is the lack of effective tools to prevent and combat naturally occurring economic crimes and corruption, especially in the context of martial law and the penetration of crime into all spheres of society, including the economy and governance. This poses a real threat to the security, effective functioning, and development of the state.

International experience in investigating criminal offences in business activities

For a more detailed analysis, it is worth considering the German criminal law framework. In analysing the structure of the German Criminal Code, it is necessary to note the peculiarities of the disposition of the distribution of the entire volume of articles. Paragraphs (articles) of the German Criminal Code are divided into General and Special Parts (Brici, 2022). An important component of German criminal law is a unique approach to the calculation of punishment for criminal acts in the economic sphere. The article analyses the content and organisation of this legal act on economic crimes; these crimes are divided into different parts. Fraud includes sanctions for various types of fraud, such as investment fraud, insurance fraud, credit fraud, wage loss and embezzlement, and cheque and credit card fraud. Finance-related offences are fictitious bankruptcy, inadequate documentation, giving an undue advantage to a creditor and giving an undue advantage to a debtor. Counterfeiting includes liability for the production of counterfeit currency, sale of counterfeit money, making counterfeit payments, storage of bills and cheques and preparation for distribution. Illegal gambling activities are unauthorised organisation of gambling, participation in illegal gambling, unauthorised lottery, or raffle. Illegal transactions with collateral include obstructing the creditor's intentions to collect collateral, unlawful return of a deposit, unauthorised use of collateral, and usury. Corruption offences cover non-competitive agreements in tenders, extortion, and corruption in business interactions, especially concerning large amounts of money and corruption in business interactions. These various offences are defined according to their characteristics and objects of offences in different sections of the German Criminal Code.

Analysing the data provided on sanctions for criminal offences in the field of the economic system under the German Criminal Code, it is worth noting that the legislator can set both minimum and maximum prison terms. Some articles provide for the possibility of confiscation, which is more related to the objects of the offence, the means of its commission or the proceeds of the offence. One of the differences between this legal document and the Ukrainian Criminal Code is the establishment of liability for corruption offences in the private sector. The Criminal Code of Ukraine provides for corruption offences only in Chapter XVII "Criminal offences in the field of official and professional activities related to the provision of public services" (Nicholls *et al.*, 2021). As part of the European integration efforts, it is important to review the current provisions of the Criminal Code and include liability for corruption in the private sector. Another international example of investigating criminal offences in the economic sphere is the legislation of the United States of America (USA), whose criminal regulation considers money laundering to be a violation of the law, and many states take measures to counteract this socially dangerous phenomenon (Pereda, 2022). These measures include long prison sentences (10 years or more) and large fines.

Several federal and state agencies are responsible for investigating business crimes in the United States. The Federal Bureau of Investigation (FBI) investigates financial crime, corruption and other violations that may affect the US economy. They cooperate with other federal agencies and local law enforcement. The U.S. Department of Justice, Financial Crimes and Corruption Section of the U.S. Department of Justice coordinates the fight against corruption, white-collar crime and other economic violations. The Securities and Exchange Commission (SEC) is responsible for regulating financial markets and investigating violations of financial laws. Their actions are aimed at ensuring transparency and fairness in financial markets. A large number of other agencies, such as the Internal Revenue Service, the Federal Security Service (FSB), local police departments and prosecutors, may be involved in an investigation depending on the circumstances and scale of the crime. In addition, each state has its law enforcement agencies that can investigate business-related crimes at the local level. They may cooperate with federal agencies and other services (Bahoo *et al.*, 2020). Investigations of such crimes include financial fraud, tax evasion, large-scale deception, corruption, stock exchange violations, and other economic crimes. The experience gained from the analysis of the investigation of criminal offences in business activities can be used to improve national legislation, for example, to clarify the wording of Article 209 of the Criminal Code of Ukraine (2001), namely the legalisation of illegally obtained proceeds of crime. In particular, unlike the laws of certain US states, this article does not provide for a specific fine for this criminal offence, and the punishment is imprisonment for a term of three to six years or eight to fifteen years, which is less severe than the laws of certain US states.

Money laundering legislation in the UK includes a wider range of socially dangerous activities, such as drug trafficking, terrorism, theft, fraud, robbery, extortion, blackmail. The legislative approach in the UK considers a criminal offence not only the actions themselves but also the inaction of banking institutions that facilitates the legalisation of illegally obtained funds (Hall *et al.*, 2023). Individuals contributing to money laundering by concealing, retaining, or investing the proceeds of crime may be found guilty if they know or suspect that the funds were obtained as a result of serious or especially serious criminal offences. The UK has a comprehensive system of law enforcement and investigation of business crime. The National Crime Agency (NCA) is a federal agency that tackles organised crime and serious economic crime. The NCA investigates and prosecutes offences such as corruption, money laundering, financial fraud, and fraudulence. The Financial Serious Fraud Office (SFO) specialises in investigating serious financial

and corporate crime, including major fraud, bribery, money laundering and other corporate irregularities. Local police departments also play a role in investigating business crime. They can investigate fraud, theft, banking, and other economic crimes at the local level. In the UK, there are also bodies such as the Financial Conduct Authority (FCA) and the Bank of England's Prudential Regulation Authority (PRA), which are responsible for regulating financial markets and can investigate financial sector breaches. The National Cyber Crime Unit (NCCU) plays an important role in investigating cybercrime that may affect business activities (Ferrante *et al.*, 2020). Investigations may include examining financial transactions, conducting searches, cooperating with audit firms, using special technologies to detect financial irregularities, and cooperating with other international agencies in cases of cross-border crimes.

A similar approach, including the above provisions, is also enshrined in the legislation of the Republic of Lithuania. Following the provisions of special legislation, institutions related to the circulation of funds, such as pawnshops, notaries, insurance companies, and other institutions licensed to provide financial services, must provide the tax police with information about persons who may be suspected of money laundering, unlike Ukrainian legislation (Bajda, 2021). It should be noted that such an approach at the legislative level should be implemented in Ukraine, which will significantly increase the level of criminal legal protection of objects in the banking sector and contribute to the special criminological prevention of criminal offences in this segment of public relations. In general, the implementation of these bodies or a part of them into the criminal legislation of Ukraine in the field of business activity is an important step to ensure effective investigation and counteraction to economic crimes, which will ensure a comprehensive approach to the investigation of economic crimes in business activity. This implementation will result in increased efficiency of investigations, improved transparency and increased liability for corruption and other economic crimes.

O.E. Akinbowale *et al.* (2020) considered an innovative approach to combating economic crime based on the use of forensic accounting techniques. The focus is on the development of effective forensic accounting methods and the study of economic crime policy. The authors present two conceptual models that consider all the requirements for the successful implementation of forensic accounting and the integration of its methods into the control system for effective fraud prevention. One of the disadvantages of this approach is the lack of an appropriate framework, which may limit its successful implementation as a tool for combating fraud. The authors correctly emphasise the importance of effective forensic accounting and integration of these methods into the control system to prevent fraud, but the relevant study concluded that only a change in the investigation system can improve the situation with the investigation of business crimes.

Following E. Soltes (2019), The perception of the frequency of misconduct held by the public, academics and regulators is largely based on the analysis of law enforcement statistics, which relies on the detection and sanctioning of misconduct. However, many criminal offences remain out of the public eye. By analysing confidential company documents detailing misconduct in organisations, the author demonstrates that law enforcement statistics significantly underestimate the number of serious white-collar crimes that occur in firms. By analysing the records of several large multinational companies, it is found that, on average, each firm registers more than two cases of internally justified violations every week. Ultimately, this analysis clearly illustrates the complexity of fighting corporate crime in large organisations. It is worth agreeing with the researcher's conclusions, as the relevant study also noted that criminal offences in business activities are mostly hidden, and therefore not reflected in official law enforcement statistics. P. Gottschalk and M.L. Benson (2020) noted that in the UK, business crime investigations are challenged by the complexity of the legal structure and the global nature of business operations. One of the key challenges in the field of investigations is the lack of coordination between different agencies, which can lead to data breakdown and complicate the effectiveness of actions. It is also important to bear in mind that complex international transactions and a large amount of documentation can cause delays in investigations and increase the cost of conducting them.

Another significant problem is the lack of a unified system for recording and analysing data related to business-related crime, which makes it difficult to study and understand the real extent of the problem. The lack of effective information exchange may also affect the ability of law enforcement agencies to investigate cases promptly and successfully. It is worth noting that, in comparison to the relevant research, in particular the situation in Ukraine, it can be said that both countries have their unique challenges. Ukraine, on the one hand, has its peculiarities in the day-to-day issues of fighting corruption and economic crime. On the other hand, in the UK, where business is global, there are issues related to the international aspects of investigations. Thus, the global nature of modern business underscores the importance of international information exchange and cooperation between law enforcement agencies of different countries. Joint efforts will contribute to more effective detection and investigation of criminal cases.

Conclusions

Summarising the aforesaid, it is possible to conclude that the different terminology used by law enforcement and judicial authorities is interconnected as a whole and its parts. Crimes in the field of entrepreneurship reveal a complex multi-level structure, as they cover a wide range of economic relations arising in the process of social production. The study emphasises the importance of implementing comprehensive strategies and systemic solutions for the investigation of criminal offences in the business sector. An effective mechanism should combine the work of law enforcement agencies, legislation, and modern technologies. The use of innovative technologies and analytical tools can significantly facilitate and speed up the investigation process. It is important to improve and implement modern methods of law enforcement. Ensuring transparency in the management and operations of enterprises will help prevent criminal offences. Measures aimed at holding business structures and their executives accountable can serve as a means of preventing offences. In addition, it is necessary to address the existing gaps in the regulation of criminal law and its harmonisation with commercial law, namely, to develop theoretical and legislative explanations to effectively address a range of problems related to the institution of business crime. This

will contribute to the creation of favourable conditions for the proper protection of business entities in the field of entrepreneurship through criminal law and will help ensure economic stability in the country.

Countering criminal offences in the business sector is a continuous process. The system of investigation and counteraction must constantly adapt to new challenges and changes in the economic environment. In general, effective investigation of business-related criminal offences requires the government, law enforcement agencies and the business community to work together to create a transparent and responsible economic system. The experience of other countries indicates the importance of having a clear and comprehensive legal mechanism for investigating criminal offences in the field of business. Ukraine needs to actively improve its legislation, considering best practices from other countries. In light of European integration, economic globalisation, and transnational aspects of business, it is important to ensure effective information exchange and cooperation between countries in the investigation of criminal cases. Foreign experience shows that the use of modern technologies and analytical tools can significantly facilitate the investigation of criminal offences in the business sector.

For further research, it is advisable to consider more countries and their approaches to the legal regulation of investigations of criminal offences in the business sector. Compare the effectiveness of different models and identify the most effective practices. It is also recommended to explore various methods and strategies used in other countries to effectively investigate criminal offences in the business environment. In addition, it is necessary to consider the use of modern technologies, such as data analytics, and artificial intelligence, to improve the effectiveness of investigations. These aspects can help to generalise and broaden the understanding of the problem, as well as contribute to the development of effective strategies for investigating criminal offences in the business environment in the Ukrainian context.

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Conflict of interest

None.

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Розслідування кримінальних правопорушень у сфері підприємницької діяльності: зарубіжний досвід та правове регулювання в Україні

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Анотація. Актуальність дослідження полягає в необхідності розкрити ефективні методи та стратегії розслідування кримінальних правопорушень у сфері підприємницької діяльності для ефективної боротьби з корупцією та правової безпеки в економіці. Мета дослідження – визначити оптимальні стратегії та інструменти, а також розробити рекомендації щодо вдосконалення правового регулювання в Україні. Використано герменевтичний та порівняльно-правовий методи, а також кейс-стаді. Виявлено основні труднощі, які існують у розслідуванні економічних злочинів в Україні, як-от прогалини в кримінальному законодавстві та недостатній рівень ефективності розслідувань, через корупцію правоохоронних органів та представників бізнесу. Аналіз досвіду розслідування кримінальних правопорушень у підприємницькій діяльності в Німеччині, США, Великобританії та Литовській Республіці надав змогу зробити висновок про схожості та відмінності нормативно-правових актів щодо розслідування кримінальних правопорушень у підприємницькій сфері, структурі спеціалізованих органів та повноважень осіб, які займаються розслідуванням таких злочинів. Розглянуто особливості зарубіжних підходів до деяких аспектів розслідувань, зокрема діяльність антикорупційних органів та фінансовий моніторинг. Ефективність систем розслідувань в інших країнах значно відрізняється, оскільки мають більш систематизоване законодавство, чітку структуру правоохоронних органів та спеціальних агенцій, які займаються виключно економічними злочинами, що у свою чергу збільшує відсоток розкриття відповідних злочинів. Запропоновано можливі шляхи вдосконалення законодавства та практики розслідування відповідних злочинів. Дослідження цієї теми привносить у науку нові підходи та практичні висновки, сприяє вдосконаленню стратегій розслідування та зміцненню правового фундаменту для боротьби з економічною злочинністю та підвищення ефективності правоохоронних заходів у підприємницькій сфері

Ключові слова: господарська діяльність; корупційна злочинність; ухилення від сплати податків та зборів; монополія; грошовий обіг; слідчі розшукові дії

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Evolution of legal regulation of digitalization of notarial activity in independent Ukraine

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Abstract. The relevance of the study is due to the insufficient regulation of digitalization processes in notarial practice in the Law of Ukraine "On Notaries". The purpose of the article is to study the genesis and evolution of digitization (digitalization) of notarial activities in independent Ukraine, highlighting the main stages of this process. The key role in the study was played by the comparative legal and historical legal methods, which were used to carry out a detailed analysis of the legal regulation of the development of digital technologies in notarial activities in the period of independent Ukraine. The author also uses the axiological method in the study of legal acts. The article outlines the use of information technologies in the field of notarial activity. The author examines the issues of legal regulation of the use of electronic registers in the notarial activities of independent Ukraine. Attention is paid to notaries as participants of the notarial process, who use the information of the Unified and State registers in their activities. The author emphasizes the importance of considering the international experience of countries where electronic registers have been successfully implemented and are functioning, and where digital technologies are used in notarial practice. The author identifies five main stages of digitalization of notarial activities in Ukraine. The first stage covers 1996-1999; the second – 2000-2003, the third – 2004-2012, the fourth – 2013-2020, the fifth stage began in 2021 and will last for the period of introduction of the e-notary system in the State. The author outlines the emergence and formation of a new legal institution and legal principle – digitalization of notarial activity, without which modern notaries are unable to perform their duties. The author substantiates the position that the use of e-notary technologies will contribute to the further development and improvement of notarial activities in Ukraine. The practical significance of the work lies in the fact that the proposals formulated on the basis of the results obtained can be used to improve the current legislation, as well as directly in notarial activities

Keywords: digital technologies; electronic registers; public and private notary; digitization of notarial acts; electronic evidence; electronic notary

Introduction

Ukraine's independence has led to radical changes in both the social and legal fields of the state, and reforms in the notary sphere have not been spared. The development of notarial activity in the country was aimed at moving towards the Latin system of notaries, which was reflected in the first notarial legislative act "On Notary" (Law of Ukraine No. 3425-XII…, 1993), in particular, by introducing a new legal institution – a private notary of notaries.

At the same time, the process of borrowing the world's best digitalization practices was underway, as evidenced by the adoption of legislative acts, including the approval of the National Informatization Programme in 1998 (Law of Ukraine No. 74/98-VR…, 1998). The development of new technologies has contributed to significant changes in the activities of various sectors of the economy, management, lawmaking and legal spheres. Further consolidation of digitalization processes in the country was achieved through the adoption of several digitalization laws, including the Laws of Ukraine "On Electronic Documents and Electronic Document Management" (2003) and "On the Electronic Digital Signature" (2003).

The process of digitalization that has been developing in the country has not bypassed notarial activities and the notarial process in particular. The regulatory act that testifies to the above is Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021), which provides for a pilot project on the phased introduction of the Unified State Electronic Notary System in Ukraine. The war waged by Russia against Ukraine suspended the implementation of this resolution, but not the process of digitalization of Ukrainian society. The Law of Ukraine No. 2807-IX (2022) approved a new National Informatization Programme. Therefore, it is necessary to focus on the evolution of the digitalization of notarial activities.

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The study of the digitalization of the notarial process in Ukraine is only gaining momentum. Scientists and practitioners mainly study the use by public and private notaries of certain Unified and State Registers used in notarial practice and identify problematic issues in their maintenance. Yu. Bysaga (2023) understands digital technologies as a set of tools, methods, and processes that use digital signals, as well as the processing of such digital information for the purpose of storing, transmitting, and exchanging such information. V. Marchenko (2020) considers certain issues related to the introduction of e-notary in Ukraine, noting the need for legislative regulation of this issue in the Law of Ukraine "On Notary" (1993). A. Lyla-Barska (2021), considering certain issues of digitalization of notarial activities, also draws attention to the need to enshrine in the Law of Ukraine "On Notaries" a clear list of notarial acts to be performed using electronic services. O. Kostenko and V. Kostenko (2018) devoted their research to the introduction of electronic trust services.

Analysing the introduction of e-notaries in the world, V. Zalyotin and Ya. Babych (2020) believe that COVID-19 can be considered a fact that stimulated the introduction of digitalization of notarial activities. I. Iliopol (2022) describes the main provisions of the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Implementation of the Experimental Project Regarding the Phased Introduction of the Unified State Electronic System of e-Notary" (2021), which approved a pilot project on the introduction of electronic notary, which was not implemented. V. Marchenko (2020) argues that the benefits of e-notary apply to all aspects of the notarial process. The author emphasizes that the digitalization system will optimize the activities of notaries and accelerate the procedure for performing notarial acts. V. Khomenko *et al.* (2021) devoted their research to the peculiarities of electronic transactions requiring notarisation.

M. Dolynska (2020) contributed to the coverage of certain issues of both e-notaries and the use of certain Unified State Registers by notaries in her previous works. M. Drana (2023) devoted her research to the problems of personal data protection in the implementation of electronic notaries. K. Nesterenko and O. Bulgakova (2020), I. Apalkova (2021), devoted their research to the issues of the introduction of electronic transactions into the notarial process studying the development of the world notary and the reform of the Ukrainian notary, also point to the need to introduce e-notary. However, the genesis and evolution of legal regulation of digitalization in notarial activities in independent Ukraine remain unexplored.

The aim of the article is to outline the genesis and evolution of digitization (digitalization) of notarial activities in independent Ukraine during 1993-2023, highlighting its main stages. The study was conducted using several general scientific and special methods. The key role was played by the comparative legal and historical and legal methods, which were used to study the legal regulation of the development of the use of digital technologies in notarial activities in the period of independent Ukraine. Using the historical method, the author reconstructs the course of the process of introduction and development of digitalization of notarial activities in Ukraine during 1996-2023. The quality of regulatory and legislative acts was determined using the axiological method. The modelling method was used to develop proposals and recommendations aimed at improving the further digitalization of notarial activities. The hermeneutic method helped to understand the texts of legislative and regulatory acts dealing with digitalization, including notarial activities.

The author studied the regulatory and legislative acts on digitalization in Ukraine in general and notarial activities in particular, the experience of digitalization in other countries, as well as the scientific achievements of both scholars and practitioners, both Ukrainian and foreign, concerning research. In conducting this research, the author analysed the regulatory and legislative acts, in particular the Law of Ukraine "On Notaries" (1993), Resolutions of the Cabinet of Ministers of Ukraine "Some Issues of Using Special Forms of Notarial Documents" (2021) and "Some Issues of Implementation of the Experimental Project Regarding the Phased Introduction of the Unified State Electronic System of e-Notaries" (2021), which regulate the introduction of informatization of public legal relations in Ukraine, with particular attention to the digitalization of notarial and procedural legal relations.

The birth of digitization of the notary process in Ukraine

The beginnings of digitization in legal activities can be traced back to the 1970s, i.e. to the times of Soviet Ukraine. In particular, the digitization of the work of the state notary is seen in the preparation and submission of annual reports on the work of state notary offices to the regional departments of justice. This practice has continued since Ukraine's independence and is enshrined in the Law of Ukraine "On Notaries" (1993). However, Yu. Bysaga (2023) is right in noting that this law does not contain provisions on the use of digital technologies.

During 1996-1999, certain principles of digitalization were introduced into notarial activities in Ukraine. This is evidenced by the legal acts adopted in 1996-1997, for example, Orders of the Ministry of Justice of Ukraine "On Making Additions to the Instructions on the Procedure for Notarial Acts by Notaries of Ukraine" (1996), "On the Approval of the Regulation on the Supply, Storage, Accounting and Reporting of the Expenditure of Forms of Notarial Documents" (1997), "On the Introduction of Special Forms of Notarial Documents" (1997).

The Order of the Ministry of Justice of Ukraine "Regulation on the Supply, Storage, Accounting and Reporting of the Expenditure of Forms of Notarial Documents" (1998) provides for the creation of the Unified State Register of Special Forms of Notarial Documents, which began to function on the basis of the Order of the Ministry of Justice of Ukraine "On the Implementation of Measures for the Protection of Notarized Documents" (1999). In other words, the use of forms was considered to be a strictly accountable document, and notaries were subject to appropriate sanctions for violations of accountability, including suspension of notarial activities.

It is worth noting that the said Unified Register of Special Forms of Notarial Documents was entered into the said Unified Register by state notaries of state notary offices, state notary archives, as well as private notaries, with information on all notarial acts certified by them on notarial forms starting from 1 October 1996. Thus, this date should be considered the starting point for the digitalization of notarial activities in Ukraine. The State Enterprise "Information Centre" of the Ministry of Justice of Ukraine transferred the information received from notaries on the use of forms to the said register.

Since one of the most common types of notarial acts at that time was the certification of powers of attorney, the Order of the Ministry of Justice of Ukraine "On Making Additions to the Instructions on the Procedure for Notarial Acts by Notaries of Ukraine" (1996) approved the Regulations on the Unified Register of Powers of Attorney. The electronic record of notarized powers of attorney at that time underwent significant changes and adjustments. An example is the Order of the Ministry of Justice of Ukraine No. 29/5 (1999); No. 52/5 (1999), which set out the new wording of the Regulation "Regulations on the Uniform Register of Powers of Attorney Certified in the Notarial Procedure", i.e., the obligation of public and private notaries of Ukraine to register certified powers of attorney for the right to use and/or dispose of property, including vehicles, as well as to register the termination of powers of attorney.

The next important act on the way to digitalization of notarial activities in Ukraine was the adoption of the Order of the Ministry of Justice of Ukraine "On the Approval of the Rules for State Registration of Acts of Civil Status in Ukraine" (1999), which introduced the Unified Register of Notaries, which was maintained by the State Enterprise "Information Centre" of the Ministry of Justice of Ukraine. The Law regulates the general issue of the activities of notary bodies of the state, since not only the registration of a new private notary in the territorial department of justice, but also the entry of data about him/her is a confirmation (electronic proof) of the creation of a new notary entity, and allows an ordinary citizen to verify the legitimacy of such a notary.

The second period of digitalization of notarial activities was initiated by the Order of the Ministry of Justice of Ukraine "On the Unified Register of Wills and Inheritance Cases" (2000), which introduced the Unified Register of Wills and Inheritance Cases in Ukraine. The adoption of this act was one of the steps towards Ukraine's ratification of the Convention on the Establishment of a System for the Registration of Wills, signed by the EU member states in May 1972. According to clause 5 of this provision, all wills drawn up and certified, amended or cancelled in accordance with the procedure established by law, inheritance cases and certificates of inheritance rights issued from 1 December 2000 had to be entered into this register. Subsequently, state notaries of state notary offices and state notary archives also entered into the said register information for previous years on all inheritance cases and certified wills, including those kept in the files of state notary archives and state notary offices.

The year 2004 marked the beginning of the third period of digitalization of notarial activities. This was facilitated by the entry into force of several Ukrainian codes, including the Civil and Family Codes. New electronic registers were introduced on the basis of relevant resolutions of the Cabinet of Ministers of Ukraine. For example, the Resolutions of the Cabinet of Ministers of Ukraine "On Approval of the Temporary Procedure for State Registration of Mortgages" (2004) and "On the Approval of the Temporary Procedure for State Registration of Deeds" (2004). The functioning and procedure for entering information into the State Register of Deeds, where notaries entered transactions subject to mandatory registration, was regulated by the Instructions on maintaining the State Register of Deeds approved by Order of the Ministry of Justice of Ukraine No. 86/5 (2004). At the same time, in 2004, state registration of immovable property and state registration of encumbrances on movable property was carried out in accordance with the Procedure for Maintaining the State Register of Encumbrances on Movable Property, approved by Decree of the Cabinet of Ministers of Ukraine No. 830 (2004), as amended.

Since the new Civil Code has changed the term "order" to "power of attorney", the issue of introducing appropriate changes to the procedure for registering powers of attorney has arisen. Order of the Ministry of Justice of Ukraine No. 111/5 (2006) approved the Unified Register of Powers of Attorney, to which the Ministry of Justice introduced several amendments.

According to Resolution of the Cabinet of Ministers of Ukraine No. 812 (2009), the authority to regulate the procedure for the use and storage of notarial forms, as well as the establishment of a sample of such forms, was transferred from the Ministry of Justice to the Cabinet of Ministers, which indicates its importance. The Order of the Ministry of Justice of Ukraine No. 2501/5 (2010) approved the Procedure for Maintaining the Unified Register of Notaries, which is still in operation with relevant amendments. Every citizen is entitled to find out information about notaries in Ukraine free of charge and at any time convenient for him/her, using the data of the said register.

Ratification by Ukraine on 10.07.2010 of the Convention on the Establishment of a Probate System (Law of Ukraine No. 2490-VI..., 2010), which entered into force on 31 December 2010, prompted the adoption of several by-laws, including a Resolution of the Cabinet of Ministers of Ukraine No. 491 (2011), which approved the Procedure for State Registration of Wills and Inheritance Cases in the Inheritance Register, and Order of the Ministry of Justice of Ukraine No. 1810/5 (2011), which approved the new Regulation on the Inheritance Register. However, ordinary citizens do not have free access to the Inheritance Register.

Thus, during 1996-2012, digitalization processes in the notarial process of the state were born, where the subjects were mainly public and private notaries. On behalf of public notaries, the State Notary Office acted as a party to digitalization agreements with the State Enterprise "Information Centre" of the Ministry of Justice of Ukraine.

Digitalization of notarial activity

The Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Property Rights to Immovable Property and Their Encumbrances" and Other Legislative Acts of Ukraine" (2010) established that from 1 January 2013, a notary acquired the status of a special entity entitled to perform the functions of a state registrar of rights to immovable property and has direct access to the data of the said register. In practice, this has contributed to more effective protection of the rights and legitimate interests of the parties to the notarial process, in particular, parties to real estate alienation agreements.

Furthermore, starting from 1 January 2013, the Unified State Register of Real Property Rights consolidated the information of several previous separate registers, which were being terminated. In particular, the Resolution of the Cabinet of Ministers of Ukraine No. 824 (2012) terminated the effect of resolutions No. 410 and No. 671 issued earlier in 2004.

The Resolution of the Cabinet of Ministers of Ukraine No. 703 (2011) regulated the Procedure for state registration of rights to immovable property and their encumbrances and the Procedure for providing information from the State

Register of Property Rights to Immovable Property. However, the above act did not last long and was cancelled by Resolution of the Cabinet of Ministers of Ukraine No. 868 (2013), which also approved new procedures for state registration of rights and for providing and receiving information from the said register.

The Law of Ukraine No. 5037-VI (2012) introduced amendments to the Law of Ukraine "On Notaries" effective 1 January 2013, which not only confirmed the functions of a notary as a registrar of rights to real estate, but also allocated to a separate notarial provision (Article 46^{-1}) the authority for notaries (both public and private) to perform the above functions of registration of both real rights to real estate and their encumbrances. The legislator emphasized that a notary, when performing notarial acts, directly uses the State Register of Real Property Rights. According to notarial practice, assistants of private notaries and consultants of state notary offices also have the right to enter the said register. However, on 16.04.2014, Law of Ukraine No. 1219-VII (2012) amended the above article in a new version.

Pursuant to the order of the Ministry of Justice, in December 2013, the State Information Service of Ukraine created an automated electronic reporting system for notaries, the "Electronic Notary Reporting System", which corresponds to the paper Reporting Form N 1-Notary (Annual) "Report on the Work of Public and Private Notaries" approved by Order of the Ministry of Justice of Ukraine No. 1529/5 (2011). This reporting system not only automated the process of reporting by notaries, but also enabled the Ministry of Justice of Ukraine and its territorial bodies to promptly process and analyse notarial reports. The author of the article, as a former employee of the notary department of the territorial department of the Ministry of Justice of Ukraine, highly appreciates the automation of notarial reporting.

Therefore, 2013 marked the beginning of a new stage of digitalization of notarial activities, both in terms of general principles – expansion of notaries' functions in terms of exercising powers in the field of state registration of rights to real estate respecting which notarial acts were performed, and in terms of improving the process of performing notarial acts respecting real estate, submission of statistical reports by notaries using digital means.

On 21.07.2014, the Ministry of Justice of Ukraine adopted Order No. 1174/5 (2014), which sets out in a new version the Procedure for admitting individuals to take the qualification exam and conducting the qualification exam by the Higher Qualification Commission of the Notary. A novelty was the conduct of the notary qualification exam in the form of electronic anonymous testing. It is worth noting that the system generates tasks for each candidate for the position of notary individually, by generating a list of both tasks and test questions from a general list. The first notary exam in the form of electronic anonymous testing was conducted in Ukraine on 6 October 2014.

The Law of Ukraine No. 247-VIII (2015), inter alia, granted notaries the right to access and use the State Land Cadastre (in accordance with the Procedure established by the Cabinet of Ministers) when exercising real rights respecting land plots, in addition to the mandatory use of information from the State Register of Real Rights.

The Laws of Ukraine No. 834-VIII (2015) and No. 835-VIII (2015) adopted on 26 November 2015 significantly expanded the powers of notaries in the field of state registration. Thus, Law of Ukraine No. 834-VIII (2015) not only restated the Law of Ukraine "On State Registration of Property Rights to Immovable Property", but also restated Article 46^{-1} of the Law of Ukraine "On Notaries", which concerned the mandatory use by notaries of information from the State Register of Property Rights to Immovable Property through direct access to it by notaries.

The Law of Ukraine No. 835-VIII (2015) is set out in a new version: The Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs", and established that notaries are also subjects of state registration as of 13 December 2015, in case they carry out state registration of other legal entities and individual entrepreneurs in accordance with Article 6 of the above act.

The Law of Ukraine No. 1666-VIII (2016) amended Article 46^{-1} of the Law of Ukraine "On Notaries" (1993) regarding the need to use information from unified and state registers. In particular, it is stipulated that starting from 02.11.2016, public and private notaries are obliged to use information from both unified and state registers "by direct access to them". The legislator has established a rule according to which public or private notaries of the state are obliged to use information from unified and state registers created and operated by the Ministry of Justice of Ukraine when performing notarial acts. In particular, for the first time, the need to use the following registers was emphasized: The State Register of Civil Status Acts and the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, as well as the Unified State Demographic Register. Notaries are also obliged to use information from both registers when performing notarial transactions with real estate, including objects under construction: The State Register of Real Property Rights and the State Land Cadastre. M. Nimak (2019) notes that in the State Register of Real Property Rights, a public, or private notary registers "not a notarial act – certification of a contract, but real rights and their encumbrances", i.e. notaries also carry out registration activities.

The following legislative and regulatory acts contributed to further adjustments in notarial legislation regarding digitalization processes in Ukraine: Resolution of the Cabinet of Ministers of Ukraine No. 918-r (2016) – approving the Concept of the development of the system of electronic services in Ukraine; Law of Ukraine No. 2155-VIII (2017) – regulating the procedure for the provision of electronic trust services. These acts became one of the legislative factors that contributed to the development of new digitalized notarial instruments in the future.

Law of Ukraine No. 199-IX (2019) amended Article 46^{-1} (part three) of the Law of Ukraine "On Notaries", according to which public and private notaries are obliged to use information from the Unified State Electronic System in the field of construction. Starting from 16 January 2020, Law of Ukraine No. 340-IX (2019) obliges public and private notaries to obtain extracts from the State Land Cadastre when performing transactions involving land plots in accordance with the provisions of Article 38 of the Law of Ukraine "On the State Land Cadastre" (2011).

The adoption in 2021 of the Concept of the Development of Digital Competences, as well as the action plan for its implementation (Order of the Cabinet of Ministers of Ukraine No. 167-r…, 2021), contributed to the next stage of digitalization of notarial activities. The Law of Ukraine No. 1892-IX (2021) imposed an obligation on notaries to

verify the validity of the submitted documents according to the Unified State Demographic Register when establishing the person who applied to the notary for a transaction, if such documents are executed using the means of the said Register (Article 43 of the Law of Ukraine "On Notaries", 1993).

Article 46[-1] of the Law of Ukraine "On Notaries" (1993) was also amended, namely part two: private and public notaries are obliged to use information from the three registers in the first place when performing notarial acts: The Unified State Demographic Register, the State Register of Civil Status Acts, the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations, as well as other state and unified registers created and operated by the Ministry of Justice of Ukraine. This means that digitalization tools in notarial practice have been further developed.

The Resolution of the Cabinet of Ministers of Ukraine No. 1290 (2021) approved the description and sample of the notarial document form, as well as the Procedure for their use, storage and circulation, and the procedure for reporting on their expenditure. It is worth reminding that ordinary citizens continue to have the right to check the information on the use of such forms by notaries, specifying the type of notarial act performed.

The direct embodiment of the principles of digitalization of notarial activities was the adoption of Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021). The war waged by Russia against independent Ukraine, due to the possibility of losing important information, led to the suspension of almost all electronic registers for a while. As of the end of February 2022, this resulted in the actual cessation of the activities of notaries and quasi-notaries, in particular, in the territories where military operations were conducted and in the occupied territories.

The legal regulation of notarial activities during martial law in Ukraine was mainly based on by-laws, in particular, several Resolutions of the Cabinet of Ministers of Ukraine: No. 164 (2022), No. 209 (2022), No. 480 (2022), No. 469 (2022); No. 719 (2022); No. 469 (2023). The above acts mostly concerned the use in notarial practice of unified and state registers kept by the Ministry of Justice during martial law in the country.

Analysing the amendments made by the Law of Ukraine "On Guaranteeing Property Rights to Real Estate Objects That Will Be Built in the Future" (2022) to part three of Article 46[-1] of the Notary Law, it appears that the legislator has combined into one rule the previous amendments made to the above part of Laws of Ukraine No. 1666-VIII (2016) and No. 199-IX (2019). In particular, it is established that when certifying real estate transactions by public and private notaries, in relation to real estate or an object under construction, as well as in relation to a future real estate object, it is necessary to use information from three registers: data from the State Register of Real Property Rights, the State Land Cadastre, and the Unified State Electronic System in the Field of Construction. The active implementation of digitalization in the Ukrainian notarial process is confirmed by the fact that public and private notaries cannot carry out their professional activities without using the system of Unified Registers. When performing certain types of notarial transactions, notaries not only receive information from these registers, but also enter information into them not only on notarial acts performed by notaries, but also, for example, have the right to enter information (registration actions) on concluded lease agreements, emphyteusis, which is electronic evidence of their conclusion.

Anyone can check whether a notarial document form is valid on the website of the state enterprise National Information Systems, which is one of the ways to protect the rights and legitimate interests of citizens in notarial transactions. Since only public and private notaries of the state use notarial forms when performing notarial acts, in practice, many questions arise regarding the legality, legitimacy and especially the validity of documents drawn up by other quasi-notarial bodies, in particular, officials of consular posts and diplomatic missions of Ukraine.

Pursuant to Law of Ukraine No. 2801-IX (2022), as of 31 December 2023, notaries will also be allowed to "register signatories in accordance with the legislation in the field of electronic trust services", which is not a violation of Article 3 of the Law of Ukraine "On Notaries" (1993).

E-notary as a perspective of digitization of notary activity in Ukraine

The Ukrainian notary is actively working to adopt the best international notarial practices, in particular those of the Latin notary system and electronic notary. Therefore, the experience of introducing digitalization into the notarial activities of other countries, including the Latin notary system, is valuable and useful for Ukraine.

Electronic notaries (cyber notaries) are quite common in the global notary community. For example, in Spain, there is the concept of a digital notary, in which a notary is considered a trustee of a third party. This concept to some extent contradicts the principles of Latin notary (López Jiménez *et al.*, 2022). At the same time, it is noted that the number of contracts (transactions) concluded in electronic form is increasing. The authors emphasize the need to use security methods when concluding such transactions. In the Italian Republic, the National Council of Notaries of Italy established an IT company called Notartel in 1997 to meet the needs for computerization of notarial activities (Bernatska, 2014). In France, there is also a notary network, MINITEL, which is used by all notaries in the country and allows them to exchange information not only necessary for notarial acts within the country, but also to have access to notarial documents of the European database, in particular wills. Alongside it, there is also a closed electronic notary network. Certain electronic technologies are used by notaries in Germany, including qualified electronic signatures (electronic signature cards issued by the Federal Notary Chamber). In Indonesia, an electronic notary is called a cyber notary. Such a cyber notary can only be a public notary, i.e. a government official (Agustin & Anand, 2021). The state has also introduced certain technological restrictions that contribute to the legality of the conclusion of original (authentic) acts. Studying the activities of the Belgian notary, S. Wuidar and P. Flandrin (2022) emphasize that the digitalization of notarial activities has increased the role of notaries and strengthened their position in Belgian legal circles. Belgian notaries operate through two digital applications: eRegistration and Biddit. However, the Professional Federation of Notaries (Fednot) has played and continues to play a significant role in the digitalization of notaries. According to the authors, the "ongoing digitalization"of the notary profession exacerbates the existing tension between the two roles performed by notaries in Belgium: the role of a public servant and the role of an entrepreneur.

Regarding the introduction of digitalization into the notarial process, the scholars point out that notaries have always "played the role of an intermediary" and only recently have they started to develop digital applications for economic purposes based on this characteristic". C. Bessy (2020) believes that the diversification of the notary's role as an intermediary is divided into three functions: trusted intermediary, legal intermediary, and market intermediary. In particular, the third function is associated with the expansion of modern notarial activities to a more business-oriented model "that promotes profit to the detriment of the quality of public services and the solidarity of the profession" (Delmas, 2019). S. Wuidar and P. Flandrin (2022) are right that the digitalization of the notary profession calls into question the balance between these three functions. Indeed, digitalization, to a certain extent, creates divisions within the profession, especially between notaries-entrepreneurs and others who are very much attached to the legal and social mission of the notary.

Some scholars point out that notarial services are expanding, and the notary profession is working decreasingly in isolation, i.e., it is becoming focused exclusively on monopolistic activities (Amiel, 2019). Indeed, the digital economy is witnessing the formation of a new institution – the electronic notary system, which is "a more optimal form of notarial services in terms of their quality, accessibility, and security" than conventional notaries (Sukhovenko, 2020).

The introduction of e-notaries in the Ukrainian state began with a discussion of the need for its introduction. According to V. Khomenko *et al.* (2021), to reform the Ukrainian notary, given the spread of respiratory viral infections, it is necessary to borrow the best foreign experience in the digitalization of notarial activities. This opinion is supported by V. Zalyotin and Ya. Babych (2020), who provide examples of the introduction of legal regulation of electronic notaries in 2020 in Belgium. This discussion was joined by government officials, representatives of the Notary Chamber of Ukraine, ordinary notaries, and academics, pointing out the positive and negative aspects, in particular in terms of legal regulation of e-notaries. Z. Zhuravlyova (2020) notes that the provisions of the Law of Ukraine "On Notaries" are "not adapted" to the procedure of e-notaries. Indeed, to introduce the e-Notary System, it is necessary, firstly, to introduce amendments to the Law of Ukraine "On Notaries" (1993).

Based on the analysis of the opinions of scholars and practising notaries, as well as the provisions of the above Law, it is proposed to introduce amendments to the Law of Ukraine "On Notaries" (1993) by supplementing Article 34 of the legislative act or by supplementing the above Law with a new Article 34^{-1}, which establishes a list of notarial acts to be performed by notaries using the e-Notary System.

The introduction of the e-Notary System is a rather complex technical and technological process that requires significant capital and investment, including from practising notaries. Effective operation of the notary is currently impossible without the use of computer equipment and other electronic gadgets, so there is a need to attract specialists in the field of computer technology. N. Mokrytska and M. Dolynska (2019), considering the existing practice of dividing working time into parts and to preserve notarial secrecy, consider it appropriate to conclude an agreement with such a specialist to perform their labour functions not for a full time, but to divide it into parts or on other terms (on certain days for several hours).

Practitioners and scholars, including I. Apalkova (2021), propose to notarize not only electronic transactions but also electronic copies of documents, as well as to use "electronic copies of powers of attorney" in notarial practice. Carrying out a comparative analysis of the activities of the notary bodies of Ukraine and Georgia, M. Dolynska (2020) noted that a radical reform of the Georgian notary took place in 2009. Since 23.03.2009, the country's notary switched to keeping a register of its actions in electronic form, and three to four months later, a common electronic database was created in which all notarial acts are registered. In particular, the electronic register contains documents issued by Georgian notaries in the course of inheritance registration and electronic records of wills. Ukrainian notaries enter the same information into the Inheritance Register. In both Georgia and Ukraine, modern notarial activities are based on the principle of digitalization, which is becoming increasingly widespread and is leading to the creation of an electronic notary.

Considering the experience of countries with Latin notaries, in particular, Georgia, the Ukrainian notary has already introduced a number of electronic services (registers) into notarial practice since 1999. The Resolution of the Cabinet of Ministers of Ukraine No. 1444 (2021), which provides for a pilot project on the phased introduction of the Unified State Electronic Notary System, launched the next, fifth stage of development of the digitalization of notarial activities in Ukraine. This resolution came into force on 13 January 2022, but the war unleashed by Russia prevented its implementation in practice. Analysing the provisions of the resolution, it was found that: there are three stages of e-notary implementation; project participants are specifically identified; eight components of the e-notary system are identified; the project expires on 31 December 2023.

Thus, Ukraine is gradually implementing e-notaries, as four of its components – the Unified Registers of Notaries, Powers of Attorney, Forms of Documents, and the Inheritance Register – are already in place, although they need to be reformed and modernized. However, they still need to be created: The Electronic Register of Notarial Acts (of all notaries in Ukraine) and the Electronic Notarial Archive. The regulation also provides for the creation and implementation of an electronic notary's office and an electronic client office.

The above-mentioned resolution was criticized by notaries and the professional association of notaries – the Notary Chamber of Ukraine. Thus, V. Marchenko (2020), as the president of the professional association of Ukrainian notaries, points out the need for legal regulation of the introduction of e-notaries in the state at the legislative level. The author of the article, like other scholars, also supports this opinion. Furthermore, V. Marchenko (2020), draws attention to the fact that, according to the practice of Latin notaries and international standards, it is the self-governing professional organization of notaries that has a leading role in the introduction of electronic registers of notarial acts. Therefore, the author argues that such a role in Ukraine should be played by the Notary Chamber of Ukraine.

K. Nesterenko and O. Bulgakova (2020) argue that when introducing e-notaries, the Electronic Register of Notarial Acts should operate on the basis of the Notary Chamber of Ukraine. One of the main problems is the data security of the e-Notary System, which is directly related to the principle of

notarial secrecy (Article 8 of the Law of Ukraine "On Notaries" (1993). In particular, this applies to cases of multipart state notary offices, as there are cases when two or more notaries receive citizens in one office.

The introduction of the e-Notary System into notarial practice will contribute to the fulfilment of the main tasks of the National Informatization Programme, as well as paragraph 2.8.5 of the Draft Plan for the Restoration of Ukraine (National Council for the Restoration of Ukraine…, 2022), developed by the Justice Working Group, according to which "all notaries are connected to the Unified State Electronic Notary System". It is only after Ukraine's victory that it is advisable to elaborate on the full implementation of the e-notary system, considering the comments of both notary practitioners, the Notary Chamber of Ukraine (as a professional self-government body of notaries) and academics.

Since modern public and private notaries in Ukraine operate only with the use of modern digital technologies, the information on certain types of notarial acts specified by law is stored on the electronic services of state and unified registers, which also guarantees the protection of the rights and interests of notary clients.

The use of e-notary technologies will contribute to the further development and improvement of notarial activities in Ukraine, in particular, in terms of optimizing the notary's work with documents, obtaining the necessary information in a short time through the use of digital technologies (electronic document management), efficient and high-quality provision of notarial services, as well as storing notarial documents on secure electronic servers.

The introduction of the Unified State e-Notary System into the notarial activity of Ukraine is a complex procedure in terms of the use of means, tools and technological processes and requires not only significant investments, but also painstaking work to create new registers, set up an electronic place by notaries and an electronic cabinet by clients.

Conclusions

The article examines the issues of the origin and development of legal and legislative regulation of digitalization processes in Ukraine. Using a combination of general scientific and special methods, including historical methods, and with the practical experience of implementing digitization of both notarial processes and notarial activities in general, the author identifies five main stages. It is established that digitalization processes in notarial activities in Ukraine originated in the late twentieth century and mainly concerned only public and private notaries, and almost did not concern other quasi-notarial bodies. The author emphasizes the need to introduce information technologies into the practice of notarial acts performed by other quasi-notarial bodies. The author suggests that digitalization tools should be used primarily when performing notarial acts by officials of consular posts and diplomatic missions.

The study revealed that the newest stage of digitalization of notarial activities, which began in 2021, will end with the introduction of an electronic e-notary system into Ukrainian reality, which, with certain regional peculiarities, effectively functions in countries with a Latin type of notary. The main obstacle to the creation of a state e-notary system is Russia's war against Ukraine, and only after its victorious end, it is worth talking about the introduction of new information technologies, including the e-notary system, into notarial practice. An important role in the implementation of this system should be played by ordinary notaries as its executors and implementers, as well as their professional self-government – the Notary Chamber of Ukraine.

The author emphasizes the importance of developing not only legislative and regulatory acts, but also guidelines for the effective implementation of digitalization in notarial practice. To effectively implement the e-Notary System into notarial practice and improve the digital literacy of notaries and their employees, the author proposes that the Notary Chamber of Ukraine, as a professional organization of notaries, should hold a series of seminars and webinars under the auspices of the Ministry of Justice of Ukraine.

Further scientific research on the introduction of digitalization in notarial activities should concern the introduction of all components of the e-notary system into the notarial practice of Ukraine, without exception. The purpose of these studies is to identify gaps in the legislative and legal regulation of digitalization processes both in relation to the e-notary system and the general principles of notarial activity, in particular access to the notary profession.

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Conflict of interest

None.

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Еволюція правового регулювання диджиталізації нотаріальної діяльності в незалежній Україні

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Анотація. Актуальність дослідження зумовлено недостатнім урегулюванням у Законі України «Про нотаріат» диджиталізаційних процесів у нотаріальній практиці. Мета статті – вивчити генезу та еволюцію оцифрування (диджиталізації) нотаріальної діяльності в незалежній Україні, виокремлюючи основні етапи цього процесу. Ключову роль у дослідженні відіграли порівняльно-правовий та історико-правовий методи, за допомогою яких здійснено детальний аналіз правового регулювання розвитку цифрових технологій у нотаріальній діяльності за часів незалежної України. Також у дослідженні нормативно-правових актів використано аксіологічний метод. У статті окреслено використання інформаційних технологій у сфері нотаріальної діяльності. Автором розглядаються питання правового регулювання застосування в нотаріальній діяльності незалежної України електронних реєстрів. Увагу приділено нотаріусам, як учасникам нотаріального процесу, що застосовують у своїй діяльності відомості Єдиних та Державних реєстрів. Підкреслено важливість врахування міжнародного досвіду країн, у яких успішно запроваджено та функціонують електронні реєстри та використовуються цифрові технології у нотаріальній практиці. Виокремлено п'ять основних етапів диджиталізації нотаріальної діяльності в Україні. Перший етап охоплює 1996-1999 роки; другий – 2000-2003 роки, третій – 2004-2012 роки, четвертий 2013-2020 роки, п'ятий етап розпочався у 2021 році та триватиме протягом періоду запровадження системи е-нотаріату в державі. Окреслено зародження та становлення нового правового інституту та правового принципу – диджиталізації нотаріальної діяльності, без якого сучасні нотаріуси не в змозі виконувати свої повноваження. Обґрунтовано позицію, що застосування технологій е-нотаріату сприятиме подальшому розвитку та удосконаленню нотаріальної діяльності в Україні. Практична значимість роботи полягає в тому, що пропозиції, сформульовані на основі отриманих результатів, можна використати, щоб удосконалити чинне законодавство, а також безпосередньо в нотаріальній діяльності

Ключові слова: цифрові технології; електронні реєстри; державний та приватний нотаріус; оцифрування нотаріальних дій; електронний доказ; електронний нотаріат

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Methodology of legal regulation of private relations in Ukraine

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Abstract. The relevance of the study is determined by the necessity to align Ukrainian legislation in the field of regulating private legal relations with pan-European requirements and standards, considering the Eurointegration processes and the path to European Union membership. The purpose of the study is to assess the effectiveness of the method of regulating relations in the field of private law. The research used a variety of scientific inquiry approaches, including historical, comparative, and legal hermeneutics, among others. Several ideas relevant to the research issue were discovered, including private and public law, private legal interactions, and dispositive and imperative regulatory procedures. The differences between these methods and their characteristics were outlined, and the current issues in the research area were examined, such as a considerable number of legal collisions and an outdated approach to regulating entrepreneurial activities. Solutions to these problems were proposed, including the process of abolishing codified economic legislation. The advantages of recodification as a method of reforming the field of private law and civil legislation in general were substantiated. Recommendations were provided for improving and optimising this process to minimise negative public perception, encompass and consider modern needs of private law and relations arising in the field, including those related to information technologies, international law, and more. The significance of this process for the effective integration of Ukraine into the European Union, as well as the assertion of safeguards for protecting the rights and freedoms of persons and legal entities as participants in private legal interactions, were

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emphasized. The findings of the study can be utilised by legislators to enhance regulations in the respective field and by researchers to expand the scientific doctrine in the field of private law

Keywords: dispositiveness; Eurointegration; recodification; economic activity; freedom of will expression

Introduction

Private law and private legal relations play a leading role in the formation of the rule-of-law state because these categories define ways to protect the interests of individuals and legal entities, contribute to the development of entrepreneurial freedom and competition, and the functioning of the market economy. Private legal relations research is important in modern times because, in the context of globalization and European integration, there is a growing need to ensure proper protection and regulation of individuals' interactions within private law, which includes family, contractual, labor, housing, and other social relations. The fundamental issue within scientific doctrine is a lack of research on how to enhance the control of these relationships.

Regarding the correlation and peculiarities of private and public relations, L. Herasymchuk (2023) aptly expressed those public legal relations are characterised by a greater degree of activity and intervention by the state, which uses the imperative method of legal regulation in relations where it acts as a subject. In public relations, compliance with instructions from authorities is envisaged, which cannot be altered by agreement and is obligatory. As for private relations, the author notes that state intervention is minimal since the dispositive method of regulation is used, which involves freedom of contract and will expression and providing space for dispute resolution by agreement between the parties.

O.D. Krupchan's (2014) paper contains considerations on the necessity of distinguishing between a private law and a public law approach to regulating contacts in the realm of economic activity. The author indicates the existing dualism in the regulation of these legal relations, which is due to the combination of methods of both public and private law in special legislation. This creates an impossibility to define the limits of state intervention in relations arising in the field of economic activity and having characteristics of private law. B.V. Derevyanko (2020) holds opposing views on state participation in economic legal relations, indicating that the economy and economic relations, in general, cannot exist without state intervention, as they require support and legal certainty.

The issue of private law regulation in the provision of medical care was investigated by G.A. Myronova (2020), who noted that the main legal act allowing the classification of activities in the field of medical law as private is the individual's expression of will regarding medical intervention and the agreement on the patient's representation based on power of attorney. The author notes that these are two fundamental instruments that allow patients to control their treatment, make wishes regarding care, and further life continuation. The execution of a power of attorney creates the possibility for making decisions through representatives when the patient is not capable of doing so. According to the researcher, this specifically allows affirming the presence of private legal relations in the field of medical law.

The question regarding the main instrument designed to regulate private law relations – legislation – was outlined by G.S. Fedyniak (2020). The author stated that the quality and accessibility of legislation, which is designed to regulate private law relations in various fields, can be achieved through terminology and language clarity. The researcher proposed to replace some terms in the civil legislation of Ukraine and other laws with Ukrainian equivalents. The term "verification" in legislation on state payments should be translated as "checking". Such a replacement will help avoid misunderstandings on the part of a private individual referring to the law for the interpretation of their rights and obligations, requirements of certain procedures.

The analysis of the above-mentioned works allows concluding that the issue of private legal relations and their regulation has many aspects and branch ramifications reflected in the scientific doctrine. The studies of the mentioned authors contain proposals for specific reforms and changes in legislation, while the challenges of the present and the necessity of European integration indicate the path to a comprehensive reform of the regulatory framework for private legal relations. Furthermore, special attention should be made to the assessment of the relevant industry's regulatory process. Therefore, the purpose of this study is to assess the effectiveness of the dispositive method in the regulation of private legal relations. The main task of the study was to identify several areas of private law requiring additional attention and improvement in legal regulation, considering the challenges of European integration.

Materials and methods

The research was carried out utilizing a variety of scientific cognitive methodologies. Among these, the historical approach assisted in clarifying the step-by-step growth and formation of both private law and private legal relations in general, as well as their significance in various historical times. The comparative technique proved effective in analyzing the distinguishing aspects of public and private law ideas, as well as the various approaches to their regulation utilizing dispositive and imperative methods.

In addition to the comparative method, a formal-logical approach was used to analyse the codified acts of Ukrainian legislation and theoretical developments related to private law, private legal relations, and their impact on the socio-political life of the country. Alongside the formal-logical approach, the method of legal hermeneutics was applied to analyse the normative legal framework of the studied field, including the Civil Code of Ukraine (2003), the Civil Procedure Code of Ukraine (2004), the Economic Code of Ukraine (2003), and a separate legislative act – the Law of Ukraine No. 2709-IV "On International Private Law" (2005). Furthermore, the method was needed during the analysis of European principles regulating private legal relations, in particular, the Principles of European Contract Law (1998) and the Principles of International Commercial Contracts (1994).

The method of analysis allowed clarifying issues related to the characteristic features of private law and relations arising in this field, the current problems that are relevant and require attention to enhance the effectiveness of regulating these legal relations. This method was also employed to investigate the concept of recodification as the primary method of civil law reform. Thus, the analytical approach

is used to identify the major aspects of this process, stages, features, and grounds for its execution. It's notable that the synthesis approach was employed concurrently with the analysis method, allowing for the assessment of existing difficulties and their consideration while developing general ways of improvement and suggestions connected to the process of civil law recodification in Ukraine.

A statistical method of scientific knowledge was also used in conjunction with the method of analysis and synthesis, which allowed highlighting the state of judicial consideration of civil claims and the main reasons for refusing to accept or return applications from subjects of private legal relations. Based on the extracted data and issues and using a systemic-structural approach, ways to resolve them and methods of improvement and supplementation were investigated, considering digitisation, globalisation processes, the need to consider public opinion, European regulatory principles, and more. The official website of the Supreme Court (Court statistics, 2022) was used as a source for presenting current statistical data. The forecasting method allowed outlining the future vision of the place of private law and private legal relations in the socio-political life of the country and economic development. Moreover, through the method of scientific knowledge, such as induction, a general conclusion and recommendations for further research were developed.

Results

The emergence of private legal relations can be traced back to the development processes of early civilisations with the emergence of such institutions as marriage and family. In medieval Europe, private relations were subordinated to the interests of the church and the state. Marriage was considered a sacred union, and the family was the basis of social order (Graham, 2021). The contemporary age of private legal relations development is distinguished by their constant evolution, which is governed by changes in socioeconomic situations, technological developments, and globalization processes.

In the field of law, private legal relations are defined as relations that arise between natural and legal persons who are equal subjects of law. The main features that allow attributing certain socio-legal relations to the field of private law are:

- equality of subjects, which means that the relevant relations arise between subjects who are equal before the law, have equal rights and obligations;
- free will, which means that participants in relations can independently define the terms and rules when concluding contracts or agreements;
- property independence, which involves the right to independently dispose of one's property.

The legislative definition of private legal relations, which is present in the Law of Ukraine No. 2709-IV (2005), is identical to the one mentioned above. However, it is worth noting the Civil Code of Ukraine (2003) as the main law regulating private relations, which does not contain a definition of this concept but indicates its certain characteristics. Under Article 1 of Ukraine's Civil Code (2003), this legislative act controls both property and non-property personal relationships developed in line with the principles of legal equality, free choice, and property independence. Part 2 of this article emphasizes that civil law cannot be applied to property relationships based on administrative subordination of one party to the connections of another.

This norm is entirely logical in terms of the fact that alongside private law, there is public law, but it is important to outline the main differences between these categories, which consist of several aspects: private relations arise between persons who are equal subjects of law, while public ones are between the state or its bodies and natural or legal persons; private relations are regulated in accordance with the property or non-property interests of their participants, while public ones are formed based on the interests of the entire society; the methods of regulation are also different, as public relations are characterised by imperative, and private ones – by a dispositive method of regulation.

The dispositive method implies that the parties involved in legal relations have the right to independently determine their behaviour unless otherwise provided by law. This method is used to regulate relations that are not crucial for society as a whole but only concern the interests of individuals, such as relations in the field of private law (Hesselink, 2022). Among the method's distinguishing features is that in civil relations, the parties have equal rights and obligations, regardless of their status, and can independently decide whether to enter into these relations and how to regulate and determine their behavior, if it does not contradict the law (Gawlik, 2021). However, given the necessity to secure the legality of this or that transaction and the preservation of persons' rights and freedoms in private relationships in the case of damage, even the dispositive technique may contain aspects of imperativeness.

In general, the issue of strengthening systems for managing private legal interactions is linked to the requirement to optimize court assessment of civil matters. (Fig. 1).

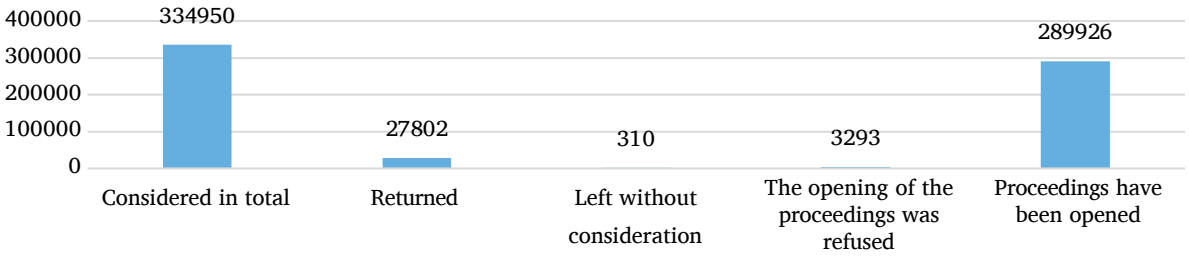

Figure 1. Adjudication of cases in civil proceedings by first-instance courts during 2022
Source: compiled by the authors based on Court statistics (2022)

Taking into account the provided statistical data, approximately 10% of applications are returned or left without consideration. According to the provisions of the Civil Procedure Code of Ukraine (2004), the incorrect determination of the procedural order in which the case should be considered may be the reason for this. Therefore, there is

a problem of distinguishing between civil and commercial procedural law in disputes concerning legal acts based on contractual relations or the necessity to ensure the primary obligation under the contract. Considering the provisions of the Code of Commercial Procedure of Ukraine (1991), commercial courts are authorised to consider disputes related to economic activities, and regulations involving legal entities and individuals engaged in entrepreneurial activities. The legislator has established a subjective criterion for distinguishing the jurisdiction of commercial courts and general jurisdiction courts. However, the Grand Chamber of the Supreme Court, in its Resolution of the Supreme Court No. 904/2538/18 (2019), noted that the subjective composition in legal acts concluded to ensure the performance of an obligation is irrelevant when determining the court to which the relevant application should be submitted. Moreover, the norms of the Code of Commercial Procedure of Ukraine (1991) indicate that individuals without entrepreneur status can be participants in economic legal relations, and exceptions regarding legal disputes involving an individual that cannot be considered within the framework of economic jurisdiction are defined. Corresponding provisions are absent in the norms of the Code of Commercial Procedure of Ukraine (1991), creating a situation where clear boundaries and criteria for general jurisdiction courts are absent, like for participants in private legal relations, leading to a lack of understanding of the dispute's specificity and the court to which its resolution falls.

The resolution of this issue is currently relevant and involves the recodification of the Civil Code of Ukraine (2003). Overall, recodification is an important reform affecting not only the normative component but also social relations in the field of private law, as civil law is the mainstay of private legal relations (van den Berge, 2018). The process of recodifying civil legislation currently involves two approaches: the first, in which the updated Civil Code of Ukraine (2003) will contain norms aimed at regulating all relations arising in the field of private law; the second approach focuses on the need to include general principles of private law in the Civil Code of Ukraine (2003), with the simultaneous existence of separate special laws regulating relations in the field of commercial law, intellectual property, and so on (van Leeuwen, 2019). Currently, lawmakers lean towards the first approach, which involves the repeal of the Economic Code as such, but commercial courts will continue to function, guided by the updated civil legislation.

The main task within the framework of recodification as a way to optimise and improve the methodological regulation of private law relations is to change the legislation in accordance with the requirements and principles of the EU (Janssen, 2019). The developers of the recodification programme have identified a set of principles (Bilousov & Podolianchuk, 2020):

- the classification of legal entities should be based on whether they were created publicly or privately;
- the development of an exhaustive list of organisational and legal forms of private legal entities;
- the elimination of Soviet institutions of economic management and property control;
- the status of public legal entities should be regulated by a separate law;
- the rights of public law entities are equated to the rights of other participants and subjects of civil legal relations.

The stages of recodification will be conducted in several main areas (Fig. 2).

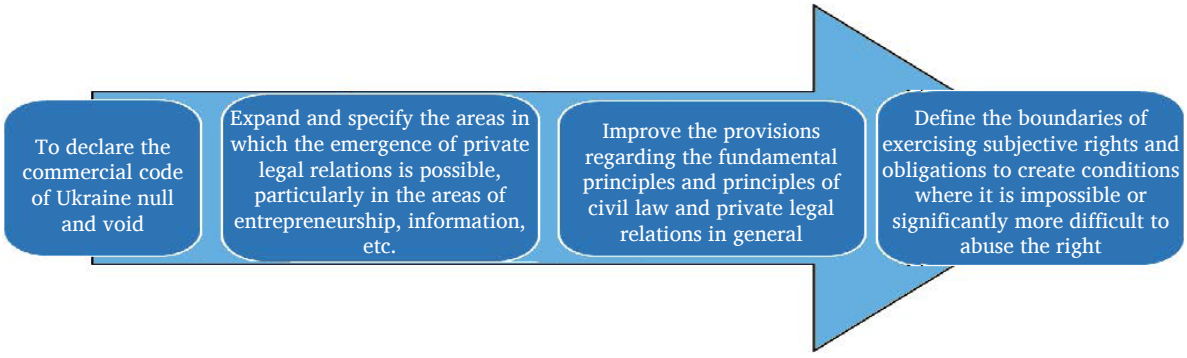

Figure 2. The stages of recodification
Source: compiled by the authors based on J. Kiršienė *et al.* (2019)

There is also an emphasis on the need to supplement civil legislation with provisions that define methods of protecting individual rights in the fields of information, personal data, reproductive activity. Such a legislative approach to improving the methodology of regulating private legal relations is revolutionary and will significantly impact the conventional sphere of private law relations (Schwartz & Scott, 2022). However, this step is necessary due to the processes of European integration and the inadequacy of the current system of regulation and protection of private legal relations, as it causes collisions and forms gaps that affect both the efficiency and quality of justice. It is important to note that the recodification process should take place not only for the purpose of European integration but also by utilising the developed norms and customs of European law, which have been successfully integrated into the civil legislation of several countries, including Germany, which reformed the regulation of private legal relations (Totry-Jubran, 2020); and France, whose civil legislation has also undergone transformations to harmonise with general European law (Tan, 2023).

Among the main European approaches and principles for regulating the private sphere, it is worth highlighting the Principles of International Commercial Contracts (1994) and the Principles of European Contract Law (1998). The advantage of these provisions is that they are practically applicable in both business and judicial activities. They were developed not based on individual national requests but through the

joint efforts of scholars and practitioners from various countries representing different legal systems (Karaba *et al.*, 2022). This implies a certain universality and international applicability of these principles as general rules of contract law.

The codification of civil laws may also include legal relationships originating under private international law. It is especially important to analyze the presence of legal standards that encompass and define private legal interactions complicated by a foreign element in Ukraine's Civil Code (2003). It is also prudent to distinguish between aspects of imperative and dispositive nature that govern private legal relations in international law, ensuring that the Civil Code in Ukraine (2003) and its legal nature correspond to a dispositive approach to private legal relations regulation. Positive duties and governmental interference should be clearly differentiated in a distinct part or special statute.

It is critical to address contemporary facts such as the ongoing coding process, the expansion of the digital economy, new technologies, changes in social interactions, and the continual evolution of intellectual property. This is especially true for topics such as e-commerce, personal data protection, and distance contracts (Kud, 2021). The process of recodifying the Civil Code of Ukraine (2003) should be transparent and open to the public. This will allow for the involvement of a wide range of experts and professionals in working on the new code and ensure an appropriate level of public trust in the new code. For instance, it would be beneficial to establish an expert council on the recodification of the Civil Code of Ukraine (2003), including the involvement of not only scholars and practitioners but also representatives of business, entrepreneurial activities. It is also essential to consider that the reformed Civil Code of Ukraine (2003) will mean the repeal of the Economic Code of Ukraine (2003) and the inclusion of a set of improved and new norms, leading to different reactions from society. Therefore, preparing the public through organising public consultations, online conferences, is necessary (Bartley, 2022). Even due to the sequence of the recodification process, the actual formation and implementation of norms may not coincide with European principles, so it is necessary to qualitatively adapt the legal awareness and awareness of potential participants in private law relations.

The updated civil code will considerably contribute to improving the regulation of private legal relations, particularly by focusing on enhancing the protection of private rights and interests of individuals and legal entities, reducing the number of conflicting acts regulating identical legal relations, and considering modern realities, including technological developments, digitalisation processes, and the importance of intellectual property.

Discussion

The issue of regulating private law relations is recognised as relevant not only in Ukraine. A number of researchers and authors analyse the likely development and future appearance of the field of private law both in individual countries and at the world level. For instance, there are opinions on the possibility of a greater role for private law compared to public law, as discussed by N. Malhotra (2019). According to these authors, the methodology of private regulation, encompassing dispositiveness and freedom of discretion, succeeds not only at the national but also at the local level, especially within large enterprises. According to this study, such enterprises are perceived as more socially responsible and person-oriented. The study also indicates that the dispositive method of regulation can be more effective in achieving environmental goals than the imperative method, as the former is considered more flexible and adaptable to the specific needs of a particular industry or sector. The results of these authors partially align with the findings of this study, particularly in terms of the differences between the dispositive and imperative methods. Indeed, the dispositive method is characterised by greater freedom of discretion, free will, and the absence of clear and mandatory rules, allowing for its application to most legal relationships, including private ones.

Questions concerning the development and improvement of private law as a science and a legal field, in general, have been explored by A.S. Gold (2020). The author emphasises the concept of the new private law that emerged in the late 20th century and its research methodology, which relies on internal and external perspectives. Internal perspectives focus on the normative dimension of private law, examining the rules and principles regulating private legal relations. They are based on ideas from moral philosophy, economics, and political theory to assess the coherence and legitimacy of doctrines in private law. On the other hand, external perspectives consider the social, economic, and historical contexts in which private law operates. According to the researcher, a successful combination of these aspects allows the formulation of contractual norms and rules recognised at the international level. The author's results have some differences from the findings of this study since private law and private legal relations are regulated by coordinating rules and requirements in the conclusion of legal transactions between participants in the respective relationships, and such coordination is based not on imperative rules but on the principles and fundamental principles of civil law.

The investigation of institutions as components of the field of private law is present in the work of A.J. Treviño (2011). The author asserts that private law institutions, such as contracts, property, and proprietary rights, and other legal transactions, serve as the foundation and guarantee for ensuring the proper regulation of individual rights and freedoms. The author also noted certain functions that are inherent in both private law institutions and the field as a whole. These include the effective and just resolution of disputes, contribution to social justice, orientation towards private interests, and the protection of private property. The researcher indicates that despite various problems and challenges currently facing the field of private law, its future as a legal domain will be successful because the nature of the field itself involves flexibility and adaptability. The author's results are valuable for understanding the specifics of the field of private law and the development of features for regulating private legal relations, although they do not fully correspond to the results of this study.

Reflections on the defining features of private law are present in the paper by P.B. Miller (2023), who asserts that private law is normatively distinctive in three aspects: private law is based on a set of values different from other legal branches. It exhibits autonomy, along with a different set of methods for developing and implementing legal norms. The author also states that private law and its legislative expression often prove to be more just, efficient, and democratic. The researcher particularly emphasised some drawbacks of

the field, such as the inability of private law to be equivalent to public law. Similar discussions on the role of private law are found in the study of M.W. Hesselink (2016). The author argues that the traditional view of private law as a system of rules regulating relations between private parties is no longer relevant. Instead, private law should be considered as principles and fundamental principles according to which the regulation of private legal relations between individuals and legal entities takes place. The authors' findings add to understanding of the characteristics of private law and its influence on the evolution of legal interactions in general, however they only partially validate the findings of this study.

It is worth examining G. Képes's (2021) study on the abolition of the "aviticitas" institution and its impact on the development of modern private law and private legal relations in Hungary. Aviticitas was a legal system that existed in Hungary from the Middle Ages until the 19th century. According to aviticitas, land was passed down from generation to generation through a system of undivided inheritance. This system had a number of negative consequences, including inhibition of economic development. In 1848, according to the author, the Hungarian Revolution led to the abolition of aviticitas. This was a significant step forward for the development of modern private law in Hungary, as it allowed for the creation of a more flexible and efficient system of property ownership (Bauer & Köhler, 2023). The author's results complement this study. It is advisable to note a certain similarity between the reform of the sphere of private law and civil legislation on the part of both Hungary and Ukraine as the abolition of the above-mentioned Hungarian institution is equivalent to the Ukrainian way of improving the sphere – the recodification of civil legislation. In the case of Hungary, this reform contributed to the improvement of the sphere of private law relations, economic development and became a guarantee of further membership in the EU, so it is reasonable to predict a similar result for the Ukrainian state.

Conclusions

The study allowed for a more in-depth examination and identification of critical components of Ukraine's way of managing private legal interactions. The historical element and phases of private law development were clarified. The notion of private legal relations has been discussed in depth in a variety of situations, including the social environment. A number of distinguishing characteristics of private law relationships, such as equality, free choice, and property independence, have been highlighted. Legislative interpretation of private connections was also offered, taking into account the rules of Ukraine's Civil Code and Law No. 2709-IV. The idea of private legal relations was found to be lacking from the primary regulatory statute. Still, there are basic criteria for attributing certain relations between natural and/or legal persons to the field of private law.

Given the above, the study includes a comparison of the methodology of regulation in private and public law, outlining the main differences between the two areas. For instance, the imperative method is inherent in administrative and criminal law, while the dispositive method is characteristic of civil and family law, among others. The main features of the dispositive method of legal regulation, which is the primary method in the field of private relations, were highlighted. These include freedom of contract, equality in rights and obligations, and the ability to independently define conditions and requirements within the concluded legal transaction. It was emphasised that the dispositive method demonstrates greater effectiveness and efficiency due to the absence of clear duties and rules and state control, providing more space and opportunities for dispute resolution through non-jurisdictional means. Attention was paid to current issues in private law, particularly the need to enhance the effectiveness of judicial power in the adjudication of civil cases. The study noted that due to legal conflicts existing in the Economic and Civil Codes, individuals seeking judicial protection find it challenging to determine the jurisdiction within which the case should be considered. It was also indicated that the main solution to this issue involves the recodification of civil legislation and the repeal of the Economic Code. Such a step is deemed necessary in the context of Ukrainian Eurointegration and the optimisation of judicial review of civil disputes within the framework of private legal relations. For further research, it is suggested to investigate issues such as the correlation between public and private law in the field of entrepreneurial activity, social and environmental aspects of private law, the impact of digital technologies on private law, legal issues of digital property.

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Conflict of interest

None.

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Методологія правового регулювання приватних відносин в Україні

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Анотація. Актуальність дослідження зумовлено необхідністю узгодити українське законодавство у сфері регулювання приватноправових відносин з загальноєвропейськими вимогами й стандартами, з огляду на євроінтеграційні процеси та шлях до членства в Європейському Союзі. Мета науково-дослідної роботи – з'ясувати ефективність методу регулювання відносин у сфері приватного права. У дослідженні було використано різноманітні підходи до наукового пошуку, зокрема історичний, порівняльний та метод правової герменевтики. Було виявлено кілька ідей, що мають відношення до теми дослідження, включаючи приватне та публічне право, приватноправові взаємодії, диспозитивні та імперативні регуляторні процедури. Окреслено відмінності вказаних методів та їхні особливості; вивчено актуальну проблематику сфери дослідження, зокрема значну кількість правових колізій та застарілий підхід до регулювання сфери підприємницької діяльності. Запропоновано шляхи вирішення цих проблем, наприклад, через процес скасування господарського кодифікованого законодавства. Обґрунтовано переваги рекодифікації як способу реформування галузі приватного права та цивільного законодавства загалом. Надано рекомендації щодо вдосконалення та оптимізації цього процесу задля мінімізації негативного сприйняття з боку громадськості, охоплення та врахування сучасних потреб приватного права та відносин, котрі виникають у галузі та стосуються інформаційних технологій, міжнародного права тощо. Було наголошено на значенні цього процесу для ефективної інтеграції України до Європейського Союзу, а також утвердження гарантій захисту прав і свобод фізичних та юридичних осіб як учасників приватноправових взаємодій. Результати дослідження можуть використати законодавці для вдосконалення нормативно-правових актів у відповідній сфері, а також дослідники задля розширення наукової доктрини в галузі приватного права

Ключові слова: диспозитивність; євроінтеграція; рекодифікація; господарська діяльність; свобода волевиявлення

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Cultural, philosophical and legal aspects of volunteering in Kyrgyzstan: Current challenges

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Abstract. The relevance of the study of volunteer activity in Kyrgyz society is due to the epistemological need for a comprehensive understanding of this sphere of human activity at the current stage of development of Kyrgyzstan. This is due to the insufficient conceptualisation of this issue in the country's scientific space. This study uses two main theoretical and methodological approaches: axiological and praxeological. The survey method was chosen for the empirical part of the study. The total number of participants in the study was 284. The purpose of the study is to analyse the motivation and features of volunteering in Kyrgyzstan, taking into account historical contexts, current conditions, legal framework, and potential areas of development. Volunteers in Kyrgyzstan actively support educational and cultural projects, focusing on the development of society in these areas. Social projects are less of a priority. The main motivations for volunteers are social responsibility and personal interests, while traditional and religious factors are less important. The professionalisation and standardisation of volunteering is becoming increasingly prominent, given the rational motivations. The main challenges for volunteers and volunteer organisations in the country are lack of funding and resources, difficulties in organising projects, and limited access to professional training for volunteers. Social and legal aid, education, youth support, healthcare and medical care remain priority areas for volunteering in the current environment. Most respondents expressed optimism about the future of volunteering in Kyrgyzstan. They are confident that it will continue to develop and play a more important role in society. Improved funding, stronger cooperation with government agencies by introducing a legal framework for volunteer activities, development of the infrastructure and global cooperation are seen as key

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factors for effective organisation of volunteer activities and addressing social and legal challenges in the future. The study contains valuable information for government institutions related to volunteering and will be useful for the development of high-quality state policy in this area

Keywords: religious attitudes; traditional values; rationality; globalisation; altruism; volunteer rights

Introduction

The multifaceted and multi-aspect nature of volunteer activity in Kyrgyz society stimulates research aimed at exploring both cultural foundations and modern determinants and predictive constructs capable of anticipating the future state of this sphere of human activity. The relevance of a comprehensive analysis of volunteer activities in Kyrgyzstan is associated with the epistemological need to identify cross-cultural and unique national features of volunteering in this country. This is necessary, primarily, for understanding the overall picture and architecture of volunteering in Kyrgyzstan.

S. Dzhuraev (2021) notes that during the pandemic, not only did the vulnerability of the state become apparent, but also the remarkable resilience of society as a whole. Even in the absence of medical personnel and medicines in hospitals, thousands of volunteers stood up to defend society. These volunteers were diverse groups of people, including medical students, businessmen, and ordinary citizens. The results of the study identify three key roles of volunteers at different stages of the pandemic. In the initial period of the crisis, the volunteer movement was growing to provide support to the most vulnerable socio-economic groups.

I.A. Akhmetova *et al.* (2022) analysed the historical roots of volunteering in Kazakhstan. They note that volunteering in the Kazakh steppe has formed and developed over many centuries, combining national identity with sociocultural characteristics. Volunteering in the Kazakh steppe has its own path. By exploring the formation and development of this sphere of human activity, researchers identified three historical sources of volunteering in Kazakhstan: the development of Islamic culture in the Kazakh steppe as a voluntary institution; tribal aid in traditional Kazakh society as a social institution; the transmission of volunteering ideas by Kazakh educators.

A study conducted by A. Kireyeva *et al.* (2022) analysed the influence of women volunteers on the process of government management in palliative care for patients in Kazakhstan. Their study included interviews with two groups of respondents: volunteers and employees of medical institutions and charitable organizations. The interview results showed that women volunteers play a key role as intermediaries between the government administration and the palliative care system. The contribution of these women volunteers is associated with providing financial support, organising training and workshops for doctors, especially in the field of oncology, providing additional beds for patients, and consultations.

R. Yorick *et al.* (2021), analysed the success of the project Tajikistan Health and Nutrition Activity (THNA), which was funded by the US Agency for International Development "Food for the Future". Within this project, 1370 volunteers in 500 rural communities were trained to improve the nutrition of children, pregnant women, and lactating mothers. The results of the study indicate the success of joint activities in the field of agriculture and health in improving the nutrition of children, and these models can be applied in other contexts. However, the researchers express concerns about the need to adapt such interventions and models of public volunteers to the local context. It is also emphasised that despite success in implementing interventions, volunteers experienced exhaustion and needed additional motivation and substantial support.

A. Baimbetova *et al.* (2021) examined the specifics of volunteer activities in the tourism industry of the Republic of Kazakhstan, which is in the stage of formation and integration. The researchers identified a low level of motivation in this sphere of volunteer activity. To address existing problems of volunteer motivation, the following methods were proposed: creating volunteer infrastructure at the regional level; financial support for volunteer organizations; implementation of educational events for volunteers; creating a legal environment that mitigates legislative barriers for volunteers. M.N. Khushnazarova (2023) suggests a step-by-step approach to preparing graduate students in social work for the implementation of Uzbekistan's state policy in the field of volunteering. She highlights three levels of educational operations: the information level – forming knowledge about the nature of volunteering in solving important societal problems; the relationship level – actualising volunteering as a positive phenomenon in society; the behaviour level – attracting and encouraging students to engage in volunteer activities.

Thus, the scientific discourse on volunteer activities in Kyrgyzstan has low intensity. Given this state of the issue, there is a need to fill this research field with a relevant and comprehensive study that could reveal the essential aspects of volunteering in Kyrgyzstan. Based on this, the purpose of the study is to determine the motivational and operational components of volunteer activity in Kyrgyzstan, considering historical foundations, contemporary realities, and potential development prospects. To achieve this purpose, the following tasks were set: to record the cultural and religious paradigms of volunteer activities in Kyrgyzstan; identify contemporary challenges and problems faced by volunteers and volunteer organizations in Kyrgyzstan; highlight prospective vectors for the development of volunteering in Kyrgyz society.

Materials and methods

The theoretical and methodological basis of the study is two main approaches – axiological and praxeological. The axiological approach focuses on examining values, ideals, and beliefs that shape the philosophy and motivation of volunteers. The use of the axiological (value-based) approach in researching the cultural-philosophical aspects of volunteering in Kyrgyzstan was very useful in several cognitive dimensions. The study focused on values considered most important in the context of volunteering in Kyrgyzstan. This may include values of solidarity, social justice, cooperation, empathy, and others. Traditional values and religious beliefs that have historically formed in this society were also considered. For example, the concept of "atke zhatkan keremet" (helping one's fellows), which is an important part of the country's culture; traditional agricultural cooperation

known as “aiyldyk kenesh.” Furthermore, much attention was paid to the personal values of the volunteers in the form of beliefs and ideals that inspire them.

The use of a praxeological (practical) approach in researching the cultural-philosophical aspects of volunteering in Kyrgyzstan was valuable because this approach focuses on the practices and experiences of volunteers. The emphasis was primarily on specific types of activities that volunteers perform in Kyrgyzstan. It explored which practices are most popular and how they interact with the cultural and philosophical features of the country. In addition, the experience of volunteering was considered. An analysis was conducted to understand what kind of experience individuals gain through volunteering and how it influences personal and professional development.

The theoretical part of the study is also supported by general scientific methods: analysis, synthesis, and comparison. The joint use of analysis and synthesis allowed for breaking down complex phenomena into components and then assembling them back into a comprehensive understanding. The heuristic potential of this methodology lay in the ability to dissect various aspects of volunteering into parts and then synthesise these parts to understand their interconnection. Comparative analysis allowed for juxtaposing volunteering in Kyrgyzstan with the experience of other countries and regions to identify common trends and features. This method helped understand how cultural and philosophical aspects of volunteering differ or converge in different contexts.

As a basis for the empirical part of the study, a survey method was used. The sample consisted of 284 respondents. The survey was conducted throughout the year, from October 2022 to October 2023. This study aligned with the ethical principles of research, including anonymity, confidentiality, and beneficence. Ethical approval of the study was obtained from the Ethics Commission of the Kyrgyz National University named after Jusup Balasagyn.

Residents of Kyrgyzstan who were engaged in volunteering on a permanent or partial basis were interviewed. The respondents were selected using the snowball sampling technique. This is due to the specific object of the study, which included respondents with a special field of activity. The questionnaire was distributed in the format of a Google Form. The questionnaire had both closed and open-ended questions (Table 1).

Table 1. Example of questionnaire questions

Question	Answer options
1. How regularly do you participate in volunteer activities?	1. Regularly (several times a month). 2. Sometimes (a couple of times a quarter). 3. On a semi-regular basis (a couple of times every six months). 4. Rarely (once a year). 5. Very rarely (every few years). 6. It is difficult to answer.
2. Which event or organisation of volunteer activity is most interesting to you?	1. Assistance to the needy (for example, assistance to the homeless, distribution of food). 2. Environmental projects (for example, garbage collection, tree planting). 3. Cultural events (e.g. festivals, exhibitions, concerts). 4. Educational programmes (for example, assistance in teaching children, support for schools). 5. Medical care and health care (for example, patient care, charity in medicine). 6. Support for families and children (for example, work with orphans, family programmes). 7. Social rehabilitation (for example, assistance to former prisoners, drug addicts). 8. Other. 9. It is difficult to answer.
3. What is the main factor that inspires you to volunteer?	1. Faith and religious values motivate me to help others. 2. Protection and promotion of cultural traditions and customs of my people or community. 3. The desire to improve social well-being and help those in need. 4. I want to actively participate in the improvement of society and make it better. 5. I participate in volunteer activities because it is interesting and satisfies my personal interests or hobbies. 6. Volunteering helps me develop skills that are useful for my career. 7. Volunteering brings me joy and satisfaction. 8. Other (specify). 9. It is difficult to answer.
4. What motive can influence your decision to participate in certain events or projects?	1. My religious beliefs and obligations may influence the choice of volunteering. 2. Participation in events that observe the cultural traditions or customs of my people or community. 3. My inner beliefs and moral values can influence the choice of a particular volunteer activity. 4. Other (specify). 5. It is difficult to answer.
5. How strong is the influence of religion and religious organisations on volunteer activity in Kyrgyzstan?	1. Very strong. 2. Moderate. 3. Minor. 4. No influence. 6. It is difficult to answer.
6. What aspects of religion can influence volunteer activity in Kyrgyzstan?	An open-ended question.

Table 1, Continued

Question	Answer options
7. How do you assess the influence of traditions and customs on volunteer activity in Kyrgyzstan?	1. Very strong. 2. Moderate. 3. Minor. 4. No influence 5. It is difficult to answer.
8. What aspects of traditions and customs can influence volunteer activity in Kyrgyzstan?	An open-ended question.
9. What, in your opinion, is the most urgent problem faced by volunteers in Kyrgyzstan?	1. Lack of funding and resources. 2. Difficulties with the organisation of volunteer projects. 3. Difficulties in cooperation with state and non-state organisations. 4. The lack of a legal framework for volunteering. 5. Lack of information support for volunteers. 6. Lack of training and development of volunteer skills. 7. Conflicts and misunderstandings among volunteers. 8. Lack of recognition and encouragement of volunteers in society. 9. Others (specify). 10. It is difficult to answer.
11. If you have experience working in a volunteer organisation or cooperating with such organisations, what problem, in your opinion, is most relevant for volunteer organisations in Kyrgyzstan?	1. Financial difficulties and dependence on grants. 2. Difficulties in finding and retaining volunteers. 3. Lack of professional management and resources. 4. Lack of modern technologies and information infrastructure. 5. Difficulties in cooperation with government agencies and other non-governmental organisations. 6. Insufficient coordination between volunteer organisations. 7. Uncertainty in determining priorities and goals. 8. Inefficient communication within the organisation. 9. Others (specify). 10. It is difficult to answer.
11. What specific problems of Kyrgyzstan are currently being solved by volunteers?	An open-ended question.
12. How do you see the future of volunteering in Kyrgyzstan?	1. Very optimistic. 2. Optimistic. 3. Neutral. 4. Pessimistic. 5. Very pessimistic. 6. It is difficult to answer.
13. What, in your opinion, can be promising vectors for the development of volunteerism in Kyrgyzstan?	1. Increase of state support and recognition of volunteers. 2. Development of educational programmes and training for volunteers. 3. Encouragement of young people to participate in volunteer activities. 4. Improvement of funding and resources for volunteer organisations. 5. Creation of platforms for coordination and exchange of information between volunteers and organizations. 6. Development of international cooperation and exchange of volunteering experience. 7. Others (specify). 8. It is difficult to answer.
14. What fantasies and images do you have about volunteering in Kyrgyzstan in the future?	An open-ended question.

Source: compiled by the authors

The processing of the obtained results assumed qualitative and quantitative analysis. Closed questions with predetermined answer options were processed quantitatively, involving the calculation of statistical indicators such as percentages and correlations. Answers to open-ended questions required high-quality processing. Coding and content analysis were used to identify themes and images of respondents' statements.

Results

Modern socio-cultural features of Kyrgyzstan

Before documenting the cultural-philosophical and religious paradigms of volunteering in Kyrgyzstan, it is necessary to analytically outline the sociocultural background of the country. The general contemporary state of the sociocultural background and the trends influencing it should be analysed.

Modern Central Asia, including Kyrgyzstan, is a former Soviet space where unique processes of transformation are taking place. This uniqueness is influenced by various factors shaping contemporary transformation processes (Urmanbetova *et al.*, 2021). The culture of Central Asian peoples is characterised by the influence of the traditions of the indigenous ethnic group, Islamic religion, residual phenomena of the Soviet era, and processes of globalisation (Sadykova *et al.*, 2022). These are four fundamental forces that have a significant impact on the sociocultural background not only of Kyrgyzstan but also of other countries in Central Asia. In

recent years, Kyrgyzstan has witnessed an increase in the popularity of conservative discourses that do not adhere to liberal views. Non-liberal social activists actively interact with the Kyrgyz-speaking population and promote traditional values, combining them with religious teachings. This evident trend can be interpreted as a manifestation of growing re-traditionalization and anti-Western orientation, which have become an integral part of the Soviet worldview and ideological system (Abdoubaetova, 2023). Throughout Central Asia, there is a tendency toward strengthening authoritarian regimes, leading to a decreased interest in creating political and legal structures typically considered foundational for pluralism (Montgomery, 2021).

One characteristic feature of traditional influence on Kyrgyz society is the transmission of specific cultural codes using verbal means. The values and culture of the Kyrgyz people are transmitted and preserved from generation to generation through verbal expressions and images (Marazykov *et al.*, 2022). An example of such verbal tradition in Kyrgyzstan is the word "Uyat," widely used in the country. It is often uttered regarding children to curb inappropriate behaviour. This is an essential element of interpersonal relationships that structure everyday life, causing discomfort in conversation and establishing boundaries of decency. "Uyat" is often translated as "shame". This practice of shame in Kyrgyzstan contributes to maintaining social control (McBrien, 2021). Kyrgyzstan is also experiencing the process of Islamisation, and this process is not yet complete. People continue to educate themselves and engage in discussions, while the practical implementation of Islamic teachings remains at an early stage. Discussions about how-to live-in accordance with Islamic beliefs have intensified due to the growing interest in Islam and a lack of prior knowledge about the religion (Tulebaeva, 2022).

The general situation in Kyrgyzstan reflects the social and spiritual crisis. The social crisis in the collective consciousness emphasises the critical nature of the situation and creates a sense of overcoming barriers hindering society's progress. On the other hand, the spiritual crisis indicates the breakdown of the cultural foundations of society, which has encountered a development deadlock. Part of society seeks to return to its roots and fundamental values, while simultaneously attempting to find ways of adaptation in the conditions of globalisation to restore the integrity of its existence (Akmataliev *et al.*, 2023). Thus, the modern sociocultural background in Kyrgyzstan is portrayed as a "field of struggle and interaction" between traditional and religious cultural postulates and values rooted in processes of globalisation and post-Soviet transformation.

Motivational structure of volunteer activity in Kyrgyzstan and the influence of cultural factors

To further specify the issues related to volunteer activity in Kyrgyzstan, a survey involving actual volunteers was conducted. The primary focus was on identifying the cultural and philosophical motives of volunteer activities. In other words, an attempt was made to find the worldview determinants that define the value and motivational components of volunteer work. The study primarily concentrated on cultural postulates related to the sociocultural background in Kyrgyzstan. The primary question was related to the intensity of volunteer activity of the respondents to understand the level of their involvement in this activity (Fig. 1).

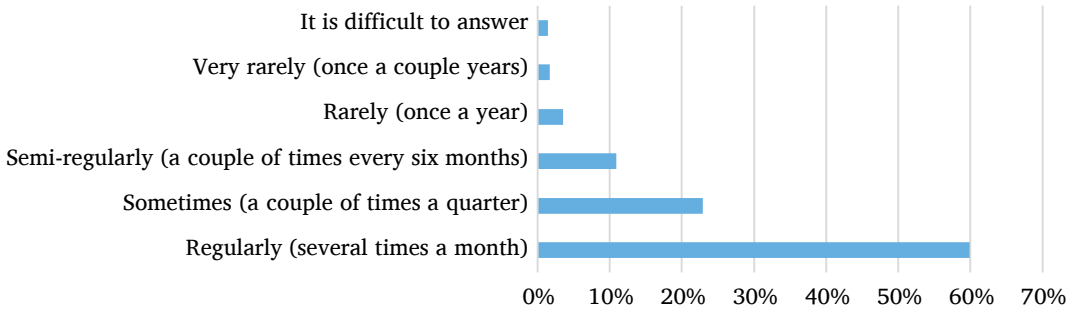

Figure 1. Distribution of respondents' answers to the question: "How regularly do you participate in volunteer activities?"
Source: compiled by the authors

More than half of the respondents are regularly engaged in volunteer activities. This indicates that the object of the study is very closely related to this field. Therefore, there is an opportunity to get clearer and deeper data on volunteer activities in Kyrgyzstan, using the responses of its active participants.

The first important issue directly related to the axiological component of volunteer activity in Kyrgyzstan was the measurement of thematic interest in volunteer activity. The interviewed volunteers were asked a question concerning their personal interests in volunteering: respondents chose which events or organisations of volunteer activity they were most interested in. Almost one-third of respondents are interested in educational programmes – 29.9%. Primarily, these projects support the upbringing of children and help the school infrastructure. This is the dominant interest among respondents. In second place among the interests is the organisation of cultural events and events. It can be festivals, exhibitions, and concerts. This area of interest was chosen by 22.5% of respondents. Approximately one-tenth of respondents chose humanitarian interests: assistance to the needy (fighting poverty), medical care (support for the sick), and family support (child support, work with orphans, family programmes) – 10.6%, 12.3% and 10.2%, respectively. Such interests as environmental projects – 7% and social rehabilitation (assistance to drug addicts and prisoners) – 3.3% did not pass the ten per cent barrier. Thus, the priority of volunteers in Kyrgyzstan is educational and cultural projects. At the same time, social projects are of secondary value.

Respondents were asked what specific factors inspire them to volunteer. Almost half of the respondents indicated a social motive for their volunteer activity – 43.9%. The social motive refers to altruism as one of the important components of the worldview system of volunteers. It was essentially a desire to improve society and contribute to it.

Personal interests were in second place among motivational factors – 15.3%. Respondents who chose this option were attracted by the satisfaction of their personal interests and hobbies. In 12.4% of respondents, the choice of volunteer activity was influenced by religious attitudes. For them, faith and the values associated with it are the motivational basis of volunteer activity. Only 7.8% of respondents stated that they were driven by traditional values, namely, the protection and promotion of the cultural traditions and customs of the Kyrgyz people. Factors of professional development and emotional satisfaction did not pass the ten percent barrier, at 7% and 8.1%, respectively.

For a clearer assessment of the influence of traditional values and religious beliefs on volunteering, respondents were asked about the motives that determine their choice of volunteer activities. It was noted that internal personal convictions, unrelated to cultural or religious content, are the primary factor for respondents, standing at 57%. Only 15.9% of respondents indicated that their religious beliefs and obligations could influence the choice of volunteer activities. Traditions and customs of Kyrgyzstan have even less influence on volunteers – 8.8%. Thus, there is no basis to claim that religious beliefs and traditional values significantly impact volunteer activities in Kyrgyzstan. The insignificant role of religious attitudes is confirmed by another question. Respondents were asked about the role of religion and religious organisations in volunteer activities in Kyrgyzstan. Almost half of the respondents believe that religion has a minimal impact on volunteer activity – 46.8%. Approximately one-third think that religion has a strong or moderate influence – 28.2%. One-fifth of respondents indicated that religion has no influence – 21.5%.

An open-ended question was also asked, which concerns specific aspects of religion that can influence volunteer activities. It should be indicated beforehand that only a third of the respondents answered this question. Through categorical classification of responses, specific thematic lines were identified and ranked by popularity. Firstly, respondents indicated that religious attitudes could inspire volunteering. They indicated moral values that correlate with volunteer activity – compassion, kindness, social justice. The second most represented thematic category was related to charity. In Islam, the principle of "Sadaqah" encourages people to charity. The third most represented thematic category is the principles of education and cognition. Respondents indicated that religion emphasises the importance of education, which can encourage volunteering in educational projects.

As for the influence of the traditional values of the Kyrgyz people on volunteer activities, approximately half of the respondents believe that there is no influence – 47.2%. Approximately a quarter of respondents indicate that there is only a minimal impact – 26.4%. Only less than one-fifth of respondents indicated that traditions and customs have a strong or moderate influence – 15.8%. Thus, the influence of traditions and customs is even lower than the religious influence on volunteer activity in Kyrgyzstan. For a more complete understanding of the real impact of traditional values on volunteering in Kyrgyzstan, an open question was asked in which respondents could offer their unique answers. The analysis of the responses showed that, according to the volunteers, there are three thematic aspects that can be associated with volunteer activity. Firstly, the idea of preserving cultural heritage. Respondents believe that volunteer activities can be aimed at preserving and promoting cultural traditions and national heritage. Secondly, festive events. Various traditional holidays and events can become a breeding ground for various volunteer practices. Third, support for local communities. Here, respondents pointed to the indigenous traditions of mutual assistance and solidarity in Kyrgyz society, which can contribute to volunteer activity.

Thus, it is evident that traditional values and religious attitudes do not significantly affect volunteer activity in Kyrgyzstan. Factors that have a rational basis come to the fore, which indicates the predominance of a rather modern vision of volunteer activity and a greater emphasis on modernity. However, it is important to note that traditional and religious aspects can still play a role in volunteering, especially in local communities and for certain groups of people. However, at the moment, rational and modern factors, such as financial support and professional development, seem to be more of a priority for most respondents. This may indicate that volunteering in Kyrgyzstan is becoming a more professionalised and organised type of activity, which may contribute to its more effective impact on social changes and the development of society.

Modern challenges and problems of volunteeringin Kyrgyzstan

Respondents were also asked a series of questions related to the contemporary challenges facing volunteer activities in Kyrgyzstan. The first question addressed the most pressing issues volunteers encounter in Kyrgyzstan. The lack of funding and resources was mentioned as the primary issue, at 29.9%. Approximately one-fifth of respondents indicated that the main problem is the difficulty in organising volunteer projects – 22.5%. Slightly more than one-tenth of respondents identified the main problem as the challenge of collaborating with government and non-government organisations, at 12.7%. Issues that did not surpass the ten per cent threshold included a lack of training and development of volunteer skills (8.8%), the absence of a legal framework for volunteer activities (7.4%), a lack of information support for volunteers (5.3%), conflicts and misunderstandings among volunteers (3.9%), and a lack of recognition and encouragement of volunteers in society (3.2%). In addition, respondents were asked about the problems faced by volunteer organisations. In the first place, respondents indicated financial difficulties and dependence on grants – 26.4%. In second place is the lack of professional management and resources. This option was chosen by 18.3% of respondents. In third place is the lack of modern technologies and information infrastructure – 16.9%. Only 11.3% of respondents identified the main problem as the difficulties in collaboration with government structures and other non-governmental organisations. Challenges that did not reach the ten per cent threshold included uncertainty in defining priorities and goals (7%), ineffective communication within the organisation (6.3%), insufficient coordination between volunteer organisations (3.9%), and difficulty in recruiting and retaining volunteers (2.8%). Both for individual volunteers and volunteer organisations, financial issues are the top priority in the contemporary stage.

An open-ended question was also posed regarding the challenges of Kyrgyzstan's society that volunteers address at the present stage. Categorical analysis of open-ended questions identified seven thematic categories. According

to respondents, the most priority task of volunteering in Kyrgyzstan is social assistance. It involves helping socially vulnerable segments of the population: the poor, homeless, elderly, and other vulnerable groups. In the second place is education and support for youth. This primarily involves activities aimed at providing educational programmes and consultations. Healthcare and medical care are in third place. Respondents indicated participation in medical programmes. Especially during the COVID-19 pandemic. Less popular challenges for volunteering included the development of local communities, combating discrimination (e.g., gender-based), cultural projects, and environmental initiatives.

It should be noted that legal regulation of the volunteer sphere in the Kyrgyz Republic began with the adoption of the Law of the Kyrgyz Republic No. 77 "On Volunteer Activity" (2023). This law regulates various aspects of volunteering, including the prohibition of its use to support political parties, religious organisations, commercial promotion of goods and services, and commercial intermediation. The law also prohibits the creation of volunteer organisations similar to paramilitary groups. This law is part of the national policy on volunteering in Kyrgyzstan. It reflects the desire to develop and regulate the volunteer movement in the country. However, some organisations, such as Amnesty International (2023), have expressed concerns about other legislative changes that could have a negative impact on the work of non-governmental organisations and civil society in general.

Future prospects of volunteering in Kyrgyzstan

As the final task of the study was achieved, respondents were presented with a set of questions regarding the future of volunteer activities in Kyrgyzstan. Primarily, a question was posed concerning the respondents' perception of the future of volunteerism in Kyrgyzstan using the "optimism-pessimism" dichotomy. More than half of the respondents are optimistic about the future of volunteering in Kyrgyzstan – 56.4%. Approximately one-fourth is neutral (26.8%). Only 12.7% of the volunteers who passed the survey are pessimistic about the future of volunteering in their country. To further specify this question for those who are optimistic about the future of volunteerism in Kyrgyzstan, a follow-up question was asked. It was associated with specific vectors of volunteering development in Kyrgyzstan. Almost a third of respondents assume that funding for volunteer organisations will improve in the future – 29.6%. Approximately one-fifth believe there will be an increase in state support and recognition of volunteers – 19.4%. Forecasts for other vectors were less significant: the creation of platforms for coordination and information exchange among volunteers and organisations (18.3%); the development of international cooperation and the exchange of volunteering experiences (13.7%); encouraging youth to participate in volunteer activities (7%); and the development of educational programs and training for volunteers (5.3%).

For a more individualised understanding of perceptions of the future of volunteer activities, respondents were asked an open-ended question that considered their fantasies and visions of the future of this activity in Kyrgyzstan. Based on the responses, five thematic categories were identified. The most common is the image of a developed and powerful volunteer infrastructure. In second place, respondents saw the future of volunteering in Kyrgyzstan with global cooperation. This indicates that the concepts correspond to the globalisation logic of development. In third place, respondents have images associated with innovative technologies in volunteering. Less significant visions of the future include the increased diversity of volunteer activities and strong involvement of youth in this type of activity.

Thus, respondents see the future of volunteer activity in Kyrgyzstan optimistically. The vectors of development, according to respondents, are associated with an increase in funding and establishing relations with the state apparatus. In general, respondents expect the strengthening of volunteer infrastructure and global cooperation. Global cooperation and the strengthening of volunteer infrastructure can contribute to the effective organisation of volunteer activities, including the expansion of the sphere of influence and the involvement of more people in volunteer projects. These factors can contribute to the improvement of society and the solution of various social problems in Kyrgyzstan. Thus, respondents consider the future of volunteering in Kyrgyzstan promising and positive, based on optimism and confidence in the possibility of volunteering to make a significant contribution to the development of society.

Comparative analysis of cultural and legal aspects of volunteering in different geographical regions (USA, China, Europe, Central Asia)

A striking example of the contrasting cultural foundations of volunteerism can be seen by comparing the United States and China. The USA has a long history of volunteering, which plays an important role in society. Many Americans are actively involved in charitable and volunteer organisations. There are a huge number of volunteer organisations working in various fields, from helping those in need to environmental protection. Individualism and private initiative in volunteering are often welcomed in the USA. Therewith, there is a growing interest in volunteering in China, and young people are actively involved in many projects. The Chinese government also actively encourages and supports volunteering, especially in the field of social services. In China, there are some cultural features that influence volunteering, such as the emphasis on family values and communal initiatives (Chen *et al.*, 2022). Thus, volunteer activity in these countries is strongly influenced by fundamental cultural and social paradigms such as individualism (USA) and communitarianism (China). In addition, there is a long history of charity and philanthropy in the United States, and this has an impact on the culture of volunteering. It is generally believed that Western societies are more materialistic compared to other cultures. The results of empirical research show that materialism can coexist with charity. However, it has also been observed that Americans are among the most generous nations, donating their time, money, and efforts to charitable causes (Mathur, 2013).

In the United States, volunteer activity is primarily regulated by labour and employment laws. Volunteers are not considered employees under the Fair Labour Standards Act (FLSA) and are therefore not entitled to minimum wage or overtime pay. However, they must be providing services for a non-profit organization or government agency, and their work should not displace paid employees. Additionally, volunteers are generally not covered by workers' compensation laws. The legal framework for volunteerism in the US is largely based on the principle of voluntariness and is aimed at protecting the rights of volunteers and the organizations

they serve (Mead, 2019). In turn, in China has a legal regulation for volunteer activity called the Regulation of Volunteer Service (2017). The regulation aims to protect the lawful rights and interests of volunteers, volunteer service organizations, and the recipients of volunteer services, encourage and regulate volunteer services, develop the field of volunteer services, cultivate and practice the core socialist values, and promote the improvement of society and civilization. The regulation also applies to volunteer service activities and activities related to volunteer services carried out within the mainland territory of the People's Republic of China.

Volunteering in Europe is often associated with the promotion of social justice, human rights, liberality, and pluralism. According to the findings of a European study, it was established that macrostructural indicators of civil liberties and the level of social trust are positively correlated with the level of volunteer activity. These results indicate that in countries with higher civil liberties and a level of social trust, the probability of citizens' involvement in volunteer activities is higher. Equality and social trust play an important role in this regard, providing a basis for the development of volunteerism in Europe. The study also highlights that historically inherited institutional features can influence individual volunteering abilities (Enjolras, 2021). The cultural diversity of European countries should also be considered. In the course of a study by A. Gil-Lacruz *et al.* (2017), in European countries where people have a positive attitude toward their friendly contacts, citizens are more likely to participate in social activities, education, and leisure actively. However, in these countries, they are less likely to participate in activities related to social justice, compared to those countries where friendship is less important.

The legal regulation of volunteer activity in Europe varies from country to country. Some European countries have launched legislative reform initiatives to create an environment that fosters volunteering. For example, the Act LXXXVIII "On Public Interest Volunteer Activities" (2005) in Hungary regulates volunteering for non-profit entities and non-governmental organizations (NGOs). Similarly, the Framework Law 266/91 "On Volunteering" (1991) in Italy prescribes the principles and criteria that regulate the relationship between public agencies and volunteer organizations. In Spain, there is a Law 45/2015 "On Volunteer" (2015) that regulates state competences and offers companies, universities, or public administrations the possibility of becoming a target audience for volunteers. The European legal framework on cross-border volunteering also addresses the regulation of volunteering activities, including the definitions of volunteering, volunteerism, and volunteer service.

There is a tradition of solidarity within communities in Central Asian countries. Often volunteering can be associated with the support of families and neighbours. An important aspect of traditional Central Asian culture is the "Toy" – a traditional gathering where people gather for joint activities, such as building houses or helping those in need. Unlike Europe and the USA, there is no clear division between public and private spheres in traditional Central Asian culture: birth, death, and marriage are community affairs, not family affairs (Giffen *et al.*, 2005). This traditional culture of solidarity and community also contributes to the development of sustainable communities where people are ready to help each other in difficult moments. This may include support in the event of natural disasters, assistance to families during a disaster, and joint efforts in education and health. Such traditions and values can serve as a basis for the development of volunteerism and civic engagement, and they can be important resources for solving social problems and strengthening society in Central Asia.

The legal regulation of volunteer activity in Central Asia has been a topic of increasing importance. In Kazakhstan, for example, the country adopted a law on volunteer activity in 2016, enshrining legal regulation related to the sphere of volunteering (Mihr, 2023). However, the development of robust, independent civil societies and NGOs in Central Asia has faced challenges, with concerns about new regulations that could further restrict and criminalize their activities. Despite these challenges, there have been initiatives to promote and recognize volunteerism in Central Asia, such as the distribution of volunteer awards and the convening of the first Central Asian Volunteers Forum in Kazakhstan (Satubaldina, 2022).

Thus, having considered the various cultural foundations of volunteerism in four geographical regions, it can be noted that the culture of volunteerism in Central Asia is approaching China in terms of communitarianism. However, given globalisation, elements of American and European models of volunteerism are increasingly being integrated in Central Asian countries: individualism, pluralism, and social justice.

Discussion

The results of the study show that volunteer activity in Kyrgyzstan is undergoing development. Nevertheless, the survey results can be interpreted as positive, regarding the predominance of positive factors over negative ones. They show that volunteering in Kyrgyzstan is becoming a more modern and organised type of activity. This means that volunteering becomes a more effective tool for solving social problems and developing society. Motivational factors of volunteering show the predominance of rationality, while optimism prevails in prognostic images. Such trends point to the high potential of volunteering in Kyrgyzstan and the need to compare the features of volunteer motivation and experience in the framework of empirical data from other regions of the world.

K. Petrovic *et al.* (2021) analysed a large volume of data from a sociological survey in Australia involving 8163 people. The main purpose of this study was to examine the relationship between religiosity and participation in volunteer activities. Preliminary data confirmed that attending religious services has a more significant impact on motivation for volunteering than subjective religiosity. The results partially confirmed this hypothesis. More frequent and active attendance at religious services correlated with an increased likelihood of participating in volunteer activities. On the other hand, more pronounced subjective religiosity was associated with more time spent on volunteer work. Researchers concluded that religious practices can increase the likelihood of participating in volunteer activities, but it remains unlikely if there are no subjective religious beliefs. These results have a number of similar aspects to the following study. Within its framework, a low religious component was recorded against the background of other factors (social or personal). The main distinguishing feature of the Australian study is the attempt to analyse the religious aspect in more depth through the search for correlations between practices in combination with internal beliefs and the measured intensity of volunteer activity. The author's work focused on the

general architectonics of motivational factors of volunteering, where religion was only one element among many others.

Chinese researchers M. Guo *et al.* (2021) focused on the analysis of the relationship between Confucian values of charity and participation in volunteer activities. 473 Chinese students who filled out questionnaires were interviewed to assess Confucian values of charity, such as family, unity, and harmony. The results showed a positive relationship between Confucian values and participation in volunteer activities. However, no significant relationship was found between family life and volunteering. Moreover, the multigroup analysis showed that this correlation remained the same for students of both sexes in colleges. These results point to the important role of Confucian values of charity in stimulating volunteer activity among Chinese students, emphasising the influence of cultural factors on public participation and voluntary activity. The Chinese study had deeper and more concrete results in terms of the influence of a particular religious denomination on volunteer activity. In the author's research, within the framework of an open-ended question, there was also an emphasis on Islam, namely the "Sadaqah" principle, which is a structural component of this religious denomination. It was mentioned by the respondents themselves. Yet the main difference was the focus primarily on generalised religious motives without specifying Islam, which indicates a less in-depth analysis of the religious influence on volunteer behaviour. This comparison highlights the limitation of the author's work, which considered the religious component too generically.

German researchers N. Moczek *et al.* (2021) focused on the motivation and personal characteristics of volunteers participating in the Insects of Saxony project. 116 volunteers took part in the sociological survey, most of whom were men, had higher education, were over 50 years old, and had been volunteering in biodiversity conservation projects for a long time. The volunteers showed prosocial (altruistic) and selfish motives for participating in the project, but they considered prosocial motives more important for their activity. The participants evaluated communication and feedback with the organisation as the most important aspects of volunteer activity. Participants also reported that their knowledge increased while participating in the project. While they were satisfied with the project as a whole, they were less satisfied with their own contribution. Nevertheless, most participants expressed a desire to continue their volunteer activities. These results highlight the importance of altruistic motives and attention to communication and feedback from volunteers for a successful volunteer programme in the field of biodiversity conservation. This German study confirms the results of the author's research, where altruism occupies a dominant place in the motivational structure of volunteer activity in Kyrgyzstan, and personal motives (selfish), such as professional career, emotional satisfaction occupies a secondary position. Yet it is necessary to indicate the main methodological difference. If in the author's study the sample was built according to the snowball method with the participation of volunteers from different projects, in this study, there was a small sample of volunteers from one specific project.

S. Compion *et al.* (2022) analysed the motives of residents of Ghana, South Africa, and Tanzania to participate in episodic volunteering and determined whether these motives are similar to long-term volunteering based on membership or have differences. A survey of 1,000 participants was conducted in 2018. To analyse the data, logistic regression models were used to identify differences in motivations between beginners, casual, and permanent episodic volunteers. The survey results showed that age and student status affect the difference between novice volunteers and permanent volunteers. More importantly, novice volunteers are primarily motivated by social reasons, whereas regular volunteers are more focused on altruistic motives. This confirms that people can be motivated to volunteer for a variety of reasons that may coincide or complement each other, and these motives may vary depending on the stage of their lives. The study of African countries confirms the results of the author's research in terms of the fact that the motives for volunteering can have a different nature. This is confirmed by the fact that the answers to the question about the motives of volunteer activity had a greater statistical severity. Nevertheless, the social motive prevailed. The main difference of this study, conducted within the framework of African countries, is an attempt to conduct age differentiation of motivations. In other words, there a difference in motivation by age categories was recorded. It has been shown that with increasing age, altruistic motives begin to prevail more.

Dutch researchers A.F. Faletehan *et al.* (2021) addressed the concept of "calling to work" in the context of nonprofit volunteering. This concept is commonly used to explain how people fulfil their vocation by doing meaningful work. Researchers suggest that it may be useful for understanding the motivation and retention of volunteers. The concept of "calling to work" in this context helps explain why people join non-profit organisations and stay there for a long time. The results lead to an important conclusion: volunteers can consciously choose to participate in meaningful activities and, thus, enjoy self-realisation and meaningfulness of life through volunteering. This approach helps to better understand the internal motivations of volunteers and explain why they leave their mark on non-profit organisations, which can be useful for developing strategies for retaining volunteers and increasing their level of satisfaction. This study examines the professional motives of volunteering in more detail. In the author's study, respondents were offered similar motives (professional career and emotional satisfaction), but they were little statistically represented since socio-altruistic motives prevailed. The main difference between the study of Dutch scientists is a deeper understanding of the personal motives of volunteering not related to cultural or religious values. The focus is on satisfaction from activity, which is rather psychological in nature.

M.S. Skinner *et al.* (2021) focused on the challenges faced by volunteers providing long-term care for the disabled. They analysed data from numerous sources to assess the degree of complexity of volunteering and informal care in this area. The results of the analysis showed that one of the common problems in cooperation between caregivers and volunteers is a lack of information and knowledge, and insufficient coordination of actions. These factors can create difficulties and cause difficulties in the organisation and provision of care, especially in the long term. This study highlights the importance of motivating volunteers and providing them with appropriate resources, training, and information to make volunteering more effective and sustainable, especially in the field of long-term care for the disabled. This study points to two important problems faced by volunteers – lack of awareness and lack of coordination in

activities. As part of the author's research, similar problems faced by volunteers in Kyrgyzstan were also recorded. Coordination problems were the second most popular among volunteers, after problems with funding. At the same time, it is important that the lack of awareness of volunteers did not have a strong statistical representation, which indicates a lower priority of this problem in the Kyrgyz space.

Thus, the research conducted over the past three years confirms that the motives of volunteering are complex and multifaceted. They may be related to religious, cultural, social and personal factors. In general, the following main motives of volunteer activity can be distinguished: altruism – the desire to help other people and make the world a better place; social ties – the need to communicate and interact with other people; personal development – the opportunity to acquire new skills and knowledge, develop as an individual. Depending on the cultural context, these motives may have different degrees of expression. In the author's study conducted in Kyrgyzstan, it was found that altruism is the most important motive for volunteering. This is because there is a strong tradition of mutual aid and charity in Kyrgyz culture. In addition to motives, the study also examines the problems faced by volunteers. The analysis of other studies mentioned: lack of coordination – there is often no coordination between volunteer organisations and official structures, which makes it difficult to work together; lack of awareness – volunteers often do not have complete information about the activities of volunteer organisations and how they can help. These studies expand the understanding of the motives and problems of volunteering. They show that volunteering is a complex and multifaceted activity that can have a positive impact on society.

Conclusions

The volunteers in Kyrgyzstan are clearly focused on supporting educational and cultural projects, which indicates their desire to contribute to the development and promotion of society in the field of education and culture. The orientation of volunteers to educational and cultural projects can play a key role in the formation of intellectual and cultural capital of society. This can contribute to improving the educational level of citizens and preserving cultural values. The volunteer activity in the country is increasingly based on rational motives, such as the desire to contribute to the improvement of society. There is a tendency towards professionalization and standardisation of volunteer activities, which can contribute to a more effective impact of volunteerism on social change and the development of society.

The main challenge facing in Kyrgyzstan is the lack of funding and resources. This problem is caused by the fact that largely volunteer activity in the country depends on grants and donations. In the context of the current challenges that volunteers are facing in Kyrgyzstan, the most priority areas are social assistance, education and youth support, as well as health care, medical care and expansion of the legal and regulatory framework that would cover more issues related to volunteering. The areas that volunteers focus on in solving modern challenges reflect the key needs of Kyrgyz society.

Most of the survey participants are optimistic about the future of volunteer activity in Kyrgyzstan. According to the respondents, the key areas for the development of volunteerism will be to increase funding and strengthen relationships with government agencies. Furthermore, respondents emphasise the importance of strengthening volunteer infrastructure and developing global cooperation. In general, the opinion of the survey participants reflects the belief in the potential of volunteering as a tool for solving social problems and improving the quality of life in Kyrgyzstan.

The practical value of this study is focused on a wide range of potential actors who may be indirectly or directly related to volunteer activities. This study is a useful information resource for high-quality state policy in the field of volunteer activity. Further research should involve a detailed analysis of not only the temporal aspects of volunteering (cultural foundations, current problems and challenges, future prospects) but also spatial aspects: the difference between volunteer activities in the regions of Kyrgyzstan and the features of volunteering in urban/rural environments.

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Conflict of interest

None.

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Культурно-філософські та юридичні аспекти волонтерства в Киргизстані: сучасні виклики

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Анотація. Актуальність дослідження волонтерської діяльності в киргизькому суспільстві зумовлена гносеологічною потребою в комплексному осмисленні цієї сфери людської активності на сучасному етапі розвитку Киргизстану. Це відбувається з огляду на недостатню концептуалізацію цього питання в науковому просторі країни. У цьому дослідженні використано два основні теоретико-методологічні підходи: аксіологічний та праксеологічний. Для емпіричної частини дослідження було обрано метод опитування. Загальна кількість учасників дослідження склала 284 особи. Мета дослідження – проаналізувати мотивацію та особливості волонтерської діяльності в Киргизстані з огляду на історичні контексти, сучасні умови, законодавчу базу, та потенційні поля розвитку. Волонтери в Киргизстані активно підтримують освітні та культурні проекти, фокусуючись на розвитку суспільства в цих сферах. Соціальні проекти займають менш пріоритетну позицію. Основними мотивами для волонтерів є соціальна відповідальність та особисті інтереси, тоді як традиційні та релігійні чинники є менш значущими. Професіоналізація та стандартизація волонтерської діяльності стає все більш помітною, враховуючи раціональні мотиви. Основними викликами для волонтерів та волонтерських організацій в країні є брак фінансування та ресурсів, труднощі в організації проектів та обмежений доступ до професійної підготовки волонтерів. Пріоритетними сферами для волонтерської діяльності в сучасних умовах залишаються соціальна та юридична допомога, освіта, підтримка молоді, охорона здоров'я та медична допомога. Більшість респондентів висловили оптимізм щодо майбутнього волонтерської діяльності в Киргизстані. Вони впевнені, що вона буде продовжувати розвиватися і відігравати більш важливу роль у суспільстві. Покращення фінансування, посилення співпраці з державними органами, шляхом введення юридичної бази щодо діяльності волонтерів, розвиток даної інфраструктури та глобальна співпраця розглядаються як ключові фактори для ефективної організації волонтерської діяльності та вирішення соціальних та правових проблем у майбутньому. Дослідження містить цінну інформацію для державних інституцій, пов'язаних з волонтерською діяльністю, і буде корисним для розробки якісної державної політики у цій сфері

Ключові слова: релігійні погляди; традиційні цінності; раціональність; глобалізація; альтруїзм; права волонтерів

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Transitional justice research in the digital age: Western Balkans results

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Abstract. In the rapidly evolving technological landscape, the digitization of the justice system in Albania holds tremendous potential for increasing efficiency and effectiveness. This study aims to comprehensively analyse and evaluate the implementation of digital technologies in Albania's judicial system. Using analysis and synthesis, historicism, and hermeneutic methods, the study explores the concept of an information society and delves into the historical development of information technology in the Western Balkan region. It reveals that while the telecommunications infrastructure in these countries still requires improvement, the integration of information technology can optimize court processes, reduce resolution times, and enhance overall efficiency. By enabling audio-visual recording and online broadcasting of court sessions, the judicial process becomes more accessible and transparent for citizens. Moreover, the study uncovers the prevalence of challenges that hinder democratic performance in the Western Balkan countries, particularly within the judiciary. However, the introduction of digital technologies fosters an objective and transparent environment, mitigating the challenges and potential risks of corruption. The study also examines the implementation of digital documents and electronic digital signatures, a crucial step in the digitization of transitional justice. The use of digitally signed electronic documents offers numerous advantages, including time savings, accurate information retrieval, convenience, cost-effectiveness, control, and ease of use. Additionally, the study emphasizes the importance of digital archives for transparency and accountability, as well as the need to respect privacy and uphold citizens' constitutional rights related to information and access. The practical significance of this study lies in its potential to inform the development of a program aimed at optimizing and improving the digital technology system within the judicial systems of the Western Balkan countries, with a special focus on Albania

Keywords: digital technologies; justice system; information society; accessibility

Introduction

Technological advances have not only changed the way people participate in transitional justice processes but have also affected the way scholars can study these processes. New platforms for social interaction and increased access to data generated by political and transitional institutions, such as parliaments, judiciaries, or other human rights bodies, on the one hand, and the participation of a wide range of individuals through online platforms, on the other, allow for analysis at a level of precision and detail that was previously impossible (Wilding *et al.*, 2018). The utilization of digital tools enables the gathering, examination, and presentation of extensive data sets, enhancing the exploration of justice-related matters. The adoption of digital methodologies enhances accessibility to information, transparency, and public engagement in diverse discussions on issues.

The study aims to comprehensively examine the impact of digital technologies on the country's legal system. On the one hand, the introduction of new information and communication tools can help to increase the efficiency and accessibility of legal processes. On the other hand, questions arise as to how to ensure cybersecurity, transparency, and privacy in this digital environment. Challenges also include the need

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to adapt legislation to new realities, ensure access to digital tools for all segments of the population, and address issues related to ethics and privacy in online justice systems.

M. Boskovic (2021) highlights the progress made by Western Balkan countries towards joining the European Union, particularly through the implementation of judicial reforms. Although these reforms aim to improve the efficiency and integrity of the judiciary, there is still a lack of trust in the justice system in the Western Balkans. International indices express significant concerns about the effectiveness of these reforms. The author examines and contrasts the outcomes of reforms in key justice areas, focusing on efficiency, accessibility, and judicial independence. However, the researcher does not explore the digitalization of the judicial system in the Western Balkans and its potential impact on efficiency, accessibility, and transparency. E. Topcu and S. Fišo (2022) in their study examine the general geopolitical and economic situation of the Western Balkans, as well as the justice system and its history. Scholars generally describe the situation without delving into the issue of digitalisation.

The issue of the rule of law and access to justice is covered by A.D. Edgar (2021). The rule of law principle, which encompasses both a legal concept and a political plan, is a key basis for the achievement of all sustainable development goals. In addition, this principle is recognised as an essential component of one of the global goals of sustainable development. The author conducts a detailed analysis of the judicial system of the Western Balkan countries but does not study the development and improvement of the digitalisation of the judicial process, which in turn helps to obtain a high level of compliance with the rule of law.

H. Haider (2018) notes that the countries of the Western Balkans have been involved in various justice processes for a long period of transition. There is a growing consensus among experts and specialists that to promote meaningful changes in the transitional justice system, it is necessary to go beyond the judicial processes prevailing in the region and to actively introduce alternative mechanisms and safe spaces of interaction in these affected communities. However, the author does not study the issue of the digitalisation of the judicial process as a mechanism for improving the entire system.

Professor I. Kisić (2013) examines the prospects of the Western Balkan countries' accession to the European Union, discusses opportunities for regional cooperation and identifies key challenges. According to the professor, the lack of genuine Europeanisation of the region is a problem of transition for both the Western Balkans and the European Union. However, the author does not focus on the fact that the introduction of information technologies offered by the European Union will accelerate European integration.

The study aims to examine the process of integrating digital technologies into the Albanian judicial system.

Materials and methods

The research analysed the implementation of digitalisation within the Albanian judiciary, corruption levels in the Western Balkans, and relevant legal documents, including the Commission Directive of the European Parliament and the Council. Additionally, sources such as the Human Rights Report on Albania and the Human Rights Report on Montenegro were used (Commission Staff Working Document..., 2018; Bureau of Democracy, Human Rights, and Labor…, 2021). The analysis employed methods such as analysis and synthesis, historicism, and the hermeneutic approach.

The study employed a comprehensive method of analysis, including comparative analysis. This method involved a systematic comparison of various aspects of the digitalisation of the Albanian legal system with similar processes in other countries, which allowed to identify the strengths and weaknesses of digital transformation, as well as opportunities for improvement and implementation of effective solutions. The comparative analysis was also conducted to consider the context of other countries and to make adaptations, which may be useful in developing recommendations and strategies for further steps in the digitalisation of the justice system in Albania. Documentary analysis, namely the study of official documents, legislative acts, regulations, and other publicly available materials related to digital transformation in the Albanian judiciary.

The synthesis method was used in the study to combine and analyse various elements of the digital transformation of the judicial system in Albania and other Western Balkan countries (Montenegro). This method allows to create a generalised picture of the impact of digital technologies on justice in the country, identify the main trends and define the key aspects of digital reform. This method helped to generalise information and develop a comprehensive approach to understanding various aspects of the digital transformation of justice in the Western Balkans, in particular in Albania and Montenegro.

The historical method was used to understand the stages of implementation of digital initiatives and to find out what factors and events in the country's history influenced decision-making on digital transformation in the justice sector. This method was used to determine how the legal system has changed under the influence of technological innovations and what historical events have shaped the development of digital justice in Albania. The analysis of the historical context helped to understand the peculiarities and challenges that arise in the process of digitalisation of the judicial system in this country, as well as to understand the reasons and circumstances that facilitated or hindered the introduction of digital technologies into the country's legal system. This method was used to identify the factors that influence the success of digital initiatives in the context of historical dynamics and experience.

The hermeneutic method was used to gain an in-depth understanding and interpretation of the legislative texts that reflect the interpretations, opinions, and context of digital transformation in the Albanian judiciary. This method was used to study the European Union's legal acts on the digitalisation of the judiciary in the Western Balkans and the government as a whole. This method allowed to consider the different perspectives, interpretations and cultural peculiarities that influence the introduction of digital technologies in Albanian justice.

Results

The modern Albanian society reflects the complex processes that include organisational, legal, economic, political, and other aspects. These processes are related to the development, implementation, use and development of computer systems to meet the information needs and interests of citizens, society, and the state. Particular attention is paid to

changes in the field of e-democracy, including the formation and development of e-parliament, voting systems, e-justice, and other aspects in line with European practice.

According to the Declaration of Principles "Building the Information Society – A Global Challenge in the New Millennium", the information society is seen as a concept focused on the interests of people, accessible to all and aimed at developing potential (Chlevickaitė *et al.*, 2021). The term "information society" is defined as a conditionally defined category that reveals the level of communication between people using the latest technologies for creating, transmitting, receiving, storing, and processing information. In the modern context, it is possible to recognise the conflict of values between the information and traditional society that arises in connection with the implementation of scientific and technological progress.

Table 1. The spread of the Internet in the Western Balkans

	Albania	Kosovo	Montenegro	North Macedonia	Serbia
Year 2021	75.6%	94.1%	73.3%	81.4%	80.99%
Year 2022	77.2%	97.3%	81.1%	79.8%	81.0%

Source: M. Dervishi *et al.* (2022)

Information technology tools used to proactively support the work of judges and court clerks include word processing and word processing applications. These programs allow judges and court staff to formulate their decisions or prepare cases for hearings in an electronic format. In the context of legal research, a variety of tools and applications, from CD-ROMs to Internet and local area network software, provide judges with access to materials such as statutory law, appellate court decisions, rulings, and court procedures (Preshova *et al.*, 2017; Kholiavko *et al.*, 2021). Office applications, along with legal tools, can be used in conjunction with models or templates of standardised decisions to help judges streamline the process of formulating decisions. Other IT tools used to directly support judges and court clerks include electronic case law databases, electronic messaging systems, and Internet-based communication tools.

Case registration and management systems are moving from traditional court case registers to electronic databases that incorporate information from court proceedings. The functionality of such systems goes beyond case registration to cover areas such as data collection on-court productivity, court financial management, and (non)litigation management systems. These systems include functionality for tracking the progress of cases, planning courtroom phases and schedules, and document management.

The electronic exchange of information between courts and their stakeholders is based on a variety of tools. In particular, persons applying to the court often use the court's website to access various information about court activities, such as online case tracking. Forms of documents can be found on this website and can be submitted electronically. Additionally, there are electronic registers, such as trade and real estate registers (Hajdari *et al.*, 2014).

The use of SMS messages allows litigants to receive information on the status of their cases and their place in the queue for consideration. Concerning the use of technology in court proceedings, this includes hardware and software tools to facilitate the presentation of a case, such as videoconferencing, electronic evidence presentation software, imaging, scanning and barcoding equipment, as well as digital audio and real-time data recording technologies.

Albania completed the implementation of an IT system for case management in January 2010. The implementation of the "Integrated Case Management Information System" (CCMIS/ICMIS) was funded by the European Community since 2007. The new system includes registration of cases, assignment of cases to judges by drawing lots, statistics, website, etc. CCMIS/ICMIS will replace the existing Ark IT system, which is currently used by some courts and simplifies the daily work of all courts and persons applying to the court (Pyshchulina, 2020). Additionally, a new electronic archive system for all court cases was implemented between 2010 and 2012, approved by the Albanian Ministry of Justice. Both systems can be used to manage and archive court cases.

Modern digital technologies are changing the social and economic aspects of both public and private institutions. While it may seem that any innovation in data management is a completely new beginning many of the new phases and pillars of data management are based on previous achievements.

Data management must consider advances in hardware, storage, computer networks and technologies such as virtualisation and cloud computing. All of these technological aspects are transforming the way data is processed and used, and so big data represents an emerging trend that is a result of these technological changes. Big data is gaining importance as it enables organisations to collect, store, manage and control information to gain the knowledge they need.

The inactivity of the judiciary and low levels of funding have led to a decrease in the efficiency of the judiciary in the Western Balkans. Most countries have long-running trials that are pending but dragging on for many years, leading to a significant backlog of cases. The introduction of digital technologies in the judiciary, including video recording of court hearings and automated protocols drawn up by an officer in the courtroom, can make the work of the courts more transparent and accessible. Without hesitation, this digital transformation also has the potential to reduce corruption in the judiciary and increase public confidence in the judicial process.

When looking at the history of the judiciary in the Western Balkans, it can be argued that the influence of the communist judicial culture and the aftermath of civil wars have contributed to the prioritisation of the legal system. Historically, the Western Balkan countries have not had much experience in developing strong political and judicial systems that would ensure the effective implementation of the law.

According to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (Commission Staff Working Document…, 2018), the introduction of digital technologies in the judiciary, such as random case assignment and court marking, can contribute to increasing efficiency, transparency, and accessibility in the justice sector.

According to the human rights report, independent media in Albania that actively express their views on the political and judicial systems face a significant number of challenges, which often negatively impact the democratic performance of justice institutions.

As far as corruption is concerned, all the countries of the Western Balkans face problems in the judicial system. All countries in the region score low on Transparency International's Corruption Perceptions Index (CPI) (Table 2).

Table 2. Corruption Perceptions Index 2022

Place	1	2	65	84	85	101	101
Country	Denmark	Finland	Montenegro	Kosovo	North Macedonia	Albania	Serbia
Score	90	87	45	41	40	36	36
World Economic Forum EOS	84	87	38	-	36	42	41
Global Insight Country Risk Ratings	83	83	47	35	47	35	35
Bertelsmann Foundation Transformation Index	-	-	53	37	45	41	37
IMD World	96	94	-	-	-	-	-
Bertelsmann Foundation Sustainable Governance Index	97	88	-	-	-	-	-
World Justice Project Rule of Law Index	88	86	-	38	40	29	32
PRS International Country Risk Guide	100	93	-	-	-	32	32
Varieties of Democracy Project	79	78	45	56	27	27	29
Economist Intelligence Unit Country Ratings	90	90	-	-	37	37	37
Freedom House Nations in Transit Ratings	-	-	44	36	47	42	47

Source: E. Vllahiu (2022)

USAID's assistance to Albania has actively contributed to the improvement of the legal procedure, in particular by developing strategies to improve the transparency and openness of the judicial process. Particular attention was paid to optimising the documentation received by the courts (Tulchynska *et al.*, 2021). The use of digital technologies, such as audio recordings of court hearings and public trials, contributed to the transparency goals. In particular, the introduction of a system of random case assignment and the detailing of the assignment protocols have enhanced transparency and increased public confidence in the judiciary. The use of modern digital technologies for stenographic recording in courtrooms has had a positive impact on the work of the courts, reducing the backlog of cases and reducing delays in their consideration. This indicates an increase in the efficiency of the courts and a reduction in the risk of corruption during the trial.

In June 2014, the new Regulation (EU) No. 910/2014 of the European Parliament and of the Council "On Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and Repealing Directive 1999/93/EC" (2014) took effect. Albania intended to accede to this document, however, since Albania is not a member of the European Union, there was a need to implement mechanisms at the state level for paperless procedures in various sectors. In Albania, a need to introduce electronic documents at the institutional level arose, which in turn led the Albanian government to introduce the use of digital signatures and digital printing. The e-IDAS Directive, also known as the Directive, aims to improve trust in electronic transactions within the internal market. Its primary objective is to establish a unified framework for secure electronic communication among citizens, businesses, and public authorities. Additionally, it aims to improve the effectiveness of online services, e-business, and e-commerce, both in the public and private sectors, across the European Union.

Albania, in line with the objectives of harmonising its legislation with the EU acquis, implemented Law of the Republic of Albania No. 107/2015 "On Electronic Identification and Trusted Services" (2015). The system of filing electronic documents using electronic signatures in court is an effective and modern approach that promotes the convenience and security of processes. The parties may create their court documents in digital format, but to file such documents, an electronic digital signature must be applied. An electronic signature can be generated using cryptographic keys and is used to confirm the authenticity and integrity of a document (Takacs, 2018; Tomço *et al.*, 2018). The advantages of using electronic documents with an electronic digital signature can be divided into seven categories: time-saving, access to accurate information, comfort, no financial costs, control, and ease of use.

Discussion

The study found that the Western Balkan countries are actively introducing information technology into the justice system, relying on audiovisual recordings of court hearings, digital platforms, and other technological tools. However, there is an unevenness in this process between different countries in the region. The introduction of information

technology has the potential to increase public trust in the judiciary by making court proceedings more transparent and accessible. However, it is important to bear in mind that the success of this implementation may depend on the level of technological literacy of the population.

Discussing the results obtained, it should be noted that the research conducted by D. Kostovicova *et al.* (2022). The argumentation of their study focuses on the potential benefits of the digitalisation of archival data of court decisions and cases. The archival digitisation of court decisions opens up new opportunities for researching the history of justice. By providing access to digital archives, researchers can effectively analyse the evolution of court decisions, identify trends, and study the impact of various factors on justice in transition. In addition, digital data can serve as a basis for further research, allowing scholars and students to study legal precedents, analyse justice system reforms, and explore historical contexts.

It is worth agreeing with the results of the study, as this initiative not only contributes to the development of science and education but also makes legal information more accessible and understandable to the general public. The study also concluded that the digital transformation of justice archives can be a powerful tool for ensuring transparency, analysis, and improvement of the legal system in transition.

A team of researchers, including M. Vidas Bubanja *et al.* (2023), conducted a study on technological change, in particular in the context of the COVID-19 pandemic and geopolitical transformations that have affected working conditions and the functioning of public authorities. The results of this study indicate that companies in the Western Balkans have realised the criticality of developing digital skills among employees and their IT knowledge. Although the level of digital literacy of citizens in the region was not specifically analysed in this study, the analysis indicates that the issue of training and development of employees, in particular in the judiciary, is becoming an important aspect of management in the context of modern technological transformations.

The study conducted by V. Prifti *et al.* (2020) examines the operations of a management information system. It explains how the system accumulates and processes extensive data, and disseminates this information to managers at different hierarchical levels to facilitate decision-making, planning, implementation, and control. The study also explores various aspects of utilizing digital technology. The implementation of a management information system is a crucial phase that involves organizing the information systems management department and procuring relevant software. According to the researchers, adopting management information systems helps enterprises enhance functionality, resulting in increased productivity, profits, and streamlined workflows across departments. Overall, the study adds an important contribution to the understanding of the interaction between information technology and management processes, pointing to potential benefits for modern organisations. The same conclusion was reached by a related study, which emphasises that management information systems are becoming an essential tool for achieving efficiency and increasing trust in the judiciary. Improved productivity, increased accuracy of decisions and simplification of administrative processes are identified as key benefits of introducing these systems into the work of the judiciary. In summary, the study adds a significant contribution to the understanding of how information technology can improve the functioning of the judiciary and ensure a more efficient judicial process.

L.R. Mahmutaj and N. Jusufi (2023) highlight the significance of companies taking a proactive approach to utilising the opportunities presented by emerging digital technologies and the ongoing digitisation within government agencies. The research confirms the significant role of digital skills in promoting the development of innovative products and services, improving efficiency, and clarifying the relationship between digital technologies, innovation, and digital skills in small and medium-sized enterprises in the Western Balkans. It is worth emphasising that the results demonstrate the importance of digital skills in driving innovation and increasing the likelihood of success in the modern business environment. Particularly interesting is the identification of factors, such as staff training and specific digital skills development activities, that significantly affect the innovation potential of organisations.

In comparison to the relevant study, it is worth noting that the present study also provides an important contribution to understanding the relationship between digital technologies, digital skills, and the successful application of digital skills by various authorities in the region. In particular, highlighting the role of digital skills in addressing current challenges for authorities, such as digital transformation and global change, provides authorities, including the judiciary, with guidance for effective development.

Considering the issue of digitalisation of the judicial system, it is worth noting the scientific work of S. Seubert and C. Becker (2021), who noted that during the period of introduction of digital technologies into everyday life of the European Union, the latter has strengthened its recognition of European fundamental rights, in particular, highlighting the importance of privacy protection. The privacy-based regulatory corridor is seen as a key element in shaping the future European legal architecture. This article argues that constitutional protection of individual rights has both a personal and democratic dimension. It safeguards the integrity of communication structures that are crucial in facilitating democratic self-determination. This perspective differs from discussions on privacy protection, which often overlook the democratic significance of a private sphere in society. Using the concept of interaction and a discourse-theoretical model of democracy, this article argues for establishing a conceptual connection between privacy and the concept of communicative freedom. From this perspective, defining a European fundamental right to private action can be seen as an effort to contribute to the overall development of European democracy.

The relevant study also raised the issue of privacy and personal data protection, and this study underlines the importance of such protection in the digital age and its important contribution to democracy in the European Union. It is important to bear in mind that the growth of digital technologies can put personal data at risk, and addressing this issue is an important task for ensuring the balanced development of society, in particular in terms of the rights and freedoms of citizens. However, the growth of digital technologies in the justice sector is facilitating access to justice through several innovative measures and technological improvements. Electronic systems allow for the online filing of documents, which allows parties to interact with the legal system more quickly and efficiently. The use of videoconferencing technologies allows for remote court hearings and consultations, reducing the need for physical presence and simplifying the

process. The creation of electronic databases provides quick and convenient access to legal information, contributing to increased transparency and awareness. Developing mobile applications that provide legal advice and access to resources can make legal services more accessible to citizens. The introduction of online dispute resolution platforms can simplify the process of resolving certain legal issues directly online.

Therefore, the introduction of modern technology in this context plays a key role in improving justice and ensuring the efficiency of judicial processes. Please note how this contributes to improving access to justice, optimising the work of judicial institutions, and increasing public confidence in the legal system. The benefits of using information technology in the resolution of court cases, including faster and more accurate decisions, transparency, and increased data security, can be highlighted. Call for the further development and introduction of innovative technologies in the legal sector to ensure that they meet the requirements of the modern world.

Conclusions

Modern technological and socio-cultural challenges make it necessary for the justice system to adapt to new realities. In this context, the Western Balkan countries are deciding to introduce information technology to improve the efficiency and accessibility of judicial services, as well as to increase public trust in the justice system.

Transition periods and complex historical contexts in the region shape the functioning of judicial systems. In particular, problems with corruption, lack of transparency and lengthy proceedings, as well as low efficiency and limited access to court procedures are becoming important aspects. The introduction of information technology can be a key tool to overcome these challenges. Digital technologies can facilitate the automation and optimisation of court processes, leading to faster trials and a reduction in the backlog of cases. The introduction of audiovisual recordings of court hearings and digital protocols can provide additional transparency and objectivity in court decisions.

In addition, digitalisation will improve the interaction between litigants. The introduction of an electronic document management system and online services for the parties can simplify the process of filing documents and reduce the complexity of the process.

An important aspect is the introduction of a web conferencing system that will allow court hearings to be held online. This will not only save time and resources but also ensure an efficient court process, especially in cases where the parties need to be located in different regions.

These technological innovations have a great potential to change the dynamics of the Albanian judicial system, ensuring its modernisation and improving the quality of justice. However, the success of this process will depend on proper implementation, reliable information security and support from all stakeholders in the legal system.

Overall, the introduction of information technology into the Albanian justice system is a strategic step towards creating a modern, efficient, and transparent legal system that meets the requirements of a modern society. However, it is necessary to consider this process in conjunction with broader reforms in the justice sector. The introduction of information technology into the justice system of the Western Balkans is a relevant and promising area of development. This requires joint efforts of the countries of the region and the support of international partners to achieve successful results in improving judicial systems.

Transitional justice in the digital age has several further areas of research, including a closer look at electronic case registration systems, online access to court information and other innovations, as well as research on cybersecurity in the justice sector and legal information systems.

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Conflict of interest

None.

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Правосуддя перехідного періоду в епоху цифрових технологій: досвід Албанії

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Анотація. У технологічному середовищі, що швидко розвивається, оцифрування системи правосуддя в Албанії має величезний потенціал для підвищення ефективності та результативності. Це дослідження спрямоване на комплексний аналіз та оцінку впровадження цифрових технологій у судову систему Албанії. Використовуючи аналіз і синтез, історизм і герменевтичні методи, робота досліджує концепцію інформаційного суспільства та заглиблюється в історичний розвиток інформаційних технологій у регіоні Західних Балкан. Це показує, що, хоча телекомунікаційна інфраструктура в цих країнах усе ще потребує вдосконалення, інтеграція інформаційних технологій може оптимізувати судові процеси, скоротити час вирішення та підвищити загальну ефективність. Завдяки можливості аудіовізуального запису та онлайн-трансляції судових засідань судовий процес стає доступнішим та прозорішим для громадян. Крім того, дослідження розкриває поширеність проблем, які перешкоджають демократичній діяльності в країнах Західних Балкан, особливо в судовій системі. Проте впровадження цифрових технологій сприяє створенню об'єктивного та прозорого середовища, пом'якшуючи виклики та потенційні ризики корупції. Дослідження також розглядає впровадження цифрових документів і електронних цифрових підписів, що є вирішальним кроком у цифровізації правосуддя перехідного періоду. Використання електронних документів із цифровим підписом пропонує численні переваги, включаючи економію часу, точний пошук інформації, зручність, економічну ефективність, контроль і простоту використання. Крім того, дослідження підкреслює важливість цифрових архівів для прозорості та підзвітності, а також необхідність поваги до приватного життя та захисту конституційних прав громадян щодо інформації та доступу. Практичне значення цього дослідження полягає в його потенціалі для розробки програми, спрямованої на оптимізацію та вдосконалення системи цифрових технологій у судових системах країн Західних Балкан, з особливим акцентом на Албанії

Ключові слова: цифрові технології; система правосуддя; інформаційне суспільство; доступність

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Reasons for the criminalization of the gambling business in Ukraine

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Abstract. The criminalization of the gambling business in Ukraine is a complex process that is influenced by several factors. With the development of socio-economic and politico-legal relations, their number is increasing, which makes it necessary to update the mechanisms for limiting activities related to gambling. The purpose of the study was to identify the reasons and factors that led to the need to establish a legal ban on the implementation of the gambling business in Ukraine. The work uses methods of analysis, synthesis, comparison, generalization, deduction, abstraction, formal and legal. The specifics of social relations that existed in Ukraine at the time of the introduction of the ban on the gambling business were studied. The features of the social and political situation under which the criminalization of activities related to gambling was carried out were determined. The political tasks that the legislator set before himself in the process of imposing a ban on the gambling business were revealed. It was established that socio-economic and socio-psychological foundations were laid as the basis of this process. The impact of the tragedy that occurred in one of the gambling establishments in Dnipro on the views of political figures and state bodies regarding the gambling business, in general, has been revealed. The specifics of gamblers, their attitude to this type of activity and changes in moral values were studied. The influence of the gambling business on various spheres of the future development of the state, namely economic, political, and social, is considered. The results obtained in the study should be used in the process of developing new regulatory and legal acts, as well as for updating the mechanisms for combating the illegal gambling business in Ukraine

Keywords: ludomania; control mechanism; public danger; criminal groups; punishment

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Introduction

The transformations in Ukrainian society in the early 1990s led to significant political, economic, and social changes in various spheres of activity. This ensured the formation of favourable conditions for the development of entrepreneurship, namely its various types, including gambling. Despite this, Ukraine has not developed a unified and high-quality state mechanism for legal regulation of the gambling market, which led to the dynamic and chaotic development of this area. As a result, Ukrainian society was characterised by the massive availability of gambling facilities, which, accordingly, contributed to an increase in the number of offences caused by citizens' addiction to gambling. This situation changed somewhat in 2009, in particular in connection with the adoption of the Law of Ukraine No. 1334-VI "On Prohibition of Gambling Business in Ukraine" (2009). Therefore, it is important to study the prerequisites for the adoption of this legal act, as well as to identify its results. Changes in the context of gambling business criminalisation were also introduced in 2020, as the Law of Ukraine No. 768-IX "On State Regulation of Activities Regarding the Organisation and Conduct of Gambling" (2020) was adopted. Accordingly, the issue of determining the social relevance of criminalisation of gambling-related activities in the current environment is also becoming relevant. It is important to study the primary goals of the above-mentioned legal acts and their consequences, which reveal the real state and effectiveness of mechanisms aimed at restricting the gambling business.

The scientific doctrine pays special attention to the specifics of establishing liability for gambling offences. Researchers analyse this issue in various aspects, which allows them to fully define the system of prerequisites for the criminalisation of gambling in Ukraine. In particular, V.V. Manzyuk and V.V. Zaborovskyi (2020) concluded that the legislator chose an ineffective approach in the process of imposing a total ban on gambling-related activities. They argued that it would be advisable to ensure a transitional stage during which business entities and employees could reorient their activities. At the same time, they did not disclose the essence of the criminalisation mechanism and its impact on this area of activity. Z.M. Toporetska (2020) argued about the shortcomings of the Law in the material dimension. She concluded that this legal act did not resolve the issue of compensation for losses incurred by gambling business entities, for example, concerning the funds paid for obtaining licences. The researcher did not propose approaches to address this gap in the legislation. R.O. Movchan and E.Yu. Drachevskuy (2021) disclosed the classification of grounds based on which gambling-related offences were criminalised. In conclusion, they noted the following factors: political and legal, economic, organisational, and managerial, ideological, and psychological. However, they did not disclose the specifics of their implementation. O. Oliynychuk and S. Khomiuk (2020) in their study revealed the essence of the grounds for criminalisation, by which they mean processes that are implemented not only in the material but also in the spiritual life of the state, the spread of which necessitates the need to ensure criminal law protection of social values. They concluded that the reasons for the criminalisation of gambling embody the real need for a criminal law novel. At the same time, the researchers did not disclose the specifics of punishment for gambling in Ukraine. N.A. Luhina and M.V. Omelyan (2019) noted that the essence of the social determination of the criminalisation of offences is revealed based on the influence of the emergence of new criminal law provisions. In conclusion, they identified such factors as economic, political, psychological, and moral. The study did not identify mechanisms to counteract the spread of criminal offences in the field of gambling.

The study aims to analyse the grounds on which gambling-related activities were criminalised in Ukraine. The study has several objectives: to reveal the essence of the criminalisation mechanism and determine its grounds; to study the specifics of gambling-related offences and establish the specific prerequisites for imposing a ban on gambling in Ukraine; to describe the effectiveness of legal regulation of the gambling business in the current conditions of development of Ukrainian society.

Materials and methods

The analysis method was used to examine the process of criminalisation, its essence, and its grounds. The analysis was also used to identify the factors that led to the need to introduce criminal liability in Ukraine for activities related to gambling. This method was necessary to study the level of social danger of this type of criminal offence, as well as to express its impact on individuals and society as a whole. The synthesis method was used to determine the specifics of gambling-related activities of business entities. It was used to reveal the negative impact of the gambling business on various types of social relations. The synthesis was necessary to establish the relationship between the effectiveness of legal regulation of the gambling business and the dynamics of the spread of criminal offences related to gambling.

The comparison method was used in the study to compare different prerequisites for the criminalisation of gambling in Ukraine. This method was necessary to identify their common and distinctive features, as well as to establish the actual results of the legal regulation mechanism in this area. The comparison was also used to study the norms in different versions that establish criminal liability for entities engaged in gambling activities. The subject of the study is in the legal field, which necessitated the use of the formal legal method. This method was used to study the content and provisions of various legal acts related to the gambling business and the establishment of criminal liability for activities in this area. This method was used to study Law of Ukraine No. 1334-VI "On Prohibition of Gambling Business in Ukraine" (2009), Law of Ukraine No. 2852-VI "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation Prohibiting Gambling Business in Ukraine" (2010), Law of Ukraine No. 768-IX "On State Regulation of Activities Regarding the Organization and Conduct of Gambling" (2020), Constitution of Ukraine (1996), Criminal Codex of Ukraine (2001).

The deduction method was used in the study to identify specific reasons for the criminalisation of gambling in Ukraine based on general knowledge of the criminalisation process and its grounds. This method was used to reveal the specifics of criminal liability for engaging in gambling activities. The abstraction method was necessary to study the gambling business as a manifestation of entrepreneurship. It was used to identify the vectors of its influence and the specifics of gambling-related activities. This method was used to reveal the social conditionality of this type of criminal offence.

The generalisation method was necessary to classify the main reasons for the criminalisation of gambling in Ukraine into objective and subjective ones. This method was also used to reveal the current state of gambling regulation in Ukrainian society. The generalisation was necessary to assess the effectiveness of mechanisms aimed at counteracting the unauthorised development of the gambling business in Ukraine.

Results

In a modern society governed by the rule of law, there are various approaches to overcoming destructive processes. However, their implementation is not always possible, which necessitates the selection of mechanisms aimed at limiting the further spread of negative processes in society, as well as reducing the extent of their harmful impact (Fiedler *et al.*, 2021; Järvinen-Tassopoulos, 2022). This includes the criminalisation of socially dangerous acts, which implies that certain forms of human activity become criminal. In this way, new legal norms of criminal law are being enshrined that define the list of criminal offences and the corresponding penalties for them. In this process, it is important to study the grounds for criminalisation, which should be understood as phenomena that occur in both material and spiritual spheres of citizens' activity, the spread of which necessitates the need to ensure criminal law protection of social values. Therefore, the reasons for criminalisation embody the internal need for the emergence of a legal norm (Dowding, 2020; Ims, 2021). The common factors that lead to the criminalisation of previously unpunishable acts include an increase in the level of their social danger; the existence of gaps in current legislation; and social changes that necessitate their protection employing criminal law. In this regard, it should be noted that the mechanism of criminalisation is an important element of the complex process of combating crime.

In Ukraine, the approach of criminalisation was also chosen in the context of combating gambling. Accordingly, on 15 May 2009, the Verkhovna Rada of Ukraine (VRU) adopted the Law of Ukraine No. 1334-VI "On Prohibition of Gambling Business in Ukraine" (2009). The provisions of this legal act prohibited the gambling business in general, as well as participation in gambling (except for lotteries and soft toy machines). Entities whose activities were related to the organisation and conduct of gambling in Ukraine were subject to financial sanctions in the form of a fine of eight thousand minimum wages with confiscation of gambling equipment. At the same time, the profit (income) from these activities had to be transferred to the State Budget of Ukraine. The aforementioned Law came into force on the day of its publication and accordingly provided for the simultaneous cancellation of all licences previously issued to business entities. This indicates that the Law did not address the issue of compensation for losses (related to payment of funds for obtaining cancelled licences) incurred by the entities.

The then President of Ukraine, Viktor Yushchenko vetoed Law of Ukraine No. 1334-VI "On Prohibition of Gambling Business in Ukraine" (2009), as he believed that its implementation would lead to an increase in the number of unemployed (approximately 200 thousand people); violation of the constitutional right to protect the rights of all subjects of property and economic activity (Art. 13 of the Constitution of Ukraine (1996); deterioration of the investment climate in Ukraine; significant financial losses for the state (the amount of payments to the budget from gambling business entities annually amounted to more than UAH 3.5 billion); shadowing of this sector of the economy (Manzyuk & Zaborovskyi, 2020; Novak *et al.*, 2022). The President considered it necessary not to cancel the licences, but to suspend them and then renew them (from the date of creation of the special zones). Despite the above arguments, on 11 June 2009, the veto was overridden by the Verkhovna Rada, and Law of Ukraine No. 1334-VI "On Prohibition of Gambling Business in Ukraine" (2009) was supported by 390 deputies. It is worth noting that the transitional provisions of the Law contained an instruction for the Cabinet of Ministers of Ukraine to develop a draft law on the organisation and conduct of gambling in specially designated gambling zones within three months, but it was not implemented. Subsequently, on 22 December 2010, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 2852-VI "On Amendments to Certain Legislative Acts of Ukraine Regarding Improvement of Legislation Prohibiting Gambling Business in Ukraine" (2010). As a result, the provisions of the Criminal Code of Ukraine (2001) were supplemented with Article 203-2 entitled "Engaging in gambling business". Part 1 of this provision provided for a fine in the amount of 10 thousand to 50 thousand tax-free minimum income, and part 2 – imprisonment for up to 5 years.

Given the above, it is advisable to disclose the main factors that led to the criminalisation of gambling. Firstly, it is worth mentioning the tragic event that took place in the city of Dnipro on the night of 6-7 May 2009. On that day, at around 00:30 a.m., a fire broke out in one of the Metro Jackpot slot machine halls at 127 Gagarina Ave. At the time, there were about 60 people there, 10 of whom died and 11 sustained injuries of varying severity (Movchan & Drachevskuy, 2021; Hubanova *et al.*, 2021). A special government investigative commission chaired by the Minister of Emergency Situations found that the hall was operating legally. However, there were violations of the rules for operating the premises, namely the main exit was engulfed in flames, and the two emergency exits were closed with automatic machines and locks. There was no centralised fire control panel in the hall, and the power grid was significantly overloaded. As a result, the next day after the fire, Konstantin Ivanov, the general director of the Dnipro branch of Kyiv-based Poriv LLC, was charged under Article 270 of the Criminal Code of Ukraine (2001) for violating the fire safety requirements established by law.

The results of the operational and investigative actions revealed that the fire was caused by a flammable liquid, which showed signs of arson. In response, the then-head of the regional state administration, Viktor Bondar, ordered the closure of all gambling and entertainment venues in the city for a thorough inspection. In turn, on 7 May 2009, the Prime Minister of Ukraine Yulia Tymoshenko initiated an extraordinary government meeting to consider suspending the licences of all gambling facilities for a month (Toporetska, 2020; Oliinyk *et al.*, 2022). She also proposed moving these facilities outside the cities, which was based on the US experience. These changes were not supported and implemented in the VRU. Therefore, it is possible to establish that one of the reasons for the criminalisation of gambling in Ukraine is the tragedy that occurred in Dnipro.

Another reason for imposing a ban on gambling in Ukraine was the rapid development and scaling of gambling

business entities and facilities. The number of visitors to these establishments was growing, and this category of entities began to include minors. According to the statistical data set out in the explanatory note to the Law, more than 75% of slot machine customers were students or schoolchildren. Accordingly, in cities, out of 500 thousand people, 25 thousand (5%) were addicted to gambling (Proposals of the President No. 4268..., 2009). This hurt the values of citizens in general, which became infantile. The latter consisted of releasing a person from responsibility through the hope of gaining luck (Tho-un & Saenphumi, 2021). It was difficult for this part of the population to make socially mature and responsible decisions. This is because gamblers are characterised by an irrational type of thinking, which is based on mental narrowness of consciousness (Livingstone & Rintoul, 2020; Lindt, 2023). At the same time, optimism is dominant, driven by the hope of enrichment and low self-discipline. It is worth noting that long-term gambling (more than 5 years) provokes feelings of psychological discomfort, anxiety, and aggressive behaviour in players (Lopez-Gonzalez *et al.*, 2021; Pontes & Williams, 2021). Given the arguments set out in the explanatory note to the Law, it can be established that the official position on the gambling ban was based on the ideas of combating gambling addiction among the population and ensuring safety measures in gambling halls.

Changes in political approaches to the gambling business were typical not only for Ukraine but also for Russia. In this regard, there was a threat of Russian business expansion in Ukraine, as in 2006 special gambling zones were created there, which significantly limited the spread of gambling. This phenomenon was openly stated by members of the Verkhovna Rada, for example, O. Bilozir (2009) (MP of three convocations, Minister of Culture and Tourism (in 2005).

In 2020, on 14 July, the Law of Ukraine No. 768-IX "On State Regulation of Activities Regarding the Organisation and Conduct of Gambling" (2020) was adopted. This proved that the criminalisation introduced in May 2009 did not bring the expected results but provoked the shadowing of the gambling business. In connection with the adoption of this regulatory act, Article 203-2 of the Criminal Code of Ukraine (2001) was amended, which established liability for illegal activities in organising or conducting gambling and lotteries, rather than for engaging in the gambling business (as it was in the first version). In this case, the essence of illegal activity is revealed in the organisation or conduct of gambling without a licence to carry out the relevant type of activity; the issue or conduct of lotteries by an entity that does not have the status of a lottery operator, as well as the organisation or operation of establishments to provide access to gambling or lotteries conducted on the Internet (Klochan *et al.*, 2021). According to the new version of Article 203-2 of the Criminal Code of Ukraine (2001), the definition of "gambling business" was replaced by "gambling". The former included the following components: organising, conducting, and providing access to gambling, while the latter concerned only the organisation and conduct of gambling. In the new version, the provision of access to gambling was mentioned only in the context of the organisation or operation of gambling facilities or lotteries conducted on the Internet. This indicates that at the moment the provision of access to gambling is a condition for ensuring the commission of a criminal offence, and therefore this act has lost its criminal punishment.

As for the main object of the criminal offence under Article 203-2 of the Criminal Code of Ukraine (2001), before the amendments, it included the established procedure for conducting business activities in terms of the legal prohibition on gambling, and additional objects were: property, morality, public safety, and normal development of minors. In the new version of this provision, the main direct object is only the procedure for organising and conducting gambling and lotteries established by law. Therefore, there is a need to continue the state policy aimed at prohibiting gambling and limiting gambling in Ukraine. This is evidenced by the current statistical data on the number of citizens addicted to gambling (Fig. 1).

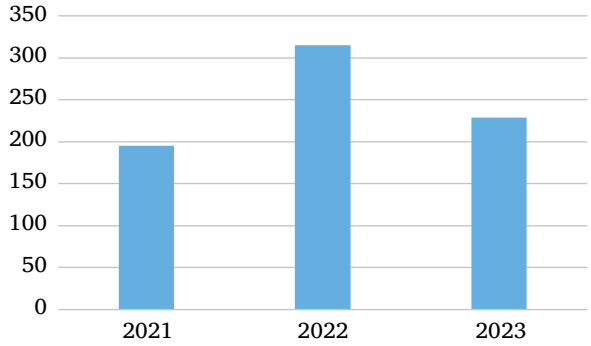

Figure 1. The number of people in Ukraine who were included in the Register of problem gamblers in January 2021 – March 2023

Source: 739 Ukrainians entered the registry of ludomaniacs in 3 years (2023)

Thus, the gambling business provokes violations of social values in society and therefore belongs to criminal offences (Levytska *et al.*, 2022). At the same time, an analysis of the Criminal Code of Ukraine (2001) shows that the approach of the Ukrainian legislator was not based on an absolute prohibition of this type of activity, but on ensuring state regulation in this area, which included criminal liability for the above-mentioned acts. In the future, it is advisable to ensure the implementation of restrictive and prohibitory mechanisms to reduce the number of criminal offences in the field of gambling.

Discussion

The scientific doctrine is also actively studying the issue of the expediency of imposing a ban on gambling, in particular by criminalising it. Researchers reveal different positions, which allows us to characterise this issue in different contexts, including based on international experience. According to K. Lind (2022), the main reason for the social determination of the criminalisation of the gambling business is its high level of social danger. She found that this indicator is determined by the fact that the development and unauthorised spread of gambling in society affects the expansion of organised criminal groups and provides for a negative impact on the health of citizens and material damage. These factors were mentioned in this study, and it was also emphasised that organised criminal activity is integrated into the sphere of economic relations, forming shadow sectors in it. The researcher also studied this issue in the context of protecting national security, in which the economy is an important component and should develop on a transparent

and legal basis. In addition, the socially dangerous nature of the gambling business is evidenced by the presence of selfish motivation, the detrimental impact on public morality, and the possibility of forming mental dependence in the form of gambling addiction. These reasons were also investigated in this paper and their specificity in Ukraine was revealed. The conclusion that the level of social danger of activities related to the organisation and conduct of gambling is extremely high is common in both studies. The common approach is to reveal the specifics of the impact of the gambling business on society, which involves the consolidation of a morbid addiction to gambling among certain categories of citizens. This indicates that the criminalisation of this type of activity is aimed at solving an urgent problem in society related to the unauthorised expansion of gambling.

Economic factors must be considered in the decision-making process to ban gambling. This position is shared by H.F. Günay (2023), who noted that limiting gambling-related activities is an economically inappropriate approach. At the same time, he emphasised that, on the other hand, gambling can influence the spread of criminal offences in other areas of public life. The conclusion common to both studies is that activities related to the organisation and conduct of gambling are aimed at generating profit not only for its organisers but also for players. As for the latter, income is the main motive for gambling for these entities, which offsets economic and legal risks. The researcher pointed out that these reasons are objective, and therefore they must be considered when forming and implementing mechanisms for the legal regulation of the gambling business. In addition, the results of both studies have in common that the circumstances described above are exacerbated by economic crises and instability in the country. That is why the possibility of reducing the level of crime in society partly depends on the effectiveness of solving the problem of low material living standards of citizens.

An important component of the gambling business is the organisational and managerial factors of its activities. T.C.H. Leung and R.S. Snell (2021) argue that these include failure to comply with the requirements of central authorities, the development of bureaucracy, and non-compliance with the provisions of laws. According to the researchers, these factors are important in the context of determining illegal gambling business, as they allow to identify the signs of this criminal offence. Accordingly, the absence or low level of efficiency of the competent state authorities in the field of gambling business control provokes the development of such activities and an increase in the amount of damage caused to society. This conclusion is consistent with the results obtained in this study, as it defines the role of law enforcement in the context of combating illegal gambling. The researchers also pointed out that the low level of implementation of organisational and managerial functions by the authorised bodies is the reason for the failure to detect a large number of gambling facilities and, accordingly, to bring the perpetrators to justice. The common thread between the studies is the proof of the negative impact of the ineffective work of public authorities on the process of controlling and counteracting the spread of illegal gambling in society.

The dynamics of the development and spread of the gambling business also depend on the level of society's culture and its ideological foundations. This position is substantiated by E. Samuelsson and J.C. Örnberg (2022) in their study, in which they described the impact of these factors on the degree of gambling crime. They found that the organisation and provision of illegal gambling business involves negative consequences for society, such as a decrease in the degree of citizens' culture and moral values in general. This was also noted in this study, in particular, the detrimental impact of gambling on the development of the younger generation. The researchers proved that the role of ideological foundations in determining gambling crime is revealed in the formation of a positive attitude of young people to this type of activity. As a result, criminal subcultures develop and spread among the population. A common conclusion between both studies is that unauthorised gambling activities harm the spiritual development of society and its moral foundations.

Special attention should be devoted to the psychological reasons for the spread of gambling and the need to criminalise it. F. Melodia *et al.* (2020) emphasised that humans are social beings, so their social activity plays a special role in their lives. The researchers pointed out that the psychological component of the gambling business is based on excitement. This was also mentioned in this study, emphasising that this property is inherent in human nature. The researchers gave examples of the impact of gambling on the actions and behaviour of a person when gambling, in particular situations in which a person assumes or realises that he or she will become a victim of a criminal offence (or its subject), but internal desire to gamble is dominant and prevailing. What both studies have in common is the disclosure of the essence of the illegal gambling business, which is the use of the proceeds of gamblers' gambling and their losses. The psychological component of gambling participants is revealed in the internal desire to experience specific sensations and win.

The mechanism of legal regulation is the main tool in the process of counteracting the spread of illegal gambling in the country. I.G. Jaya *et al.* (2023) found that the effectiveness of legislative regulation of gambling affects the level of crime related to the organisation and operation of gambling businesses. This was also emphasised in this study, namely, that this approach allows controlling the activities of such entities and providing players with the opportunity to satisfy their gambling. The common position between the papers is that to regulate this area qualitatively, it is necessary to develop a single regulatory act that will allow defining the essence of the gambling business, its types, and specifics. This conclusion allows us to reveal the interconnection of objective, namely political and legal, and subjective, in particular psychological, preconditions of criminal offences in the field of gambling.

Based on the above, the process of criminalisation of the gambling business is caused by several factors that reveal the social danger of this type of activity. This indicates that limiting and establishing control over the gambling industry is an important vector of legal regulation of modern social relations. In this way, it is possible to ensure the monitoring of the activities of entities involved in the organisation of the gambling business and to counteract its spread in society.

Conclusions

The study found that the imposition of a ban on gambling in Ukraine is caused by socio-economic and socio-psychological factors. The criminalisation of gambling-related activities is a multidimensional process, as it is aimed at regulating complex social relations in the field of gambling.

The article examines the provisions of the Law adopted on 15 May 2009, which criminalised gambling in Ukraine. The author identifies the reasons for its adoption, including the tragedy in a gambling hall in Dnipro, the fight against the unauthorised spread of gambling and the involvement of a wide range of citizens in it, and the prevention of the expansion of the Russian gambling business.

After studying the provisions of the Law, as well as the prerequisites for the adoption of the Law of Ukraine's "On State Regulation of Activities on Organising and Conducting Gambling" in 2020, it was found that the total ban on gambling led to the shadowing of this area of activity, as well as the spread of organised crime among gambling business entities. For this reason, the legislator slightly changed the approach to determining the social determinants of criminalisation of gambling-related activities. Following the provisions of Article 203-2 of the Criminal Code of Ukraine, the criminalisation of gambling is also caused by regulatory factors. The study found that in the absence of criminal liability for this type of criminal offence, it would be impossible to ensure legal protection of the interests of the population and the state in the field of gambling. Given this, the author notes that the main reason for criminalising this type of activity is its high level of social danger, which negatively affects not only individuals but also the system of social values of society as a whole. In future studies, a comparative analysis of the experience of Ukraine and other countries should be carried out in the context of improving mechanisms and tools to counteract the unauthorised spread of gambling and prevent the development of criminal groups in it.

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Conflict of interest

None.

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Анотація. Криміналізація грального бізнесу в Україні – складний процес, на який впливає низка чинників. З розвитком соціально-економічних та політико-правових відносин їх кількість зростає, що зумовлює необхідність оновлення механізмів для обмеження діяльності, пов'язаної з азартними іграми. Мета дослідження полягала у виявленні підстав та факторів, що зумовили необхідність встановити правову заборону на реалізацію грального бізнесу в Україні. У роботі використано методи аналізу, синтезу, порівняння, узагальнення, дедукції, абстрагування, формально-юридичний. Досліджено специфіку суспільних відносин, що існували в Україні на момент впровадження заборони на гральний бізнес. Визначено риси суспільної політичної обстановки, в умовах якої здійснено криміналізацію діяльності, пов'язаної з азартними іграми. Розкрито політичні завдання, які ставив перед собою законодавець в процесі накладення заборони на гральний бізнес. Установлено, що в основу цього процесу було закладено соціально-економічні та соціально-психологічні підстави. Розкрито вплив трагедії, що сталася в одному з ігрових закладів у Дніпрі на погляди політичних діячів та державних органів щодо діяльності грального бізнесу загалом. Досліджено специфіку гравців азартних ігор, їхнє ставлення до цього виду діяльності та зміни моральних цінностей. Розглянуто вплив грального бізнесу на різні сфери майбутнього розвитку держави, а саме економічну, політичну та соціальну. Здобуті в дослідженні результати варто використати в процесі розробки нових нормативно-правових актів, а також для оновлення механізмів для боротьби з незаконним гральним бізнесом в Україні

Ключові слова: лудоманія; механізм контролю; суспільна небезпека; злочинні угрупування; покарання

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Contract law of Albania in the context of public-private partnerships

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Abstract. The significance of the research is underscored by the fact that Albania, as a country in the process of socio-economic development, faces the need to attract specialists for the implementation of infrastructure projects. The research seeks to explore challenges within the realm of public-private partnerships concerning contract law in Albania and to propose constructive avenues for enhancement. The methods employed in this endeavor encompassed systematisation, logical analysis, concretisation, and generalisation, along with the application of formal-legal and formal-logical approaches. The investigation analysed modern mechanisms of legal regulation in the system of public-private partnerships. Problems, including compliance with free market principles, ensuring competition and high quality of public services, have been identified. Specific steps are proposed to address them: strengthening internal control in contract awarding procedures, updating legislation with a focus on maintaining market freedom and competition, assessing, and sharing risks between the private and public sectors, and actively engaging stakeholders. The recommendations aim at organic implementation, considering the interests of all stakeholders. In addition, it is suggested that changes in the justice system should stably take place, considering the stability of the overall system. The study also delved into analysing the existing views and concepts of scholars on the subject matter. Examining various perspectives has facilitated a more profound comprehension of the intricacies surrounding the phenomenon and potential avenues for enhancing contract law in Albania within the framework of public-private partnerships. The outcomes of this research possess the potential to provide valuable insights for the formulation of effective legal measures governing contract law in the context of public-private partnerships in Albania

Keywords: projects; protection of parties' interests; problems and challenges; legislation; effective mechanisms

Introduction

In modern professional practice, the strategies of the state and its partners acquire multiple meanings, significantly influencing the evolution of general practice. Thus, to date, public finances remain in a vulnerable state, especially in light of the significant level of public debt, exceeding 35% of the total domestic product in 2022 (International Monetary Fund, 2022). This generates a strong debate on public-private partnerships (PPPs), which has become a major topic due to its high weight in the economy, reaching 35% of the gross domestic product in the said year. Thus, the link between the factors affecting the state of public finances and their reflection on the discussed aspects of collaborations between public and private entities is improving.

The contract law of Albania in the context of PPPs represents an important relevance in modern society. The development and regulation of PPPs are becoming key aspects of the economic and societal advancement of the nation. In this context, understanding and strengthening contract law plays an essential role in creating a stable and reliable legal framework for cooperation between public and private actors. Albania, a rapidly developing country, faces an increasing need to attract investment and create a favourable climate for business. PPPs are becoming a key instrument in achieving these objectives and their effective functioning requires clarity, coherence, and adaptability in the area of contract law.

The analysis of the contract law of Albania in the context of PPPs reveals important aspects such as the compliance of the legislation with international standards, the protection of the interests of all parties in PPP agreements, and the effective regulation of the procedures for the conclusion and execution of contracts. Thus, studying and improving Albania's public-private partnership contract law is important for creating a favourable investment environment, building trust between the parties to the agreements and ensuring sustainable economic development of the country. In a study conducted by I. Lushi *et al.* (2021), an attempt is made to examine the correlation between the degree of trust of the main buyer and contractual relations in the agro-industrial sector.

According to A. Spahiu (2020), public-private partnership (PPP) mechanisms are extensively employed as a means to engage private entities in the execution of public projects.

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The implementation of this type of partnership provides instant access to services, avoidance of debt obligations for the state, effective management, introduction of technology and higher standards of service, and compliance with contracts. This level of interaction requires careful attention to the legal framework to ensure regular and reasonable facilitating the involvement of the private sector in public initiatives and ensuring the safeguarding of public interests, optimisation of value for money, and equitable risk distribution.

L. Dalipi and A. Emini (2023) highlight that the Civil Code has established legislative cohesion within the realm of civil law, providing Albania with a distinct legal framework aligned with contemporary challenges and European standards. Meanwhile, K. Nasto and J. Sulillari (2021) have uncovered a noteworthy surge in public-private partnership contracts in Albania over recent decades. These agreements have exerted a considerable influence on the country's public finances, particularly resulting in substantial alterations to government expenditures and revenues. This has caused concern and criticism from the opposition and the public due to potential negative consequences such as increased public debt, reallocation of budgetary funds from other sectors, and possible restrictions on social programmes and infrastructure projects.

R. Kau and S. Veliu (2023) performed a comprehensive examination of the legislation and operation of public-private partnerships within the context of Albania. Their study covers many aspects, including comparisons with the legislation of the European Union and other European countries. Their findings and recommendations emphasise the positive dynamics of this institution in the context of legal regulation and improved transparency of public and private partnership processes in Albania. The main focus of the article is on significant problems, such as corruption in tender procedures, weakened institutions and the lack of effectiveness of the PPP Commission and the Administrative Court in handling numerous appeals in this area.

While the authors of these studies have covered a significant number of aspects, some key issues have been overlooked. These include corruption in tender procedures, weakened institutions and ineffective regulatory bodies. Some studies also did not analyse the impact of PPP contracts on the country's financial situation. Therefore, the study aims to assess the impact of PPP contracts on the functioning of contract law in Albania, to identify problems in the legal system, and to propose recommendations to improve transparency and efficiency in this area. Albania marks a record in Europe in terms of the government's off-balance sheet commitments, which it has received for concessions in the form of PPP, at 9.5% of the Gross Domestic Product (GDP). This percentage is at least three times higher than the country that spends the most on PPPs in Europe, Slovakia, according to Monitor's calculations, based on the 2021 draft budget data from the Ministry of Finance and Eurostat data for EU countries. for off-balance sheet commitments of PPPs (Albania, record in Europe…, 2020).

Within the framework of this research, philosophical, general scientific and special scientific approaches have been used, which have allowed to delve deeper into the essence and content of contract law in Albania, especially in the context of public-private partnership, namely: dialectical, formal-logical, formal-legal methods, methods of systematisation, logical analysis, concretisation, and generalisation. The dialectical method was applied to analyse the development of contract law in Albania within the framework of public and private partnerships, identifying the contradictions and evolution of this field. Formal-logical method – for systematisation and logical analysis of data related to contract law in Albania, which allowed structuring the information and highlighting the main aspects. The formal-legal approach was employed to analyse legal norms, laws, and their application in the public-private partnership, ensuring legal precision and accuracy of the analysis. Systematisation, concretisation, and synthesis methods to clarify the specificities of contract law in the context of collaborations between public and private entities, and to identify general patterns and conclusions based on the findings.

In the course of the scientific investigation, a comprehensive understanding and substantiation of the issues were achieved by referencing various legal norms from both national and international sources. These include the Constitution of Republic of Albania (2016), Civil Code of the Republic of Albania (1994), and Law of the Republic of Albania No. 125/2013 "On Concessions and Civil Partnership" (2013), Law of the Republic of Albania No. 9643 "On Public Procurement" (2006). The identified gaps and potential in the legislation indicate the need for further improvement of the legal framework for more effective management of this area in the country.

Public-private partnerships in modern scientific research

Presently, a universally accepted definition of Public-Private Partnerships (PPPs) is lacking, leading to challenges in assessment and comparison on an international scale. The term "public-private partnership" is subject to varying interpretations by academics, government agencies, and international organizations, contributing to the absence of a consistent definition in the literature.

The use of the term PPP encompasses a broad spectrum of contract types, and there is no standardized global convention for naming or describing these diverse contracts across different countries or jurisdictions. Nevertheless, a working definition can be offered: PPP represents a distinctive contract type wherein a public partner (government entity) delegates certain responsibilities to a private partner through a long-term agreement. This agreement delineates the rights and obligations of each party, along with mechanisms for financial adjustments arising from unforeseen events or non-compliance by the parties (PPP/Public-Private Partnership…, 2018; Commission Staff Working…, 2022).

As posited by L. Liu *et al.* (2022), PPP is essentially a medium to long-term contract between the public and private sectors, characterized by an explicit agreement on shared objectives for the provision of public infrastructure or services. L. Liu *et al.* (2022) assert that the PPP model leverages the private sector's managerial expertise and investment to deliver essential resources for producing public goods and services. In alignment with L. Chunling *et al.* (2021), private companies engaging in PPPs are primarily motivated by economic benefits, and effective risk management is paramount. Companies entering into projects with the public sector face the risk of suboptimal resource utilization.

One crucial aspect explored in the literature pertains to the alignment of Albanian legislation in contract law with

international standards and practices. Researchers delve into the influence of European Union directives on shaping the legal framework for Public-Private Partnerships (PPPs) in Albania and assess its adherence to global standards in the realm of contract law. As such, C. Petrovan and C. Nastase (2022) analyse PPPs, focusing on the comparison of cost-effectiveness with private actors operating in this field. It is found that these partnerships have improved the availability of dialysis services but have not improved renal transplantation.

The studies center around issues associated with contract fulfillment within the framework of public-private partnerships. N. Wang and M. Ma (2020) examine dispute resolution mechanisms and the liability of parties for non-fulfillment of obligations. Notably, the research pays special attention to concerns of corruption and transparency in the initiation and execution of public-private partnership agreements. T. Adebayo *et al.* (2021) and I. Akomea-Frimpong *et al.* (2021; 2022) delve into the legal consequences that may arise in case of violations related to these aspects.

The literature emphasises the need to improve Albanian contract law, considering the experience of other countries and international standards. The authors analyse proposals to improve the legislation to increase transparency, eliminate legal gaps and ensure more efficient functioning of public-private partnership mechanisms.

E. Jokar *et al.* (2021) and N. Song *et al.* (2022) note that public-private partnership is characterised not only by results but also by the management of the project and related contracts. The focal point is risk sharing, a crucial element in the evolution of this partnership model. As per G. Ampratwum *et al.* (2022), public-private partnership represents an institutional innovation that optimally leverages the strengths of both government and private entities to foster long-term collaboration for the efficient provision of infrastructure and services.

S. Verweij and I. Meerkerk (2021), H.M. Liman *et al.* (2021) and A. Žuvela *et al.* (2023) note that one of the key findings from the Albanian experience is the fact that despite the existence of specific primary legislation regulating PPPs, there are serious problems related to corruption in the process of their implementation.

Thus, the relevance and complexity of issues related to the conclusion and performance of contracts in the context of public-private partnerships in Albania are identified in the literature review on contract law.

Peculiarities of PPP legal regulation in Albania

In Albania, the PPP unit is subordinate to the Ministry of Finance, but is not officially mandated with fiscal management functions. The PPP legislations in Albania explicitly require the approval of the Minister of Finance for PPP projects both before the start of the procurement and before the signing of the contract (Albania, record in Europe…, 2020).

Public-Private Partnerships (PPPs) represent a distinct form of collaboration between public entities and the private sector with the objective of financing, developing, modernizing, managing, operating, and/or delivering services related to infrastructure. A pivotal aspect of PPPs is the shared assumption of risks between the public and private sectors in the delivery of infrastructure or services. Despite the absence of universal consensus on the definition of PPPs, certain key elements characterize this model of interaction. PPPs entail contractual arrangements between the public and private sectors for the provision of infrastructure and public services. The financing of infrastructure or services is undertaken by the private partner, and risks are distributed between the partners based on their respective risk management capabilities. In its guidance on public-private partnerships, the European Commission (2003) emphasises the key importance of the private sector in these schemes. It acts not only as a source of additional capital but also as a provider of alternative management skills and implementation tools. The private sector adds significant value to projects for society, considering the needs of society and using resources efficiently.

Albanian legislation views Public-Private Partnerships (PPPs) as enduring bilateral contractual agreements between a client organisation (public partner) and one or more economic operators (private partner). In such arrangements, the private partner commits to delivering services within the public partner's jurisdiction, shouldering various levels and scopes of risks while receiving compensation based on the contract terms. Within this legal framework, the obligation to provide public services encompasses aspects like financing, design, construction, utilisation, operation, and maintenance of public infrastructure facilities. The risks undertaken by the private partner may pertain to financing, construction, accessibility, operation, management, maintenance, and technical issues. In return, users and consumers receive regular direct payments from the public partner, along with other forms of financial support, including ownership transfer and other contractual obligations (Law of the Republic of Albania "On Public Procurement", 2006).

The existing Law of the Republic of Albania "On Concessions and Public Private Partnership" (2013) uniformly regulates concessions and public-private partnerships from a procedural standpoint. According to this law, PPPs can manifest as public works concessions, public services concessions, contract works contracts, or public services contracts, contingent on the remuneration form favorable to the private partner and the distribution of primary risks. The conclusion of a public-private partnership (or concession) contract in Albania involves multiple administrative procedural phases. In the preparatory phase, various steps are executed, including the identification of potential concession/PPP projects, appointment of a concession commission/PPP committee, preparation of a feasibility study, cost calculation of the concession contract/PPP, and the formulation of tender documents. Emphasising the need and feasibility of the project idea, the public authority compiles a synthesis report during the preparatory work, considering implementation alternatives and identifying all relevant technical and economic scenarios in advance.

In Albania, PPPs represent a strategic collaboration between the public and private sectors to execute projects across diverse domains such as infrastructure, health, education, and more. This form of partnership plays a vital role in stimulating economic growth and modernising the country's infrastructure. PPPs in Albania are a significant component of the strategy for developing infrastructure and other sectors of the economy. PPP trends in the country usually reflect the desire to attract investment, technological development, and improvement of public services. The implementation of such projects can cover various areas, including transport, health, education, and energy (Fig. 1).

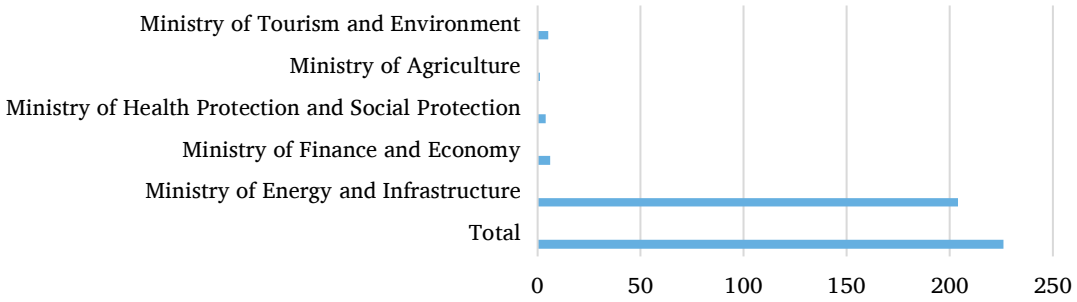

Figure 1. Trend of concession/PPP projects signed during the period 2006-2022
Source: compiled by the author based on International Monetary Fund. (2022)

The adoption of Public-Private Partnerships (PPPs) is motivated by several pivotal factors, including the pursuit of value for money, swift access to supplementary services, prevention of arrears and impacts on the public budget, and enhanced management, technology, and productivity. Before deciding whether to favour PPPs or other alternatives, performance analyses and comparative studies of the different options are necessary. The primary goal of a Public-Private Partnership (PPP) project is to ensure value for money, signifying the extent to which the customer can optimize the benefits derived from the works or services delivered within the PPP framework. Undertaking a preliminary analysis of alternatives is a crucial step in attaining the objectives of a PPP project, given the efficiency of this collaborative model compared to other contract types. The public authority is obligated to conduct an analysis, rooted in a feasibility study, to ascertain whether a project structured as a PPP is more cost-effective than a traditional procurement alternative. PPPs offer enhanced value for money to the public because the provision of public services under this framework is pre-evaluated and compared with other contracting approaches.

PPPs enable the realisation of projects that, for various reasons (e.g. limited budget, lack of experience), cannot be implemented under traditional forms of contracting. It facilitates the delivery of public services that might have been delayed or not realised at all, thus providing more public services. In Albania, for example, there have been several public-private partnership projects ranging from infrastructure to social and economic initiatives (IRD Engineering will enhance…, 2019). Road construction, reconstruction and maintenance projects are often implemented through public-private partnerships. For example, the construction of new motorways, such as the Durres-Cukes highway, is carried out with the participation of private investors.

Energy projects also include the participation of private companies. For example, the construction and modernisation of energy facilities such as hydroelectric power plants or solar energy installations are carried out in partnership with public entities. Tourism infrastructure development projects, such as the construction of hotels, restaurants, and entertainment complexes, are carried out with the participation of private investors who cooperate with the government to create conditions for the development of tourism in the country. Sometimes public-private partnerships are used in projects related to education and health care. For example, the construction of new educational institutions or modern medical centres can be carried out by joint efforts of private and public structures. These projects demonstrate the variety of areas in which public-private partnerships in Albania are being used to contribute to the development and modernisation of the country. Despite the need for PPPs, their implementation in practice raises several issues that should be addressed for the effective implementation of this partnership.

Preserving market freedom and maintaining competition remain key requirements of European law. This is particularly important when selecting private partners and setting conditions for contract renewals. The renewal of agreements due to significant initial investments may create the risk of a closed and uncompetitive market. Adhering to selection procedures that ensure competition, transparency and proportionality is therefore critical for the successful functioning of public-private partnerships. Data has been received that for the year 2024, new concessions/PPPs worth about 109.5 billion Lek or 1.04 billion Euros are planned for the year 2024, accounting for about 4.5% of the projected GDP. As a result, the percentage of the total value of contracts in the Gross Domestic Product (GDP or GDP) for all existing and planned Concessionary and PPP contracts increases to 30.6% of GDP.

According to the Sector, of the new planned PPP concession projects, 4 are in the Transport sector (road and air) with a total value of 104.3 billion Lek, while the other 2 concessions/PPP are in the urban development sector, two Concession contracts in the sector of Educational Infrastructure, Tirana Municipality with a total value of 5.18 billion Lek. From the official information so far, for 5 out of 6 planned PPP concession contracts, the tender competition has been held and the winners have been announced. For 5 investment contracts, it will be private, but with an anticipated level of income from the State Budget as guarantor, and 1 is fully privately financed (Concessionary and PPP contracts…, 2023).

PPPs in Albania have a crucial role in promoting economic growth, modernising infrastructure, and providing essential public services. The legal framework ensures a structured and transparent approach to these partnerships, balancing risk-sharing between public and private entities. Despite challenges, PPPs continue to evolve in Albania and have made significant contributions to various sectors, including transport, energy, tourism, education, and healthcare. As Albania progresses, PPPs are expected to continue playing an important role in the country's development strategy by utilizing private sector involvement for public benefit.

Challenges and promising avenues for improvement

Articulating service quality can be challenging, particularly within the realm of public services, where the relationship between inputs and outputs is frequently not clear. This necessitates ongoing and active monitoring of service

management, especially when a service provider is granted a monopoly in a specific area. Concurrently, Public-Private Partnerships (PPPs) encounter common risks inherent in project implementation. These risks encompass technical challenges linked to structural defects, construction risks arising from time and cost overruns, operational risks tied to maintenance costs, income risks stemming from insufficient demand, financial risks associated with financial expenses, potential environmental hazards arising from the project's influence on the surroundings, and political and legal uncertainties stemming from alterations in legislation or unsupportive government policies, in addition to the risk of unexpected situations.

One of pivotal aspects of PPPs remains the question of the sustainability of revenues from the services provided to cover operational and financial costs, as well as to ensure a return on investment. Factors that may cause problems in PPPs include the following aspects (Batjargal & Zhang, 2021):

- Unstable organisational structure of the public partner. In an unstable environment, the organisational structure of the public partner often suffers from inefficiency and high bureaucracy, which can complicate project implementation.
- Uncertainty of project objectives. Problems arise when the private partner lacks a clear understanding of the project's initial objectives and the expected results of the cooperation in the initial phase.
- Insufficient communication. Ineffective information sharing within the government-contractor relationship can lead to inconsistencies in the resources required to achieve project objectives.
- Improperly structured PPPs. Different types of PPPs transfer varying levels of risk to the private sector. Harmonised risk allocation based on manageability in both the public and private sectors is recommended.
- Lack of internal capacity. Occurs when both the government and the private contractor lack the necessary human resources to effectively manage a PPP.
- Poor planning. The outcome of a Public-Private Partnership (PPP) frequently depends on the effectiveness of the initial framework, policies, legislation, and various other factors. Proper planning from the project's outset is crucial.
- Insufficient attention to operations. Viewing the partnership primarily as a financing tool can lead to neglect of infrastructure maintenance.
- Insufficient comprehension of value for money. Challenges emerge when the costs linked with PPPs are not adequately balanced by returns, or when public officials lack a complete understanding of the value-for-money concept.
- Divergent organisational cultures and objectives among partners.
- Subpar institutional environment and support.
- Fragile political and legal frameworks.
- Untrustworthy mechanisms for sharing risk and responsibility.
- Insufficient procedures for selecting PPP partners.
- Discrepancy between resource inputs and quality.
- Insufficient monitoring and evaluation of PPP processes.
- Opacity exacerbated by the intrinsic characteristics of PPPs.

To mitigate the aforementioned risks, governments can formulate a comprehensive Public-Private Partnership (PPP) life cycle that encompasses all its stages – from initial planning and transaction conclusion to ongoing partnership management. An inherent challenge in the legal regulation of PPPs is the involvement of public authorities in projects, necessitating the establishment of a public accountability mechanism distinct from situations where all participants are private. Simultaneously, the establishment of PPPs involves a departure from the political and bureaucratic processes inherent in public activities.

To effectively tackle this issue, ensuring public awareness and averting unnecessary bureaucracy, it is recommended to focus on legal mechanisms. For example, developing transparent legal regulations that are easily accessible and understandable to all stakeholders, in addition to minimising administrative burdens. However, difficulties arise here: how to balance the interests of the state and the private sector to avoid conflicts; whether it is possible to delegate long-term management of infrastructure to a state organisation; and what administrative requirements are necessary to achieve such a balance. This focus on legal aspects may raise questions, but it is through analysing legal issues that one can look for ways to strike a balance between public openness and avoiding unnecessary complexity in management.

A PPP model in Albania that combines the positive elements of both sectors will be successful if there is both a profit and a return on private investment, as well as delivering high-quality services to citizens and fulfilling the public interest. These two aspects, while interdependent, can be both a strength and a risk of the partnership. Vulnerabilities include the difficulty of mutual understanding between the two sectors and monitoring, which in transition countries can create risks of corruption and abuse. Therefore, a priority in Albania is to establish effective legal control mechanisms before the legal framework itself.

According to the European Commission's 2022 report on Albania (Commission Staff Working…, 2022), the Law on Concessions and Public-Private Partnerships demonstrates partial compliance with the EU Concession Contracts Directive. While Albania has made strides in public procurement, updating legislation, implementing an electronic complaints system, providing procurement training, and establishing an online PPP database, more efforts are required to combat corruption in procurement procedures. The report suggests several recommendations for enhancing the PPP legal framework, such as broader use of the most economically advantageous tender award criterion and alignment of concessions and PPP legislation with EU standards. Additionally, there is an emphasis on improving the capacity of relevant authorities to handle a high volume of complaints in this domain.

Albania's experience highlights that despite having specific legislation governing PPPs, corruption-related issues can arise during implementation. It is recommended to reinforce internal controls in PPP award procedures from the outset to preempt potential corruption-related problems. Strengthening the role of institutions in project selection and contract management is crucial to mitigate future risks, and continuous monitoring of risks at all stages of the process is necessary. Successful implementation of projects to improve collective services requires that the state, through its central, regional, and local organisations, identifies the needs of citizens and businesses, creates and delivers services, and entrusts the creation and management of tangible and intangible infrastructure to private individuals through a competitive mechanism and the selection of competent personnel in the relevant fields.

Trends in contract law in the context of PPPs in Albania in the context of modern doctrine

When it comes to contract law in the context of PPPs in Albania, the study of this area becomes a key task for legal science. The comparison of foreign experience with national legal regulation opens new perspectives for advancing and enhancing the national justice system. This contributes to a more balanced and efficient legal system that ensures fairness and harmony in the functioning of the country's laws. The PPP concept in Albania is reflected in contract law and fiscal policy, playing a key role in shaping economic interrelationships. It influences the structure and dynamics of the country's economy, aiming at the joint development of the private and public sectors.

Studies conducted by T. Liu *et al.* (2020) and L. Liu *et al.* (2022) reveal that the analysis of PPP systems of different countries allows to highlight their unique features. PPP regulation in Albania is affected by the current economic environment and political changes, which affects the effectiveness of PPPs and contract law in general. Of particular interest is the use of artificial intelligence in law enforcement. L. Chunling *et al.* (2021) note that computers can collect huge amounts of data for subsequent analysis. They note that computers are capable of collecting huge amounts of data for further analysis. However, turning this information into useful knowledge requires the analysis of experienced professionals or intelligent tools that provide facts and alternative solutions to law enforcement. Their research underscores the utilization of computer science technologies, including geographic information systems, clustering, link analysis, and advanced intelligent analytical tools, for crime profiling and prediction. Nonetheless, it is essential to weigh the potential risk of these technologies being exploited by criminals.

In the context of Albanian contract law and PPPs, the digital age brings with it vast amounts of information from various sources and formats. This data is becoming an important strategic resource for public authorities and businesses, enabling the creation of products that best meet the needs of users. However, the systematicity and consistency in shaping tax relations and policies in many countries do not always match the needs of the modern environment. The introduction and active use of Big Data technology will not only help to counter tax evasion and fraud but will also simplify procedures for the implementation of projects in the field of contract law in Albania through the PPP prism. W. Wang and M. Ma (2020) argue that the risks listed in the context of PPPs are not unique to this type of partnership but are characteristic of most projects in various sectors. They can appear in both purely private and public projects. As such, risks need to be considered in any investment activity, and they are not related exclusively to PPPs.

As mentioned earlier, project management faces common risks inherent in its execution. These risks include technical deficiencies related to design, problems during construction, delays and budget overruns, operational risks related to maintenance, risks of low demand, financial risks, environmental impacts of the project, and political and legal risks related to changes in legislation or unsupported government policies. In addition to these, there is the risk of force majeure. It is important to emphasise here that the risks described in the PPP context can be manageable with the right project management approach. This includes the use of insurance, the development of risk minimisation plans, and careful consideration of the legal and policy environment to prevent negative impacts.

T. Adebayo *et al.* (2021) and I. Akomea-Frimpong (2022) consider the development of sustainable financing models that consider risks to be key in the implementation of PPPs. While agreeing with this thesis, it should be added that this includes a variety of funding sources, contingency reserves and modelling of revenues and expenditures to ensure stable financial flows. At the same time, it should be noted that effective management and professional execution of PPP projects can also reduce risks, improve service quality, and ensure revenue stability. A competent team of managers and specialists can effectively overcome the risks linked to the technical, environmental, and financial facets of the project. Despite the existence of primary legislation regulating PPPs, experience has shown the emergence of corruption problems during the tendering process. This raises the need to strengthen internal controls already at the stage of PPP award, to prevent potential problems in the process. Criticism is also levelled at the weakness of the institutions responsible for project selection and contract management, which may create risks in the future. The focus is on reinforcing the role of these institutions, emphasising the need to control risks at all stages of project implementation. Strict competition requirements may limit the choice of partners and increase the cost of projects by excluding potentially qualified participants. This can reduce the effectiveness of PPPs and make it more difficult to find the best solutions for project implementation.

The need for ongoing active monitoring also requires significant resources and may cause additional bureaucratic complications. Long-term contracts extended due to significant investments may create a monopoly and reduce competition, negatively affecting service users in the long term. This can lead to limited choice and a lack of incentive to improve services. This is highlighted by S. Verweij and I. Meerkerk (2021). Consequently, for successful implementation of collective service improvement projects, it is suggested that the state should actively identify the needs of citizens and businesses through central, regional, and local organisations. This includes establishing, providing services, and entrusting private individuals to manage the infrastructure through competitive mechanisms and competent recruitment in the relevant fields.

Thus, Albania's tax system is an integral part of managing the country's economy and ensuring its financial stability. In recent years, the country has been actively modernising its tax system to improve the business environment, stimulate investment and increase competitiveness in the global arena. This includes revision of tax rates, simplification of taxation procedures and introduction of advanced information technologies for more efficient collection and monitoring of tax revenues. Measures are also aimed at promoting tax discipline and discouraging tax evasion through stricter control and compliance with tax laws. These efforts are intended to create a favourable business environment and contribute to strengthening the country's financial sustainability in the face of global challenges and dynamic changes on the world stage. Certainly, the significance of tax policy in the realm of Public-Private Partnerships (PPPs) in Albania is steadily growing. This mirrors not just the economic requirements of the country but also its commitment to fortifying the collaboration between public entities and the private sector to foster sustainable development.

The government is poised to formulate a new law on the concession of public-private partnerships, with the objective of mitigating the issue that is now appearing with the existing contracts of public relations and private companies. In the document "priority measures within the framework of the Public Administration Reform 2023-2030" released for public consultation, it is noted that the law, which is expected to be approved at the end of 2025, will be preceded by the drafting and approval of the methodology for the inventory, the comment and the depreciation of assets in the public sector, which will be ready by mid-2025. It is also expected to be the methodology for approving concession/PPP projects – until the end of 2026. These legal changes aim to synchronize based on the data of monitoring contracts and following the monitoring process of concession/PPP contracts continuation; Strengthening and supplementing the government's capacities for monitoring ongoing concession/PPP contracts; Creation of efficient mechanisms related to the monitoring of concession contracts/PPP, so that the risks of the contracted parties, with the focus to continue on the contracting parties, as low as possible to ensure more and the greatest benefit.

Strengthening the role of contracting authorities in determining the procedures that are chosen for public contracts, to determine which procedures maximize "best value for money" and "value for people" by the 2026 fund. It seems that this initiative is not referring to the history of the concession contracts in sale, before those who deal with the provision of services and have become a burden on the state budget (New law on concessions…, 2023).

The landscape of contract law in the context of PPPs in Albania is constantly evolving due to the interplay between economic development, legal reform, and technological advancement. The integration of advanced digital technologies like Big Data and Artificial Intelligence has the potential to improve the efficiency and transparency of PPP management. However, this advancement also presents challenges, including data security risks and the need for robust legal frameworks to effectively manage these new technologies. As Albania continues to modernise its legal and economic systems, it is crucial to focus on sustainable financing models, risk management, and transparent procedures in PPPs to achieve long-term economic stability and growth.

Conclusions

Contract law in Albania, especially in the context of PPPs, represents an important aspect of the country's legal system. PPPs are gaining importance in Albania, becoming a pivotal tool for advancing infrastructure, services, and various sectors of the economy. The laws and regulations concerning contract law in PPPs are aimed at balancing the interests of the parties, ensuring transparency of transactions and respecting competition rules. It is worth noting that Albania endeavours to align its PPP system with international standards and practices, especially in light of the aspirations of integration into the EU. The recent decades of progress in market economies have identified a novel and effective source of financing for public projects, particularly those of strategic significance. This newfound resource lies in the collaboration between the public and private sectors. The exploration of the dynamics and challenges associated with this public-private partnership (PPP) arises as a necessity recognised several years ago in Albania, at which point this topic became the most discussed issue in politics Albanian.

In conditions when the need for financing projects and services of a public and strategic nature is above the real possibilities of public finances, cooperation with the private partner becomes I necessary This necessity is even more pronounced for developing countries such as Albania, for whom the construction of road, energy and social infrastructure are emergency and impossible to face from public funds. In addition, the rise of collaboration between the public and private sectors offers opportunities for increasing the quality of management, efficiency as well as minimizes project risks, compared to the traditional method procurement. PPPs in Albania can cover various areas such as construction, transport, health, and education. Despite the importance of PPPs, their implementation faces challenges such as respecting free market principles, maintaining competition, and ensuring the quality of public services. Risk factors include poor organisational structure, uncertainty, inappropriate structure, and lack of internal resources. To avoid such problems, the government can develop a legal framework, giving due consideration to all stages of Public-Private Partnerships (PPPs), encompassing planning, contracting, and management, is crucial.

To avert potential issues related to corruption in the tendering process and PPP implementation, it is advisable to enhance internal controls within contract award procedures. This may include strict measures and monitoring systems to ensure compliance with ethical standards and prevent corrupt practices. For more effective PPP implementation, continuous improvement of the legal framework is necessary. This includes analysing and updating legislation to ensure compliance with free market principles, competition, and quality of public services. Additionally, within the framework of PPPs, it is imperative to conduct a thorough assessment of risks and determine their allocation between the private and public sectors. This approach facilitates effective risk management for each party, a critical aspect of ensuring a successful partnership. To attain the desired outcomes in PPP projects, active involvement of multiple stakeholders is essential. This can facilitate a broader understanding of needs and better utilisation of resources, as well as provide feedback and support from different community groups. The implementation of these recommendations can contribute to improving public-private partnership processes in Albania, making them more efficient, transparent, and consistent with fairness and competition.

In the future, various aspects of safeguarding the rights and interests of the parties in public-private partnership contracts in Albania can be investigated: mechanisms for dispute resolution, contract enforcement and liability for breaches; the role of the judiciary in dispute resolution and law enforcement; the impact of legal norms on the investment climate and the enhancement of the economy of the country; the assessment of the effectiveness of control mechanisms and transparency in the conclusion and execution of these contracts; the effectiveness of legislative changes and recommendations These topics can be the basis for a more in-depth study of issues related to contract law in Albania in the context of public-private co-operation.

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Conflict of interest

None.

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Договірне право Албанії в контексті державно-приватного партнерства

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Анотація. Актуальність дослідження зумовлено тим, що Албанія, як країна, що перебуває в процесі соціально-економічного розвитку, стикається з потребою залучати спеціалістів до реалізації інфраструктурних проєктів. Мета цього дослідження полягала в розгляді проблемних аспектів функціонування державно-приватного партнерства в контексті договірного права в Албанії та формуванні перспективних шляхів його вдосконалення. У роботі використано методи систематизації, логічного аналізу, конкретизації та узагальнення, а також формально-юридичний і формально-логічний методи. Виконано роботу з аналізу сучасних механізмів правового регулювання в системі державно-приватного партнерства. Виявлено проблеми, зокрема в дотриманні принципів вільного ринку, забезпеченні конкуренції та високої якості державних послуг. Для їх розв’язання запропоновано конкретні кроки: посилення внутрішнього контролю в процедурах присудження контрактів, оновлення законодавства з фокусом на підтримці свободи ринку та конкуренції, оцінка та розподіл ризиків між приватним і державним секторами, а також активне залучення зацікавлених сторін. Рекомендації спрямовані на органічне впровадження, враховуючи інтереси всіх учасників. Крім цього, запропоновано, щоб зміни в системі правосуддя відбувалися стабільно і з урахуванням стабільності загальної системи. Дослідження також поглиблено в аналіз наявних думок і концепцій учених, що стосуються цієї проблематики. Вивчення різних поглядів дало змогу глибше осмислити складність цього явища та можливі шляхи вдосконалення договірного права Албанії в контексті державно-приватного партнерства. Результати цього наукового дослідження мають потенціал бути цінними для розроблення ефективних правових актів регулювання договірного права Албанії в контексті державно-приватного партнерства

Ключові слова: проєкти; захист інтересів сторін; проблеми та виклики; законодавство; ефективні механізми

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Non-current asset restoration costs upon cancellation of martial law in Ukraine

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Abstract. The need to conduct a study on accounting for the costs of restoring non-current assets after the lifting of martial law in Ukraine is urgent. This need has arisen as a result of the extensive destruction and damage that the military conflict has caused. The end of the war will lead to the need to restore these assets in order to alleviate the humanitarian situation and facilitate economic recovery, and this is of great legal importance to ensure proper accounting. The study aims to develop a model to systemise and predict the process of accounting for costs associated with the restoration of non-current assets. The following methods of scientific cognition were used: comparison, description, modelling, analysis, and synthesis. Thus, the main factors that destroy certain non-current assets were formulated in the course of this study. Each of the proposed stages of this accounting process has been thoroughly researched, analysed, and explained, which ultimately demonstrated its holistic mode of operation. It also proposed a classification of costs that should be recorded, supported by specific examples, and tracked the entire document flow process, including its preparation, receipt, registration, and retention, which made it possible to specify the implementation of the steps involved. Emphasis is placed on the importance of maintaining company records, listing necessary documents. Evidence of proper fund utilization for non-current asset restoration is deemed vital for addressing stakeholder concerns effectively. In terms of practical

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implications, this paper should be useful for accountants, auditors, government officials and all those involved in the cost accounting mechanism, as the study will contribute to a better understanding of the implementation of all accounting steps, which in turn will allow identifying and eliminating problems that may arise at each stage

Keywords: national standard; classification; model; document flow; financial support; international partnership; armed conflict; legal framework

Introduction

The cancellation of martial law in Ukraine will have many consequences in all spheres of life, including the economic sphere. That is why it is already worth predicting and researching what impact this will have, in particular, on the accounting for the costs of restoring non-current assets. This topic is important for research because studying this issue allows the government and businesses to understand what financial resources are needed to restore and maintain the country's functioning. Equally important is that understanding the accounting for asset restoration costs will have an impact on tax policy. In the event of the lifting of martial law and reconstruction, it will be necessary to attract financial support from international partners and organisations, so awareness of accounting activities is important to establish common standards and requirements for receiving external assistance. It is also important that the proper functioning of the accounting mechanism is key to a rapid and effective economic recovery from the armed conflict.

The previous studies revealed several fundamental problems. One of them is the identification of funding sources for the restoration of non-current assets. It is also crucial to address the issue of accounting and reporting standards that meet international standards. In addition, the exact value of damaged or destroyed assets will need to be established to properly allocate financial resources and determine cost-effectiveness, which has been identified as a potentially daunting task. Even after the war, the issue of sustainability and adaptation of the reconstructed assets to new conditions will arise, requiring additional resources and planning.

Particularly noteworthy is the study by Yu. Sivitska (2019), which was directly focused on identifying ways to improve the efficiency of asset management of agricultural enterprises in Ukraine using a comprehensive actuarial model. The article confirms the hypothesis about the relationship between the financial statements of agricultural enterprises prepared by International Financial Reporting Standards (IFRS) and actuarial management reporting. Moreover, the results of the study indicate a direct dependence of the investment attractiveness of agricultural enterprises in Ukraine on the quality of information provided in international reporting.

The study by M. Kuzub *et al.* (2022) focuses on the comparison of Ukrainian, American, and European accounting standards and, the assessment of key aspects of these standards. The article presents the results of a comparative analysis of accounting standards of Ukraine, the USA and Europe to study the problems, prospects and factors that affect the implementation of international financial reporting standards. The study also provides recommendations for the development of national accounting standards but does not address the aspect of how they can be used within the accounting activities in Ukraine, unlike this study.

It was also necessary to consider the study of V. Ilin *et al.* (2020), which aimed to reveal the peculiarities of accounting for transaction costs of agricultural enterprises, considering the peculiarities of the shadow economy. The main achievements of this study were the consideration of the role of transaction costs as an economic category in the activities of agricultural producers and their impact on the increase of shadow economic processes in agriculture. On the other hand, the authors have thoroughly investigated the factors that lead to the emergence of such costs and the shortcomings of their reflection in accounting and have provided recommendations for their correct reflection in reporting.

The study of S. Korol *et al.* (2022) aimed to assess and analyse the impact of globalisation and regional optimisation on the functioning of enterprises that are required to develop transfer pricing documentation. The study focused on analysing the causes of global economic risks and the role of transfer pricing documentation, which can help mitigate the negative effects of undesirable events on the global economic system. Thus, the researchers did not consider the impact of events in the context of a specific entity, while the subject of this study provides for an overview of the entire issue, focusing on the specifics of Ukraine. S. Drobyazko *et al.* (2019) analysed the efficiency of management responsibility centres at different levels of management. Such an assessment of efficiency was based on reporting and considered the overall performance, which was determined based on the key indicators provided.

Given the above, the study aims to model a mechanism for accounting for costs associated with the restoration of non-current assets, which should be applied after the cancellation of martial law in Ukraine. Such knowledge will help to determine the optimal approaches to accounting for these costs and predict their impact on the financial stability of enterprises and the country's budget system.

Materials and methods

A range of scientific cognition methods were used in the study, which served as the basis for formulating and searching for the data necessary to achieve the research objective. Thus, the most useful among them, in particular, were the following methods: comparison, description, modelling, analysis and synthesis. The combination of these methods made it possible to better understand the issues of accounting for the costs of restoring non-current assets in the context of the cancellation of martial law in Ukraine and to draw reasonable conclusions.

The comparison method was used to identify different cost accounting methods and practices and to compare accounting standards, legal requirements, and practical approaches in both the national and international systems. The most significant method was the description method, which was based on the reproduction of the procedure for accounting for the costs of restoring non-current assets in the context of the cancellation of martial law in Ukraine. This allowed us to reveal all the nuances and peculiarities of this process, including legal requirements, accounting standards and procedures.

The modelling method, which was used to recreate the entire accounting procedure, is particularly noteworthy, as it facilitated the forecasting and identification of all the key stages and details related to the implementation of this mechanism in the future when the need for its application will arise after the martial law is lifted. This model was used to identify some dependencies and assess the impact of various factors on cost accounting. On the other hand, an analysis method was applied, which proved to be useful in the study to identify and evaluate existing data and information on cost accounting. Moreover, the application of this method was to track the practice of accounting for the costs of restoring non-current assets and not only in different sectors of the economy and organisations in Ukraine. This allowed us to obtain direct data on how these costs are accounted for and how this process is carried out in practice. Another method worth mentioning is the synthesis method, which was useful in the process of creating new solutions and recommendations based on existing data and information. The main role of synthesis was to use it in developing optimal strategies for accounting for the costs of restoring non-current assets after the lifting of martial law based on the results of analysis and modelling.

The empirical part of the study was based on careful planning of the work required to collect data following the research plan, followed by processing and analysis of the collected data to identify patterns, trends and relationships. The content of this part was disclosed through a comprehensive interpretation of the found patterns and research results in the context of the topic, which was formalised in the form of a scientific report, which became the relevant section of this article. The legal basis for this study was based on the laws, regulations, orders, and other normative acts governing accounting in Ukraine. Particularly useful in this context were the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" (1999), and also Order of the Ministry of Finance of Ukraine "On Approval of the National Regulation (Standard) of Accounting 7 "Fixed Assets" (2000).

Financial reports of organisations involved in the restoration of non-current assets, including balance sheets, income statements, cash flow statements, as well as documents published by NGOs and government agencies that may contain information on cost accounting in the context of the study, also played an important role. National and international accounting standards relating to the accounting for the costs of restoring non-current assets, as well as other essential elements in this area, were also important and contributed to the achievement of the goal. The increased level of attention was focused on International Standard on Auditing 315 "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment" (2008) and IFRS 5 "Non-current Assets Held for Sale and Discontinued Operations" (2018).

In the context of formulating the theoretical basis of the study, articles and publications were used that consider aspects of cost accounting in the situation of cancellation of martial law in Ukraine. Among the competent scholars in this area, the work of Ukrainian, Chinese, Lithuanian, Indonesian, British, and American specialists was used. In addition, expert statements and opinions of accountants, financial analysts, and other specialists competent in conducting cost accounting assessments were used as a supplementary source.

Results

The war in Ukraine has created a situation in which businesses located near or within the area of hostilities regularly suffer significant losses, including losses due to the destruction of buildings; fires caused by enemy fire; damage to products, damage to working equipment. The question of how to properly account for such circumstances in accounting, taxation and the processing of relevant financial transactions becomes relevant.

First of all, the scope of non-current assets to be considered and their specifics were outlined. Thus, the study considered that non-current assets can be considered those assets that determine the duration of use that exceeds 1 year or one operating cycle if it lasts longer than a year. In other words, it can be concluded that the main criterion for classifying assets as current or non-current is their expected duration of use, not their form, cost, or value. This duration of use is planned at the time of acquisition of the asset and does not necessarily coincide with its actual service life. Based on the above and guided by the Order of the Ministry of Finance of Ukraine "On Approval of the National Regulation (Standard) of Accounting 7 "Fixed Assets" (2000), all important categories of non-current assets were formulated, which, in particular, should be considered when deciding whether they are subject to restoration and how the related accounting of expenses should be carried out when martial law is lifted in Ukraine (Table 1).

Table 1. Items under which non-current assets are recognised in the balance sheet

Name of non-current asset	Items for which it can be displayed
Main items	The amount related to owned and leased assets, facilities and leased complexes that are classified as property, plant and equipment following the established standards.
Long-term receivables	Debt, which includes liabilities to individuals and legal entities that do not arise in the normal course of business and are due to be repaid after 12 months from the balance sheet date.
Deferred tax assets	The amount of income tax is recoverable in future periods due to temporary differences between the tax and accounting bases of measurement.
Unfinished construction	The cost of construction in progress is intended for the company's use and prepayments made to finance this construction.
Long-term financial investments	Any investment that is not readily saleable at any time and financial investments held for more than one year.

Table 1, Continued

Name of non-current asset	Items for which it can be displayed
Intangible assets	The cost of using the following rights: • trademarks for goods and services; • industrial units; • natural resources; • places on the commodity and stock exchanges; • computer software; • industrial and intellectual property objects; • know-how; • goodwill; • the right to use buildings and structures; • contributions to the charter capital, including those acquired in the course of the company's operations; • rights to carry out certain types of activities and lease buildings, structures and premises.
Other non-current assets	This category includes values for non-current assets that cannot be included in the above categories.

Source: compiled by the authors based on Order of the Ministry of Finance of Ukraine "On Approval of the National Regulation (Standard) of Accounting 7 "Fixed Assets" (2000)

By assessing all the main types of non-current assets, all the necessary steps could be defined to ensure high-quality and complete cost accounting. However, it is worth noting that the lifting of martial law in Ukraine may result in the need to restore damaged assets or infrastructure, which will be an important issue for many businesses and organisations. Based on this, seven elements have been identified in the study that will contribute to the realisation of this goal. The first of these "steps" is costing, which is the need to determine the amount of costs associated with the restoration of non-current assets such as buildings, equipment, and vehicles. The next essential element is the classification of costs, which can be divided into two main types: capital costs and ordinary costs. Capital expenditures include those aimed at restoring major non-current assets that improve their quality or service life, and ordinary expenditures include expenditures for routine repairs and maintenance of assets. The next step is to record the expenditure in the accounting records, which means that the expenditure is recorded by the appropriate responsible employees (accountants) in the documents where capital expenditure can be amortised over the life of the asset. Then, the stage of preserving the relevant documentation was formulated, which is based on ensuring high-quality conditions for maintaining all supporting documents (invoices, contracts, acts of work performed). At the same time, the element of compliance with the law was separately highlighted, based on the mandatory observance of all relevant tax and financial rules and restrictions that may affect cost accounting. The final stages of cost accounting are audit and verification, which consist of mandatory control measures to ensure that all expenses are correctly recorded and comply with the law. The reporting stage was also separately identified, as once the assets have been recovered and the relevant accounting is completed, reports should be prepared that may be required by internal or external stakeholders, including tax authorities.

However, the study did not stop there, as many of the substantive aspects of each step had to be described separately, and therefore each of the above elements had to be analysed more thoroughly. Within the sequence, the first step was to determine the costs. At this stage, it is necessary to determine which non-current assets are to be restored. These may include buildings, infrastructure, equipment, vehicles, and other assets that have been damaged or destroyed in connection with the hostilities. A comprehensive assessment of the extent and degree of damage to each asset should then be made. It is important to determine how severe the damage is and how it has affected the functionality of the asset itself. Once a specific damage assessment has been formulated, the necessary restoration costs should already be determined. These may include the costs of materials, labour, equipment, contractors' services, and the costs of developing and planning the restoration project.

The next, more formal step is to define the classification of expenditures. As mentioned above, this study proposed to divide them into capital and ordinary expenses, which, when martial law is lifted in Ukraine, will allow for a significant systematisation and streamlining of cost accounting. Thus, capital expenditures include expenditures for the restoration of fixed assets that improve their quality or service life. This list includes significant expenditures for the restoration of assets that require major repairs, modernisation, or complete replacement. Examples of capital expenditures in this case include reconstruction of buildings, replacement of obsolete equipment or purchase of a new vehicle. Ordinary expenses include funds used for current repairs, maintenance, and minor repairs of non-current assets to maintain their current functionality. Their main characteristic is lower significance, which is related to the fact that the realisation of such expenses will not lead to a significant improvement in the quality or service life of the asset. Elementary examples in this context include repairing premises, painting equipment, or replacing defective parts. In general, when accounting for capital and ordinary expenses, it is important to determine which types of expenses fall into each category and include them in the relevant accounting records and reports. Generally, capital expenditures are depreciated over the life of the asset, while ordinary expenditures are included in maintenance costs.

The subsequent accounting entry was identified in the study as the most important stage, which ensures the functioning of the entire document flow and forms the cost accounting itself. The term "document flow" in this case refers to a system that creates, checks, and processes primary accounting documents in an organised manner from the moment of their creation to their transfer to the archive. The

development of a document management system is an important part of the accounting structure for any enterprise, as it ensures the clarity and efficiency of processing documents related to the accounting of non-current assets and the stability of the accounting department, as well as guarantees timely decisions on the sale, termination, renewal, and improvement of the productivity of their use.

The document flow process must go through certain stages for each document, including its compilation, acceptance by the responsible person (accountant), registration in the system of accounts included in the accounting registers, and transfer to the archive of the document itself. However, the lifting of martial law will require special attention to the document flow process and possible revision of the requirements and standards set by national legislation, which are known to be extensive (List of national accounting…, 2023). In addition, it is worth noting the importance of international standards, which must also be implemented and observed at each stage of this process. In particular, one of the main principles of international accounting standards is highlighted in the literature concerning transactions recorded in accounting and reporting for a special period. This principle is stipulated in paragraph 1 of IFRS 5 "Non-current Assets Held for Sale and Discontinued Operations" (2018), the essence of which is that tracking should be carried out to reflect assets held for sale (carrying amount that is planned to be recovered primarily through sale instead of current use). Moreover, according to this principle, it is necessary to present and disclose information about the termination of their activities (Kuzub *et al.,* 2022b).

Regarding the retention of relevant documentation, the role of this step is to track and confirm expenditures, which can also provide trust and transparency in the financial management of the organisation. Compliance with all document retention rules will allow auditors, tax authorities, investors, and any other stakeholders to prove and track the targeted expenditure, while the lack of proper documentation will lead to legal issues. Based on the above, the study found that, at the same time, the law must be strictly observed at each of these steps, as this is the only way to ensure the legitimacy and legality of the actions of managers and organisations, which will contribute to openness and trust in financial activities in the context of the lifting of martial law. The study focused on compliance with tax laws and regulations in the accounting of expenses, which should be the basis of the financial strategy. It is also necessary to mention the accounting treatment of the costs of restoring non-current assets, which must be complied with by financial standards and accounting principles, in particular those mentioned above.

Finally, the last steps towards full accounting for intangible asset restoration costs were identified as the audit and reporting by the company. In this case, the main purpose of the intangible asset audit is to obtain sufficient evidence to confirm that these assets have been properly recorded according to the requirements of the law and regulations and that the information in the financial statements is reliable and accurate in all material respects. The study determined, in particular, that the auditor is tasked with verifying the statements made, which are defined in International Standard on Auditing 315 "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment" (2008). Thus, referring to this standard, it can be said that audit evidence should demonstrate at least four main aspects: the actual existence of such assets at the time of the balance sheet; the company's property rights to them; the availability of all documents that can confirm any transactions with non-current assets, given the circumstances related to the lifting of martial law in Ukraine; and determining whether the company correctly evaluates, distributes (depreciates), reproduces all transactions related to non-current assets in the accounting records and reflects in the financial statements the actual information about them.

Analysing the reporting stage, it was defined as "a set of financial documents and information reports that are created and submitted by authorities or enterprises in order to document and reflect all costs and transactions related to the restoration of non-current assets in the context of the lifting of martial law". Such reporting may include such elements as financial statements, transaction documents, audit reports, tax accounting documentation, as well as reports and documents for stakeholders (shareholders, management, accounting regulators). Therefore, accounting for the costs of restoring non-current assets will become an objective necessity when martial law is lifted in Ukraine, which will entail specific consequences. Such realities will lead to a situation where companies will have to adjust to both national and international standards and requirements. Furthermore, all relevant activities should be organised into a system, which in this study has been divided into seven main steps, each of which will ensure reliable, legal, and efficient cost accounting.

Discussion

The study in this area highlighted and clarified the problematic aspects that were directly related to the stated topic. The study of competent research papers in the field made it possible to formalise the results related to the definition and classification of the assets that should be considered in this context, and, most importantly, to identify specific mechanisms and formulate precise steps that constitute the actual cost accounting itself. Moreover, many studies dealt with related topics or looked in more detail at certain elements that could be considered in more detail within a particular issue.

First of all, it is worth mentioning the study by S. Alibhai *et al.* (2021), which describes the approaches and requirements related to the assessment of asset impairment in accounting based on International Accounting Standards (IAS) 36 and International Financial Reporting Standards (IFRS) 5. The study identified that the process of assessing asset impairment includes at least four essential steps Identifying indicators of impairment, which may include changes in the market, changes in technology, and changes in legislation. The study also mentioned the estimation of expected cash flows, which should be based on forecasts and may require consideration of various scenarios. It also mentions the process of calculating the "value in use", which is based on the calculation of the present value of future cash flows using a certain discount rate. It also highlights the stage of choosing a discount rate, which should reflect the risks associated with a particular asset and is usually based on the company's cost of capital or other important financial indicators. These procedures help entities determine whether an asset should be impaired in their financial statements and determine the value of the asset at the financial statement date. In general, this study is important in the context of ensuring the accuracy and reliability of an entity's financial

statements, which to some extent correlates with the results obtained in the course of this study.

Particular attention should be devoted to the study by I. Kovova *et al.* (2018), which thoroughly investigates the impact of European standards and requirements included in the Association Agreement between Ukraine and the European Union on the value-added tax (VAT) system in Ukraine. The study focuses on such aspects as identifying common and distinctive features in different systems, assessing the effectiveness of VAT rates and trends over time, examining VAT administration in the EU and Ukraine, comparing VAT rates in different countries, reviewing current European trends in this area, and proposing potential tax reforms. In contrast to the present study, the work of the above-mentioned authors considered only tax legislation, which was generally useful for a deeper understanding of the role of this component concerning cost accounting, which was considered in the present study.

Given that the study did not address the issue of "corruption" in any way, the study by B. Santoso (2022), focused on the analysis of two essential aspects: the possibility of optimising state compensation in corruption cases through mutual legal assistance and the identification of existing obstacles to this optimisation. The author examines the mechanisms for obtaining comprehensive information on the possibilities of optimising state compensation in corruption cases through the mutual legal assistance model, as well as identifying factors that may complicate this process. The author emphasised that there are various methods for compensation of state losses in corruption cases, one of which is the use of the mutual legal assistance model. This approach was identified as the key to the recovery of assets acquired through corrupt practices, especially in cases where these assets were transferred abroad.

The bank system is undoubtedly an essential element of the entire financial system, but this paper did not focus on a detailed review of this mechanism. However, R. Vidal and J. Ribal (2015), Y. Ouyang (2023) and V. Kostyuchenko *et al.* (2020) studied this issue, in particular, in the context of banks' adaptation to the changes brought about by modernity. V. Kostyuchenko *et al.* (2020) formulated in their work the task of creating an assessment system that can objectively reflect the bank's success in achieving its goals and timely identify deviations from expectations. The authors emphasised that the accounting practices of Ukrainian banks indicate insufficient information for effective management, especially in terms of efficiency. The study indicated that a bank's solvency is crucial to its operations and that the existence of analytical support to help managers make timely and informed decisions is critical. The stability of the banking system was identified as key to the economic development of the country, while the importance of introducing analytical support that would work in a changing environment would significantly contribute to this. This study emphasised the relevance of introducing analytical tools in bank management, highlighted the role of accounting and analytical support, and suggested indicators that could influence the bank's ability to respond to changes in the environment. Y. Ouyang (2023) argued that the rapid development of the process of informatisation of modern society has led to the need to ensure cybersecurity in all areas of human activity. This is because any intentional or unintentional impacts on the information sphere, both external and internal, can harm security and lead to various types of damage. As part of the study, cognitive models were developed to determine the level of security of a computer network, information security system, and critical infrastructure facilities, including banks. The authors also developed scenarios that illustrated the system's response in terms of maximising the mitigation of the most significant cyber threats.

Ö. Özer and E. Umut (2022) considered the importance of such technology as blockchain, as current trends in digitalisation should be considered and implemented in the future, in particular, when martial law in Ukraine is lifted, which was considered in this study as a significant factor affecting accounting and auditing. The authors emphasised that fast and accurate data processing leads to the evolution of methods of producing and storing large amounts of information. As concluded, auditors will have to constantly develop their talents, knowledge, and skills to meet the requirements of blockchain technology. The study first examines the accounting for crypto assets under the TFRS and then demonstrates how these assets should be included in the independent audit process and how the training and skills of professionals in this area can be improved. The results of the authors' research indicate that there are only general recommendations for the inclusion of crypto asset transactions in financial statements and rules for their audit. This necessitates international regulation in this area.

Undoubtedly, the lifting of martial law in Ukraine was one of the key factors in the consideration that influenced the situation of accounting for the costs of restoring non-current assets within the scope of the stated topic. However, the recent crisis caused by the coronavirus pandemic has also created specific conditions and triggered consequences, which were discussed in V. Humeniuk *et al.* (2021) and also T. Zulu and M. Kabwe (2023). Thus, N. Davydenko and H. Skryphyk (2017), L. Kasperevych (2018), and V. Humeniuk *et al.* (2020) developed conceptual provisions and formulated practical recommendations aimed at developing methodological approaches to state support for small businesses. The study assessed the process of formation and strategic priorities of state financial support for small businesses in European countries, as well as macroeconomic mechanisms for its implementation in the context of the coronavirus crisis. The authors identified changes in the interest of the international community in the form of financial support for small businesses. The researchers also conducted a comparative analysis of macroeconomic financial regulation instruments used during the COVID-19 pandemic in Europe. Most importantly, the scientific results of this work can be applied in the field of state and regional management of small businesses. Regarding the study by T. Zulu and M. Kabwe (2023), the study identified the impact of COVID-19 on the accounting profession in Zambia. The results of the study indicated a significant relationship between the way inventories were valued before and during the COVID-19 pandemic. It also found significant links between the industry and issues related to inventory valuation during COVID-19, business continuity, and disclosure of financial statements and liabilities concerning the COVID-19 pandemic. In addition, there have been links between the industry and the adoption of technologies such as cloud accounting, artificial intelligence, data analytics and forecasting, and blockchain during COVID-19, as mentioned above. In general, the results of the researchers highlighted the need to consider the impact of COVID-19

on the accounting profession, as its consequences remain in force for a long period after the pandemic ends.

P. Occhino and M. Maté (2017), S. Naumenkova *et al.* (2022), and also the handbook by F. Angélico *et al.* (2022) formulated specific ideas and advice for civil society representatives in the field of asset recovery, or at least to strengthen ongoing work in this area. The main feature of this study is the reference to representatives of civil society organisations and other experts with whom consultation materials on asset recovery had previously been published. This study has identified the importance of asset recovery and the role of civil society organisations in this process; examined the barriers that may arise to asset recovery and how to overcome them; identified steps to be taken to start asset recovery work; and created recommendations for engaging the public and partners in this process. As the factor of civil society influence was not specifically covered by this study, the researchers' work may prove useful in filling this gap.

Summing up all of the abovementioned, it is logical to conclude that accounting for the costs of restoring non-current assets will be a complex and extraordinary phenomenon, the implementation of which will be faced by the state and enterprises when martial law is lifted in Ukraine. It is unrealistic to predict exactly how this mechanism will be implemented in the activities of the entire system, but it can already be argued that it will entail appropriate changes to each element involved in these processes. In particular, it is worth paying attention to the impact of Ukrainian and international accounting standards, the development of modern technologies, such as blockchain, which may affect this area, the corruption factor that will affect each stage of accounting, as well as the interaction between enterprises, the state and civil society organisations within the process.

Conclusions

The lifting of martial law in Ukraine will entail global transformations in all spheres of life, including the economic aspect of the state's functioning. This fact provokes the need for these changes to be predicted and assessed in the long term, which will be useful in terms of readiness for new challenges in the future. In particular, this study has shown how such a perspective can and should be reflected in the accounting for the costs of restoring non-current assets. The destruction of infrastructure, and products, constant fires and shelling are all objective factors that have resulted in a large number of businesses (primarily in the context of active hostilities) losing their non-current assets, which were the key to their profits. Given this, this study identified and classified those assets that should be restored when martial law is lifted. Such specification was essential for the correct determination and allocation of costs for their restoration.

The study's most significant accomplishment lies in the development of an accounting model specifically tailored to address the restoration of non-current assets. This model has been meticulously delineated into seven distinct stages, providing a structured framework to systematically record and manage future restoration costs. Furthermore, the research underscores the imperative need for these actions to align not only with Ukrainian legal and regulatory standards but also with international obligations. In addition, this paper delves into the realm of document management by individuals responsible for overseeing this process. It identifies the primary stages involved in document management and underscores the critical role of oversight throughout the accounting mechanism. This oversight should be maintained through continuous audits and reporting conducted by the enterprises themselves. Taking all these findings into consideration, it is strongly recommended that comprehensive legislative measures be expeditiously enacted to regulate this mechanism more robustly in the near term, particularly from a legal perspective.

Further research in this area may focus on the study of specific accounting stages, as well as consider the specifics of a particular non-current asset (fixed assets, construction in progress). Thus, it can be concluded that the purpose of the study was fully realised, but it is possible that in the future this topic will require further study in some respects.

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Conflict of interest

None.

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Витрати на відновлення необоротних активів після скасування воєнного стану в Україні

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Анотація. Існує нагальна потреба провести дослідження щодо обліку витрат на відновлення необоротних активів після скасування воєнного стану в Україні. Ця потреба виникла внаслідок значних руйнувань та збитків, які спричинив військовий конфлікт. Закінчення війни призведе до необхідності відновлювати ці активи, щоб полегшити гуманітарну ситуацію та сприяти економічному відновленню, що має велике юридичне значення для забезпечення належного обліку. Мета дослідження – розробити модель для систематизації та прогнозування процесу обліку витрат, пов'язаних з відновленням необоротних активів. Використано такі методи наукового пізнання: порівняння, опис, моделювання, аналіз та синтез. У процесі дослідження сформульовано основні фактори, що руйнують ті чи ті необоротні активи. Кожен із запропонованих етапів цього облікового процесу був ретельно досліджений, проаналізований та пояснений, що в кінцевому підсумку продемонструвало його цілісний режим роботи. Також запропоновано класифікацію витрат, що підлягають обліку, підкріплену конкретними прикладами, та простежено весь процес документообігу, зокрема його підготовку, отримання, реєстрацію та зберігання, що дало змогу конкретизувати реалізацію відповідних етапів. Наголошено на важливості ведення документації підприємства, перелічено необхідні документи. Докази належного використання коштів на відновлення необоротних активів вважаються життєво важливими для ефективного реагування на занепокоєння стейкхолдерів. З погляду практичного значення ця робота має бути корисною для бухгалтерів, аудиторів, державних службовців та всіх, хто задіяний у механізмі обліку витрат, оскільки дослідження сприятиме кращому розумінню реалізації всіх облікових етапів, що дасть змогу виявити та усунути проблеми, які можуть виникнути на кожному етапі

Ключові слова: національний стандарт; класифікація; модель; документообіг; фінансове забезпечення; міжнародне партнерство; збройний конфлікт; нормативно-правова база

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Investigating cryptocurrency financing crimes terrorism and armed aggression

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Abstract. The article is devoted to the study of the problems of investigating crimes of financing terrorism and armed aggression with cryptocurrency, which is relevant considering the attack on Ukraine by the Russian Federation, as well as in connection with the significant spread and use of cryptocurrency for financing both terrorism and armed aggression. The purpose of the article is to study the problems of investigating crimes of cryptocurrency financing of terrorism and armed aggression and finding ways and means of solving problematic issues, because cryptocurrency financing of terrorism and armed aggression is an encroachment on national security. The methods of system analysis and technical-legal analysis, as well as the formal-logical method, were used in the research process. Thanks to this, approaches to understanding the way of committing crimes of the researched category have been determined. The shortcomings in the legal regulation of the circulation and use of cryptocurrency in Ukraine, as well as in the legal regulation of the investigation of crimes related to the illegal acquisition and use of cryptocurrency for criminal purposes, including for the financing of terrorism and armed aggression, are highlighted. Jurisdictional problems of criminal prosecution of persons who committed crimes of this category, their high latency due to the lack of proper legal procedures and methods of investigation, have been determined. The need to create specialized units in law enforcement agencies, whose competence will include the detection and investigation of the specified crimes, their active interaction with the Cyber Police, is substantiated. The attention and necessity of introducing a system of constant monitoring of social networks, the Internet, and media and conducting OSINT-intelligence from open sources with the aim of detecting and stopping such criminal activities, tracking and arresting and eventually seizing cryptocurrency, if such an opportunity is available, was emphasized. Practical recommendations for the investigation of crimes of cryptocurrency financing of terrorism and armed aggression have been formulated. The need for international legal cooperation in this area was emphasized; the need to involve specialists in the field of information technologies, programming, and blockchain engineering in the investigation process in general and in specific investigative actions. The requirements for the

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recording of evidence in the protocols of investigative (search) actions during the investigation of crimes of this category are formulated, in particular, the need for hashing of files is specified. The practical significance of the study is that the obtained results can be used during the investigation of crimes of the studied category

Keywords: virtual assets; blockchain; crimes in the field of cryptocurrencies; search of evidence; OSINT-intelligence; tracking cryptocurrency transfers

Introduction

Over the past decades, cryptocurrencies (virtual assets) have been an integral part of the functioning of society. It is actively used by individuals and legal entities to pay for goods and services. Cryptocurrencies are also traded on online exchanges and exchange services, used as a means of saving, etc. Cryptocurrency is essentially a convenient financial instrument that, like many others, can be used both legitimately and for criminal purposes. In particular, cryptocurrencies are stolen by hacking cryptocurrency exchanges and wallets of individual owners, they are seized under the pretext of investing in fraudulent cryptocurrency projects, they are used to finance terrorism and armed aggression, and they are used to legalize the proceeds of crime. However, the legal regulation of cryptocurrencies in Ukraine is still in its infancy in the area of criminal justice. Investigating crimes of cryptocurrency financing of terrorism and armed aggression is something entirely new for law enforcement. There are virtually no successful cases in this area. There are also no scientific studies in Ukraine that directly address this topic.

As for foreign research, the works of such scholars as V. Dyntu and O. Dykyj (2021), who consider cryptocurrency as a tool for terrorist financing and note that the main issue in the fight against crime is the de-anonymisation of the Bitcoin owner/user, which allows the identification of the criminal.

A. Maurushat and D. Halpin (2022) consider cryptocurrencies as a tool for online fraud and analyse the challenges associated with investigating fraud with cryptocurrency investments. V. Karpuntsov and R. Veresha (2023), studying the legal aspects of the regulation of virtual assets in Ukraine, point out the need to address the issue of legal qualification of illegal actions with crypto assets, as well as the issue of theoretical and legal understanding of new legal relations. M. Utkina *et al.* (2023), studying the issues of financial intelligence (monitoring) of transactions with virtual assets, state that virtual assets are used in criminal offences such as money laundering and determine the role of financial intelligence in the effective fight against money laundering. M. Dumchikov *et al.* (2023) note that the methods of money laundering through virtual assets, in particular, include virtual asset conversion services. Their study allowed them to conclude that it is necessary to strengthen financial monitoring by financial control authorities of the activities of conversion service centres.

A. Trozze *et al.* (2023), studying the results of criminal prosecution for financial crimes related to the use of cryptocurrency, based on the analysis of the results of the trial of 37 resolved cases in the United States, concluded that the presence of only individual defendants (and not a corporate defendant or a combination of them) and the use of only cryptocurrency besides bitcoin to commit the crime reduced the likelihood of resolving the case by dismissal.

Particular attention is drawn to the scientific work of A. Pantazidis *et al.* (2023), dedicated to the use of virtual reality for training security officers. Thus, they propose a new interactive and realistic virtual reality-based game for training law enforcement officers to analyse and understand terrorist activities. The game is based on pragmatic models of terrorist actions and teaches its users to predict the signs of terrorist attacks, as well as provides tools for creating datasets for training artificial intelligence (AI) modules that can help analyse and predict potential terrorist activity. In addition, their study provides a perspective on the evolution of the game in metaverse environments, where blockchain infrastructures can be used to both increase the cyber resilience of the game and protect the reliability of the data generation process.

S. Mirkamol and E. Mansur (2023) consider cryptocurrencies as the money of the future. E. Badawi *et al.* (2022) investigated fraud through cyberattack, in which fraudsters promise victims free cryptocurrencies in exchange for a small mining fee. As part of their research, they identified more than 8,000 cryptocurrency addresses directly related to the scam, hosted in more than 1,000 domains. In total, these addresses received about $8.7 million, an average of $49.24 per transaction. The study by G.A. Siu *et al.* (2022) focuses on the evolution of investment fraud temptations and fraud-related keywords on the online cryptocurrency forum Bitcointalk over a 12-year period. A. Schmidt (2021), exploring the risks of virtual assets to money laundering and terrorist financing, recommends expanding the regulatory framework to include regulation that is native to the peer-to-peer nature of virtual assets to address the risks. However, the approaches to investigating such crimes, the specifics of their investigation, the requirements for recording evidence in the protocols of investigative (search) actions, and the specifics of tracking, seizure, withdrawal, and confiscation of cryptocurrencies used to finance terrorism and armed aggression remain unexplored.

The aim of the article is to study the problems of investigating crimes of cryptocurrency financing of terrorism and armed aggression and to find ways and means to resolve the problematic issues, since cryptocurrency financing of terrorism and armed aggression is an encroachment on national security.

Materials and methods

The study used the methods of system analysis and technical and legal analysis, as well as the formal logical method, which made it possible to determine the ways of committing crimes in the category under study.

Furthermore, in the course of the study, to clarify the state of legal regulation of the cryptocurrency sphere in Ukraine, the author used the methods of system analysis and technical and legal analysis to study such legal acts as the Law of Ukraine "On Virtual Assets" (2022) and the provisions of the Criminal Procedure Code of Ukraine, which allowed the author to draw conclusions about the insufficiency of legal regulation of these social relations. To determine the state of research on the topic of investigation of crimes related to cryptocurrency financing of terrorism

and armed aggression, the author uses the method of systematic analysis and the formal logical method to analyse the works of Ukrainian and foreign scholars contained in scientific databases, which made it possible to identify the issues which are not covered by such studies, as well as the issues which require more in-depth research, to investigate them and to propose ways and means of solving the existing problems. In addition, the method of systematic analysis and the formal logical method made it possible to identify the peculiarities of investigating crimes in the investigated category, to formulate approaches to the process of their detection and investigation, to state the need for constant monitoring of social networks, the Internet, and the media, conducting OSINT-intelligence from open sources, tracking, arresting and seizing cryptocurrency, as well as to formulate requirements for recording evidence in the protocols of investigative actions, and to come to the conclusion that files should be hashed. In addition, in the course of the research, the Scopus scientific database was used to search for scientific papers using the search terms "cryptocurrency", "virtual assets", "financing of terrorism with cryptocurrency", "financing of armed aggression with cryptocurrency". In total, more than 400 scientific papers related to the field of cryptocurrencies in general were reviewed, but most of them were excluded as not relevant to the field of criminal justice. The work used 20 studies by scholars that were directly related to the subject of the study.

In the course of the research, such web resources as CoinmarketCap and Internet Archive were used. Thus, the use of CoinmarketCap allowed forming an idea of the cryptocurrency market, its players and the structure of the cryptocurrency industry in general. A study of the capabilities of the Internet Archive web resource made it possible to establish the feasibility of using it to archive files containing evidence of criminal activity by individuals or organized groups. The web resource also pays attention to such a tool as the Wayback Machine, which can help in the process of investigating crimes of the investigated category if pages on the Internet have been highlighted or modified to hide traces of criminal activity. The study examines the capabilities of the software Crystal, Chainalysis, CipherTrace, CryptoFinance, Bitcoin Abuse Databases, Walletexplorer.com, Graphsense.info in terms of its ability to detect criminal activity in blockchains by analysing and tracking transactions. The author also studied the possibilities and noted the use of such programs as Mozilla Firefox with the Easy YouTube Video Downloader Express extension, as well as Mediainfo and RapidCRC Unicode programs in the process of investigating crimes of the investigated category. This, in particular, made it possible to formulate recommendations that when reviewing data on the Internet, it is possible to use the "Screenshot" function of the Mozilla Firefox browser and save a screenshot of the entire web page to the storage medium, and then use the software to copy photos or video files, fully and consistently reflecting this in the protocol of the relevant investigative (detective) action.

In addition, the Unified State Register of Court Decisions was monitored, during which 103 guilty verdicts related to the use of cryptocurrency for criminal purposes were processed. Such a study made it possible to find out that every 10 verdicts relate to the commission of crimes related to the financing of terrorism and armed aggression (under Article 89, part 1 of Article 110-2, part 4 of Article 111-1, part 1 of Article 263, part 1, part 2 of Article 263-1 of the Criminal Code of Ukraine), which indicates a rather significant share of crimes in the studied category in the structure of crime in the field of cryptocurrencies in general.

Results and discussion

The study of cryptocurrencies in the context of fundamental rights allowed C. Rueckert (2019) to conclude that in the context of criminal prosecution, law enforcement agencies restrict freedom of telecommunications, data privacy (including the right to information self-determination), freedom of expression and freedom of information. Therefore, whenever some of these fundamental rights are violated, the regulatory concepts and approaches to investigation or prosecution should be provided for by law and should meet the test of necessity.

P. Xia *et al.* (2020) describe fraud in the exchange of cryptocurrencies. The study by R. Phillips and H. Wilder (2020), in particular, focuses on the issues of committing cryptocurrency fraud through phishing. L. Swartz's (2022) research is devoted to "network fraud" with cryptocurrencies. As an example, this article examines the 2017 initial coin offering (ICO) bubble. ICOs were supposed to be a new, radically disruptive way of crowdfunding to finance the development of a new, radically disruptive blockchain technology ecosystem. In total, ICOs raised approximately $5 billion in 2017 alone. But by all analyses – by observers and participants alike, both during the bubble and afterwards – the vast majority of ICOs turned out to be frauds.

Some countries, such as North Korea, have their own cyber forces, with separate units tasked with hacking cryptocurrency exchanges and wallets and illegally seizing cryptocurrency used to finance the regime and circumvent international sanctions when making payments for certain goods and services. Obviously, cryptocurrencies are also used to purchase weapons and military equipment, technologies, software, and to finance terrorist operations outside such countries. Typically, crimes in this category are highly latent, their investigation is extremely difficult, and it is impossible to bring the perpetrators to justice and seize and confiscate cryptocurrency. In particular, the hacking of the CoinEx cryptocurrency exchange in September 2023 (estimated damage of USD 55.5 million) could have been carried out by North Korean hackers from the Lazarus Group (Experts suspect hackers…, 2023).

According to Transparency International, cryptocurrencies are used to withdraw funds in Russia to circumvent sanctions. There are OTC brokers in Moscow who sell dollars in stablecoins, which are then exchanged for pounds sterling in the UK (Cryptocurrencies are widely used…, 2023). In October 2023, officers of the Cyber Police Department blocked an illegal online currency exchanger that used Russian payment systems. According to the National Police press service, the offenders used the website to bring Russian rubles into Ukraine and exchange electronic money and cryptocurrencies. Their cooperation with the aggressor country is being checked (An online currency exchanger…, 2023).

In accordance with data provided by Bloomberg, in May 2023, the US Department of Justice launched an investigation into the cryptocurrency exchange Binance over suspicions that it was used by Russians to circumvent sanctions (Binance faces us probe…, 2023). In November 2023, in this case, Binance agreed that Hamas and other terrorist

organizations had conducted transactions on its services. As a result, the exchange will have to pay $4.3 billion to the US government, and its CEO and founder Changpeng Zhao will be fined $50 million and will resign as CEO (The largest cryptocurrency exchange…, 2023). Cryptocurrencies are also used to finance the war against Ukraine. In particular, according to cryptocurrency tracking companies Chainalysis, Elliptic, and TRM Labs, the main beneficiaries are paramilitary groups that supply military products and weapons (Digital danger: What is…, 2023).

As stated in the State Security Strategy approved by Decree of the President of Ukraine No. 56/2022 of 16 February 2022, the Russian Federation continues to wage hybrid warfare and systematically uses cyberattacks to achieve its strategic goals in Ukraine. The special services of individual states use organized criminal groups and corrupt officials to fuel separatist sentiment.

In particular, Russian organized crime conducts special hybrid operations abroad (Maliuk, 2023). According to the State Bureau of Investigation (SBI), the enemy is trying to undermine Ukraine's defence capabilities through drug trafficking schemes. Thus, since February 2022, SBI and police officers have launched pre-trial investigations in almost 400 such criminal proceedings (SBI: The special services…, 2022).

German law enforcement officers shut down the largest marketplace in the darknet, Hydra, which was used to sell drugs, fake documents and money laundering through cryptocurrency. German law enforcement officers removed the physical servers in Germany and were able to confiscate about $25 million in bitcoins. Since the activities of the Hydra website are linked to the Russian Federation, German law enforcement officers provided their Ukrainian colleagues with access to the investigation materials, which allowed them to detain individuals involved in the activities of the marketplace in the country (Detentions of members of a criminal…, 2022).

The commission of such crimes leaves electronic digital traces, which, in particular, may include correspondence on the Internet, posts, photos, and videos on channels in various applications (Telegram, Viber, Signal, WhatsApp), content from social networks (Facebook, TikTok, YouTube). It can also include various links to blocking resources. All of the above is information in electronic (digital) form. The data in social networks and managers are subsequently deleted by criminals to make them untraceable and to hide the traces of the crimes. And here, the investigator, prosecutor, detective, or operative officer faces the crucial issue of recording electronic (digital) information using available procedural and technical tools. One of the ways to help is to inspect electronic documents and computer data, copy them, archive them and hash the files that are the subject of the inspection. Article 237 of the Criminal Procedure Code (CPC) of Ukraine (2012) provides investigators and prosecutors with the relevant powers.

To properly record evidence in criminal proceedings on crimes of this category, when conducting an inspection of documents in electronic form and computer data containing relevant information, the investigator, or prosecutor is entitled to engage specialists in the field of computer technology, programming, cybersecurity, and blockchain engineering. During the inspection, it is possible to use programs such as Mozilla Firefox with the Easy YouTube Video Downloader Express extension, as well as Mediainfo and RapidCRC Unicode. During the review, it is possible to use the "Screenshot" function of the Mozilla Firefox browser and save a screenshot of the entire web page to a storage device. Later, it is possible to use the software to copy photos or video files. It is important to record the metadata of the copied files. For this purpose, it is advisable to use MediaInfo. Hashing, i.e. calculating the hash codes of files, is performed using RapidCRC Unicode. Hash codes of files are subject to indication in the protocol. Web resources can be archived using the Internet Archive service (n.d.). It is also possible to use the Wayback Machine resource at the specified link, which can help if the pages on the Internet on the sites and, accordingly, the content have been highlighted or changed.

In general, when conducting reviews of electronic (digital) documents and computer data, it is necessary to consistently indicate what actions are performed, which files are reviewed, on which websites, social networks or messengers, via which links and with which software. Hashing the saved and viewed files and indicating the hashes of such files in the hash protocol allows verifying their authenticity at any time and confirming that no changes have been made to them. This is especially important considering their subsequent examination in court. When it comes to tracking transactions, i.e. cryptocurrency transfers from one address in the blockchain to another, it is important to include the addresses and hashes of transactions, the software used to track them, as well as the addresses of the relevant cryptocurrency blockchains and the results of a sequential search. In the case of cryptocurrency transfers to cryptocurrency wallets controlled by the pre-trial investigation authority, the software used for this purpose, the name, and amount of cryptocurrency, the addresses from which the transfer is made and the addresses to which the cryptocurrency is transferred, and the hashes of the relevant transactions shall also be indicated. In no case should private keys and mnemonic (Seed) phrases be indicated, as this would allow anyone to access and illegally take possession of the cryptocurrency.

At the same time, it is advisable to immediately make a duplicate of the relevant electronic document, as well as copies of information, including computer data, which, in accordance with the requirements of Part 4 of Article 99 of the CPC (2012) of Ukraine, are mandatorily recognized by the court as the original document. Such an algorithm of actions will allow the court to present a duplicate of the document as evidence, and in case of unforeseen loss or damage to the originals of the relevant electronic (digital) evidence, the duplicate will be recognized by the court as the original, and therefore as proper and admissible evidence.

On 17.02.2022, the Verkhovna Rada adopted the Law of Ukraine "On Virtual Assets", which classifies virtual assets as intangible assets. However, the said Law has not yet entered into force, and therefore, the legal status of virtual assets is not defined at all. Similarly, the Tax Code of Ukraine (2012) refers to virtual assets only in part 10 of Article 170 (only the possibility of seizure of virtual assets is provided).

The term "virtual assets" is a legislative definition and a concept that is generally identical to the concept of "cryptocurrency". As of 01.12.2023, the CoinmarketCap (n.d.) resource provides information on tens of thousands of cryptocurrencies and 684 exchanges that trade and exchange cryptocurrencies.

Any cryptocurrency is a set of characters. They make up the wallet address, the so-called public key, which is generated by the system and is required to transfer a certain amount of cryptocurrency to it. A transaction hash allows identifying

a transaction in the blockchain of a particular cryptocurrency. At the same time, neither the Law of Ukraine "On Virtual Assets" (2022) nor the CPC of Ukraine (2012) currently provide answers to the question of how to prosecute, investigate and prove a person's guilt in court in the event of illegal possession of cryptocurrency and cryptocurrency financing of terrorism and armed aggression.

In particular, the European Financial and Economic Crime Threat Assessment (2023) published by Europol notes that improved investigative techniques have helped police identify suspicious transactions and the individuals involved. Nevertheless, the global nature, speed and mixing of cryptocurrency transactions pose a significant challenge to law enforcement investigations. It is also difficult to trace and freeze crypto assets and convert them into fiat currency. At the placement stage, money brokers open several accounts using money mules and fake identity documents, and the cash received from criminals is exchanged for cryptocurrency (Aleksandrov, 2022).

At the stratification stage, the illicit funds are separated from their original source by exchanging them for other coins. In this process, known as a "hopping chain", money is moved from one cryptocurrency to other regulated exchanges and jurisdictions to make it difficult to trace. The layering process may involve cryptocurrency mixers that eliminate the links between the source and destination addresses by using multiple intermediary wallets. In the integration stage, money mules are used to open multiple bank accounts in one or more countries in a short timeframe to quickly transfer funds from cryptocurrency wallets. In addition, criminals create online companies to accept payments in cryptocurrency. Crypto-ATMs are used to convert fiat currency into cryptocurrency and vice versa to launder the proceeds of crime and transfer funds abroad. Another popular technology channels criminal proceeds to cryptocurrency gambling platforms, where criminals can claim gambling winnings (Europol, 2023).

Instead, as of 01.12.2023, the Unified state register of court decisions (n.d.) recorded only 103 convictions related to the use of cryptocurrency for criminal purposes in Ukraine, of which 10 verdicts (nos. 201/2020/23, 204/4713/23, 204/7642/23, 204/7978/23, 204/5603/22, 405/6271/23, 204/2980/21, 405/2939/23, 204/9472/23, 495/823/21) were delivered in relation to the commission of crimes related to the financing of terrorism and armed aggression (under Art. 89, p.1 Art. 110-2, Art. 111-1(4), Art. 263(1), Art. 263-1(1), Art. 263-1(2) of the Criminal Code of Ukraine (2012). At the same time, expert research indicates that cryptocurrencies are widely used for criminal purposes. According to The Chainanalysis 2021 Crypto Crime Report, Ukraine ranks 3rd in the world in terms of the volume of transactions related to the purchase of drugs on the darknet (Karchevskyi, 2021).

At the same time, O. Samoilenko and K. Titunina (2023), studying crimes in the field of cryptocurrencies, point out the need to solve such tactical tasks as blocking transactions for the sale of cryptocurrencies by a certain person and identifying such a person or group of individuals. While agreeing with this statement, it should be noted that blocking cryptocurrency sales transactions is not always technically possible in the case of criminals located outside of jurisdictions and using cryptocurrency wallets installed on their gadgets and using decentralized exchanges and so-called mixers that hide the links between transactions.

The study of international cooperation in the investigation of economic crimes related to cryptocurrency trafficking allowed O. Kreminskyi *et al.* (2021) to identify the following consequences of international cooperation in the investigation of economic crimes related to cryptocurrency 1) the need to use a risk-oriented approach of the international community at the global level, coordinating government efforts to prevent economic crime; 2) the formation of a network of organizations that ensures an effective balance between existing threats and opportunities for cryptocurrency circulation; 3) the development of free, decentralized governance networks at the global level, which is an innovative and effective way to combat criminal activity, compared to traditional centralized forms of coercion in the era of rapid and unpredictable technological change.

Given that there are more than 8,000 Internet service providers in Ukraine, it is difficult to obtain a court order to block an illegal Internet resource. If it is located outside of Ukraine, a request for international legal assistance should be sent to the competent law enforcement agencies of foreign countries in addition to a court order. This procedure also lacks a clear mechanism and can take a long time (Movchan *et al.*, 2021).

In Ukraine, there are two types of blocking of Internet resources: the first is in accordance with the Law of Ukraine "On Sanctions" (2014). The second type of blocking was introduced after the introduction of martial law in Ukraine in February 2022. This is a blocking within the framework of the implementation of orders of the NCU (National Centre for Operational and Technical Management of Electronic Communication Networks of Ukraine), which operates under the State Special Communications Service (Belovolchenko, 2023).

To successfully investigate cryptocurrency financing of terrorism and armed aggression, law enforcement agencies need to identify criminals. Transactions can be analysed using criminal analysis methods and tools. In particular, to detect and track illegal activities in blockchain networks, methods of the Intelligence-Led Policing/ILP model (Detentions of members of a criminal…, 2022) and special software (in particular, Crystal, Chainalysis, CipherTrace, CryptoFinance, Bitcoin Abuse Databases, Walletexplorer. com", "Graphsense.info"), the use of such software provides an opportunity to effectively analyse the relationships between transactions and establish patterns of criminal finance flows (Movchan & Taranukha, 2018).

The materials of criminal proceedings obtained with the use of special software are characterized by documentation and high information content, which makes it possible to prove the fact of a criminal offence. Their authenticity can also be confirmed by the conclusions of computer forensics.

As noted by M. Karchevskyi (2021), covert investigative (detective) actions carried out in the field of information and communication technologies allow detecting and procedurally recording information about cryptocurrency transactions by combining two main ways of recording information: visual, related to the external perception of information posted on a web resource, and technological, related to the use of special software for recording data. Given the importance of detecting, documenting and procedural use of information on cryptocurrency financing of terrorism and armed aggression, it is proposed to develop an appropriate instruction that provides for the tactical aspects of recording a criminal offence using the CIDA, as well as an algorithm

for seizing cryptocurrency and preserving it until a decision is made on the case.

S.K. Taylor *et al.* (2021) propose the creation of crypto-wallets by law enforcement officers to seize cryptocurrency at the crime scene. While agreeing with the expediency of the above, it should be added that in this context, it is necessary to introduce security protocols that would eliminate the risk of accidental loss of cryptocurrency and its misappropriation by law enforcement officers. In addition, if cryptocurrency transactions are recorded and documented during the commission of a criminal offence, there is technically no way to seize the cryptocurrency and block the electronic wallet. In this case, it is proposed to create a separate electronic wallet, which will be managed by the relevant law enforcement agency (in particular, the National Police, the Security Service of Ukraine, the NABU, the BES, the SBI) in the person of a designated responsible employee. Thus, it is proposed to seize cryptocurrency in the form of a transaction to the specified wallet.

Thus, the results of the study indicate that there are difficulties in investigating crimes of cryptocurrency financing of terrorism and armed aggression, which are related to the lack of legal regulation in this area of social relations and the absence of established practice and successful cases. At the same time, understanding and awareness of the challenges that arise and the application of appropriate approaches and techniques in numerous instances allows achieving the set objectives, detecting and stopping such criminal activity, identifying perpetrators, tracking transactions, seizing, arresting and confiscating cryptocurrency used to finance terrorism and armed aggression

Conclusions

The study of scientific sources, legislation and practical cases relating to the investigation of crimes of cryptocurrency financing of terrorism and armed aggression fully allowed achieving the research objective and reaching reasonable conclusions that countering this phenomenon by criminal law means is a matter of national security of the State. The scientific novelty of the work lies in the conclusion that specialized units should be created in law enforcement agencies with the competence to detect and investigate these crimes and their active interaction with cyber police. Specialists in the field of information technology, programming, and blockchain engineering should be involved in the investigation of such crimes. Due to the high latency of such crimes, it is necessary to introduce a system for monitoring social networks, the Internet, and media and open-source intelligence (OSINT) to detect and stop such criminal activity, track, seize and confiscate cryptocurrency and confiscate it. For this purpose, it is proposed to create a separate electronic wallet, which will be managed by a law enforcement agency (in particular, the National Police, the Security Service of Ukraine, the NABU, the BES, the SBI) in the person of a designated responsible employee, and the seized cryptocurrency will be stored there until a court decision is made. Since the jurisdiction of the state may not always extend to certain cases of crimes in this category, international legal cooperation is also necessary. During the investigation, an important part of the process is the inspection of electronic documents and computer data, their copying, archiving and hashing of the files that are the subject of the inspection. In addition, if pages on the Internet have been highlighted or modified to hide traces of criminal activity, a resource such as the Wayback Machine should be used. To track and analyse cryptocurrency transactions, the following software should be used: Crystal, Chainalysis, CipherTrace, CryptoFinance, Bitcoin Abuse Databases, Walletexplorer.com, Graphsense.info. The use of such programs as Mozilla Firefox with the Easy tube Video Downloader Express extension, as well as Mediainfo and RapidCRC Unicode programs when reviewing data on the Internet allows using the "Screenshot" function of the Mozilla Firefox browser and saving a screenshot of the entire web page to the storage medium, and then use the software to copy them, fully and consistently reflecting everything in the protocol of the investigative (detective) action.

The practical significance of this study is that the findings obtained can be used in the process of detecting and suppressing the relevant criminal activity. At the same time, these issues require further in-depth research and the development of a whole scientific doctrine and practical recommendations for counteracting the state-level financing of terrorism and armed aggression by cryptocurrencies. This primarily concerns the detection, tracking, blocking, and seizure of cryptocurrencies intended for the financing of terrorism and armed aggression, as well as the application of criminal law measures to cryptocurrency exchanges and online resources used to finance terrorism and armed aggression.

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Conflict of interest

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Розслідування злочинів про фінансування криптовалютою тероризму та збройної агресії

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Анотація. Статтю присвячено дослідженню проблем розслідування злочинів про фінансування криптовалютою тероризму та збройної агресії, що актуально з огляду на напад на Україну російської федерації, а також у зв'язку зі значним поширенням та використанням криптовалюти для фінансування як тероризму, так і збройної агресії. Метою статті є дослідження проблем розслідування злочинів про фінансування криптовалютою тероризму та збройної агресії й пошук шляхів та способів вирішення проблемних питань, адже фінансування криптовалютою тероризму та збройної агресії є посяганням на національну безпеку. Під час дослідження використано методи системного аналізу та техніко-юридичного аналізу, а також формально-логічний метод, що дало змогу визначити способи вчинення злочинів досліджуваної категорії. Висвітлено недоліки у правовому регулюванні обігу і використання криптовалюти в Україні, а також у правовому регулюванні розслідування злочинів, пов'язаних із незаконним заволодінням та використанням криптовалюти в злочинних цілях, і передусім для фінансування тероризму та збройної агресії. Визначено юрисдикційні проблеми злочинів цієї категорії, їх високу латентність через відсутність належних правових процедур та методик розслідування. Обґрунтовано необхідність створення у правоохоронних органах спеціалізованих підрозділів, до компетенції яких буде відноситися виявлення та розслідування вказаних злочинів, їх активної взаємодії з кіберполіцією. Акцентовано увагу та необхідності запровадження системи постійного моніторингу соціальних мереж, мережі інтернет, медіа та проведення OSINT-розвідки з відкритих джерел з метою виявлення та припинення такої злочинної діяльності, відстеження, арешту і зрештою вилучення криптовалюти, у разі наявності такої можливості, та її подальшої конфіскації. Розроблено практичні рекомендації щодо розслідування злочинів про фінансування криптовалютою тероризму та збройної агресії. Наголошено на необхідності міжнародно-правового співробітництва у цій сфері, необхідності залучення до процесу розслідування загалом та до конкретних слідчих дій фахівців у сфері інформаційних технологій, програмування, інженерії блокчейну. Сформульовано вимоги до фіксації доказів у протоколах слідчих дій у ході розслідування злочинів цієї категорії, зокрема вказано про необхідність гешування файлів. Практичне значення дослідження полягає в тому, що одержані результати можуть використати працівники правоохоронних органів під час розслідування злочинів досліджуваної категорії, а також у подальших наукових дослідженнях за вказаною тематикою

Ключові слова: віртуальні активи; блокчейн; злочини у сфері криптовалют; пошук доказів; OSINT-розвідка; відстеження переказів криптовалюти

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Protected area genocide in Ukraine: An aspect of genocide

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Abstract. As the preserved territories of Ukraine are highly vulnerable and unique, pollution of these areas due to military aggression can have extremely negative consequences not only for Ukraine but also for the entire world, particularly for the international economy. The aim of the article is to explore the phenomenon of the genocide of preserved territories associated with military aggression as a distinct form of genocide and the connection between the negative impact on the environment and adverse fluctuations in the national market. The study employs methods of comprehensive literature analysis and expert assessments, involving a comparison of legal and Ukrainian scientific approaches. The legislative approach to defining "genocide of preserved territories" is analysed, and a monitoring of statistical data on the level of negative impact on the territories and objects of Ukraine's natural reserve fund is conducted. The method of scientific generalization and graphical representation is used to visualize the results of the research. For evaluating the secondary results of shelling on regions with a high level of protection, specifically preserved territories and objects, a quantitative literature review, including meta-analysis, is conducted. Calculations reflecting the extent of destruction from bombing are performed, allowing observation of the most damaged areas and assessing the needs for their restoration. Immediate consequences (first level) and hidden long-term economic consequences on the market oriented towards ecology after the war are identified. The concept of the genocide of preserved territories is introduced, which not only helps highlight the negative consequences and the extent of damage to these unique territories and objects but can also be used as a tool for legally highlighting the impact on the entire country from the level of damage to preserved territories and objects. This concept can contribute to determining the violated rights of preserved territories and encourage increased investment in this sector. Additionally, the research can assist in assessing the connection between the level of environmental destruction and the suitability of these regions for environmentally focused business projects

Keywords: nature reserved territories; ecocide; postwar period; genocide; consequences of war; level of the damage

Introduction

The unwarranted Russian invasion of Ukraine has resulted in numerous adverse consequences, particularly significant environmental damage. The destruction of protected areas, notably in the Mykolaiv, Kherson, Zaporizhia, Donetsk, and Luhansk regions, is leading towards an ecological catastrophe. Ecosystems recognize no borders, so the negative side effects will manifest across all countries.

The military aggression has brought about unpredictable environmental impacts, affecting not only the health of Ukrainian citizens but also the entire national economy. In Southern and Eastern Ukraine, many Ukrainian people lose their lives daily due to the continuous shelling of civil infrastructure. Yet, there are also concealed consequences of bombing, particularly environmental effects that result in economic repercussions. The long-term influence on national market from military destruction could be very high due to the low level of environment capability. The process of post-war transformation will necessitate substantial investment, which cannot be entirely provided by the state. Therefore, cooperation between public authorities and entrepreneurs is essential. It is crucial to consider the specific characteristics of economic activity and the area in which it will be implemented.

G. Detweiler (2019) conducted an analysis of how various enterprises and organizations interact with financial institutions. Her findings highlighted that the inflexible stances taken by these banking institutions necessitate a reevaluation and broadening of the scope of activities. This means considering expanding the cooperation between sectors of the national economy that are currently not part of these economic interactions.

A well-balanced collaboration between the management of environmentally protected areas and financial institutions can be mutually beneficial, extending beyond financial gains. These partnerships hold the potential to make substantial contributions to environmental, ecological, economic, and social progress within society. They can foster the creation of innovative economic and organizational frameworks,

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paving the way for new approaches to economic activities in the realm of reserve management. This includes fostering inclusive entrepreneurial endeavours with an ecological and economic focus (Andryeyeva *et al.*, 2019).

According to A. Fournier (2018), the military conflict between Russia and Ukraine has remained in a state of prolonged aggression. This enduring conflict is exacerbated by the contrasting psychological attitudes of Ukrainians, representing a young nation with distinct values, in contrast to the Soviet sentiments of Russian citizens. The author emphasizes that the market can potentially undergo significant changes depending on the attitude of a specific nation towards various aspects of life. The way a nation treats its protected areas and natural resources is a reflection of the extent of market-driven transformations. Even in countries and regions affected by conflict and war, society should consider the significance of these territories and their potential contributions to the well-being of the community.

C. Wanner (2021) underscores the critical importance of empathic support in the postwar period. She emphasizes the necessity of addressing both personal and collective social deviations that have arisen during and after the conflict. Economic behaviour during times of military aggression often provides a glimpse into the business perspectives that shape post-war markets. However, without corresponding changes in societal behaviour and attitudes, it becomes challenging to transform the national economy. Striking a balance between the tools necessary for winning a war and ensuring environmental safety is crucial during periods of military aggression.

E. Edenborg (2017) highlights the need for strategies to combat psychological fatigue and depressive episodes resulting from the ongoing military invasion. Additionally, he emphasizes the importance of challenging prevailing political narratives and fostering artistic development in individuals affected by the conflict. The damage to protected areas becomes a significant problem during military conflicts. It is crucial to raise awareness about this issue and emphasize that post-war reconstruction should begin with comprehensive economic and ecological packages. Economic development relies on the sustainable use of resources, and therefore, policymaking should prioritize sustainable development over short-term investment programs. This approach ensures long-term environmental and economic stability.

The primary research aim revolves around understanding the role and impact of damaged protected areas (PAs) in their assessment as regional assets, particularly within local communities. The application of the proposed evaluation method is expected to yield several important outcomes, including:

- evaluating the correlation between the extent of damage in different regions of Ukraine and the subsequent assessment of PAs after the conflict;
- encouraging businesses to not only invest in specific infrastructure projects but also in more extensive civil infrastructure developments, which can enhance the overall value of the entire region,
- developing tools to maximize the positive external effects of the new synergy between infrastructure development and protected areas in post-war Ukraine, while effectively managing any negative consequences;
- attracting "new" financial and investment participants to the field of protected areas within the national economy, such as credit unions and insurance companies;
- increasing the appeal of investment opportunities for business groups interested in offering eco-services;
- establishing effective ecological and economic regional inclusion systems, which are contingent upon the level of infrastructure restoration and the degree of pollution in PAs;
- identifying the most reliable approaches for restoring or relocating social infrastructure networks and ensuring the availability of essential public services in the research areas.

The post-war reconstruction system should prioritize eco-friendly approaches. Therefore, it is crucial currently to monitor the relationship between the level of damage and the ability of protected areas to regenerate themselves. The term "Protected Areas Genocide (PAsCide)," as both a distinct legislative concept and a social phenomenon, seeks to investigate the extent of harm inflicted upon vital areas such as nature reserves and territories designated for conservation.

Materials and methods

The theoretical and methodological foundation for researching the development of the correlation between the potential of preserved territories and the level of their pollution due to military aggression from the Russian Federation is based on the scientific works of Ukrainian and foreign researchers. It also draws upon the conceptual principles of the theory of management optimization for preserved territories. The information-legal basis of the study includes laws of Ukraine, resolutions of the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, orders of the Ministry of Environmental Protection and Natural Resources of Ukraine, the Ministry of Culture and Information Policy, the Ministry of Community and Territory Development of Ukraine, the Ministry of Defence of Ukraine, and other subordinate regulatory acts that regulate social relations aimed at expanding the vectors of activity of objects of the natural reserve fund of Ukraine. Additionally, it involves mechanisms for regulating nature use during the implementation of economic-environmental vectors of entrepreneurial activity.

During the formulation of conclusions and the prospect of further research, the method of scientific abstraction was employed, allowing for the identification of the main vectors of development of the economic-environmental potential of preserved territories and the correlation between the level of damage and their economic-environmental potential, considering the peculiarities of economic-environmental processes in the national economy.

The graphical-figurative technique ensured the visually clear formation of the results of the author's proposed scientific research, including the duality of the regulatory-legal status of the genocide of preserved territories as a socio-ecological phenomenon and a military occurrence. By employing the method of scientific generalization, a consistent approach was established for defining the fundamental nature and function of elements within the natural reserve fund within the framework of economic and ecological dynamics. The acts of genocide against protected areas were examined as distinct forms of violence and war crimes, accompanied by both overt and hidden externalities. Through statistical analysis, indicators of destruction and pollution of preserved territories during military aggression were identified, enabling the determination of the overall level of degradation of ecological systems.

Formulas were also proposed to calculate the volumes of reduction in the economic-environmental potential of

preserved territories depending on the level of pollution, destruction of infrastructure around objects of the natural reserve fund of Ukraine, as well as the potential for future environmentally oriented economic activities and the attraction of investment programs in the region based on the distance from the pollution epicentre.

This research integrates multiple data collection and analysis techniques to comprehensively investigate the impact of conflict on protected areas, local communities, and the post-war environmentally oriented market in Ukraine. A quantitative literature review was carried out to explore the complex relationship between the damage to protected areas, the extent of adverse environmental consequences, and the latent economic impacts on the national market. Special attention was given to mitigating disparities across various studies. To achieve this, a comparative approach was employed to outline the primary strategies for rejuvenating the post-war environmentally oriented market, attracting investments, and customizing these approaches to align with the unique economic landscape of Ukraine. A comprehensive literature review will be conducted to explore sustainable development and socioeconomic changes within protected areas (PAs), with a specific focus on the aspects of the damage level of protected areas, researching and monitoring various elements that have the potential to increase the worth of PAs, such as the development of industrial and civil infrastructure, analysing the role and position of PAs as genocide object.

This analysis should provide a comprehensive view of the socioeconomic side effects resulting from the environmental impact of bombings in the research region. It can serve as a basis for developing strategies and policies to address these consequences and support affected communities:

$$Q = \int(R), \tag{1}$$

where: Q – affected surface; dQ – the distance from epicentre to reserve, zone 2 (Eq. 1); the affected area of reserve (Eq. 2):

$$5 = \int(x; y; z). \tag{2}$$

According to this formula, the environmental influence of the bomb will be equal in three checkpoints x; y; z. So the environmental influence will spread evenly to all reserve surfaces. Thus, the level of destruction will be as great as the potential for Eco-business development decreases. But, in case the different impact in checkpoints, it is necessary to calculate the common effect on the whole surface of reserve due to the next formula (Eq. 3):

$$\iint(\tfrac{x}{5} + \tfrac{y}{5} + \tfrac{z}{5})\sqrt{170}. \tag{3}$$

If 2 checkpoints are analysed, e.g. the nearest checkpoint A and the most distant checkpoint B, then the effect will have the next formula (Eq. 4):

$$\int_B^A f\,(x)d(x)\sqrt{S}, \tag{4}$$

where: d – the conditional distance, S – area of reserve.

So, the difference between the nearest checkpoint ant the most distant one will be next (Eq. 5):

$$\int_B^A f\,(x)d\sqrt{S} = |F\,(x)\backslash_B^A = F\,(B) - F\,(A). \tag{5}$$

There is a connection between the environmental effect of the bomb and the Eco-business potential (Table 1).

Table 1. Connection between the zone of destruction and level of environmental negative effect

Area (Zone)	(1)	(2)	(3)	(4)	(5)	(6)
Distance, m	90	170	300	440	1120	2290
hectare	0.009	0.017	0.03	0.044	0.112	0.229
Relation coefficient	555.6	294.12	166.67	113.64	44.64	21.83

Source: author's development, based on the Order of the Ministry of Environmental Protection No. 111 (2020)

This relation coefficient is analysed according to the next formula:

$$\frac{k}{x} = y, \tag{6}$$

where: x – the distance from the shelling epicentre, k – the area of study reserve (Eq. 6).

So, the environmental impact factor (Ev) could be calculated by the next formula (Eq. 7):

$$\mathrm{Ev} = \sum \frac{\mathrm{M}/\,(\mathrm{Kh}+\mathrm{Kb}+\mathrm{Ks}+\ldots\ldots\ldots)}{\mathrm{d}}, \tag{7}$$

where: Ev – the negative environmental impact (on the calculating date), Kh – coefficient of health effect due to negative environmental impact, Ks – coefficient of the level of social services providing on the research territory, Kb – coefficient of Eco-business development, M – the measure of permissible pollution standard on this territory (according to area characteristics, e.g. protected area or not).

The environmental impact factor (Ev) can vary due to the term between bombing and research, that's why it is necessary to consider the time factor (t). Furthermore, it is possible to analyse the so-called "degradation line" according to the next formula (Eq. 8):

$$\mathrm{L}_1 = \mathrm{Evt}, \tag{8}$$

$$\mathrm{L}_2 = \mathrm{Evt}_2, \tag{9}$$

where: L_1 is the orange line of degradation, because it is faceted the nowadays level of destruction and consequences. The time factor (t) is equal to zero, because the monitor of pollution degree measured after shelling. But due to this track off it is impossible to research long-term consequences; L_2 is the red line of degradation, because the negative environmental effect could be estimated in 2-3 years after (e.g., a change in the migration paths of animals that led to the disappearance of certain plant species. Raw materials for Eco-cosmetics were made from plants) (Eq. 9).

Results and discussion

Exploring the synergy:
Ecosystem damage and eco-business prospects

According to the Ukrainian legislative system, the damage to protected areas is not categorized based on the level of negative impact it may have on society or the market. This approach is established in the Law of Ukraine "On the Nature Reserve Fund of Ukraine" (1992). In other words, the legislation does not distinguish between different levels of harm or assess the extent of their consequences on society or the economy. Certain severe offences against nature may be subject to evaluation under criminal law, but even these categories of damage cannot be directly compared to the current level of damage to protected areas (Criminal Code of Ukraine, 2001). In essence, the legal system recognizes that the damage to protected areas goes beyond the scope of traditional criminal offences related to the environment. To consider genocide of protected areas, as a crime according to the traditional legislative system in Ukraine, it is necessary to prepare countless legislative amendments, connected with the international law system (Constitution of Ukraine, 1996). There is no unified approach among domestic and foreign scientists to interpret the category "protected area," as well as to define the key characteristics of this definition. Because according to the legislative system of Ukraine it is considered as a Nature Reserve Fund Territory (Law of Ukraine No. 2456-XII…, 1992).

Due to the decentralization and deconcentration of power reform, changes were introduced to the administrative-territorial division of the country. In accordance with the requirements of the Resolution of the Cabinet of Ministers of Ukraine "On the Formation and Liquidation of Districts" (2020), several districts were established with administrative centres and territorial communities. Territorial communities were tasked with conducting an inventory and registering all natural resources and assets within their territory, as coastal areas could be within the boundaries of two or more districts and, consequently, territorial communities. The passports of territorial communities should identify coastal areas as natural assets or resources. However, the mandatory provision of passports was initially prescribed for united territorial communities, regulated by the Methodology for the Formation of Capable Territorial Communities (Resolution of the Cabinet of Ministers of Ukraine No. 214…, 2015). As of today, territorial communities use passport requirements as a tool for enhancing the community's image without considering the real socio-economic, investment, financial, and other mechanisms of this document. In addition, many territorial communities make changes and additions to passports due to the lack of standardized requirements.

Protected areas have traditionally been designated for the conservation of natural resources. As of the beginning of 2022, in pre-war Ukraine, there were 8,633 territories and objects in the nature reserve fund, encompassing 6.8% of the country's total area. This included 5 biosphere reserves, 19 nature reserves, and 53 national natural parks (Official website of Nature Reserve Fund of Ukraine, n.d.).

However, due to the Russian war against Ukraine, approximately 900 protected areas covering an area of 1.2 million hectares, roughly one-third of all protected areas in Ukraine, have been affected. This impact has put 14 Ramsar sites covering 397.7 thousand hectares, around 200 territories in the Emerald Network covering 2.9 million hectares, and biosphere reserves at risk of destruction in Ukraine (Official website of Nature Reserve Fund of Ukraine, n.d.) (Table 2).

Table 2. Objects of the Nature Reserve Fund of Ukraine Affected by the Russian Federation's Invasion on Ukrainian Territory (May 2022)

No.	Name of the protected area facility and legal status	Area and location (region, territorial community)
1	Askania-Nova named after F.E. Falz-Feina (reserve)	Kherson region, 33,307.6 hectares, of which 11,054 hectares are "completely protected"
2	Azov-Syvash National Natural Park	52,154 hectares, Kherson region, includes Lake Syvash, spit of Byruchy Island
3	Dzharylgach National Natural Park	Skadovsky district, Kherson region, 10,000 hectares
4	Nature Reserve "Yelanets Steppe"	town Yelanets, Mykolaiv region, (IUCN category – Ia (strict regime reserve), 1,675.7 hectares
5	"Feldman Ecopark"	Lisne village, Dergachiv district, Kharkiv region, 140.5 hectares
6	Mykolaiv Zoo	Mykolaiv region, Mykolaiv, 18, area 0.48 hectares
7	Kharkiv Zoo	Kharkiv, st. Sumskaya, 35, area 22 hectares
8	Oransky is a landscape reserve of local importance	Ivankiv district, Kyiv region, 100 hectares

Source: Department of the Nature Reserve Fund (2021), Official website of Nature Reserve Fund of Ukraine (n.d.)

The ongoing conflict initiated by Russia against Ukraine has taken a toll on the country's protected areas. Approximately 900 protected areas, covering an area of 1.2 million hectares, have been impacted. This amounts to approximately one-third of the total area of all protected areas in Ukraine. This includes 14 Ramsar sites, spanning 397.7 thousand hectares, around 200 territories affiliated with the Emerald Network, covering 2.9 million hectares, and biosphere reserves, all of which are currently at risk of destruction in Ukraine (Official website of Nature Reserve…, n.d.) (Table 3).

Table 3. Dynamics of protected areas (PAs) 2019-2021 (Analysis of the areas of the nature reserve fund of Ukraine by administrative-territorial units, 2019, 2020, 2021)

Administratively territorial unit (regions)	2021 PAs area	PAs area vs Anti-terrorist operation zone 2021, %	Anti-terrorist operation zone 2021, ha	Rating 2020	2020 PAs area	PAs area vs Anti-terrorist operation zone, 2020	2019 PAs area	PAs area vs Anti-terrorist operation zone, 2019	Rating
Vinnytsia	60189.4437	2.27	2649.29	27	60189.4437	2.27	60106.444	2.27	27
Volyn	220231.5	10.93	2014.47	8	220231.5	10.93	219465.4	10.89	8
Dnipro	99757.0931	3.12	3192.3	24	99757.0931	3.12	99623.493	3.12	24
Donetsk	100359.8316	3.78	2651.7	21	100359.8316	3.78	99996.692	3.77	21
Zhytomyr	138258.1304	4.64	2982.7	18	138258.1304	4.64	137646.33	4.61	19
Zakarpatttia	138258.1304	15.16	1275.3	5	193319.1769	15.16	192438.88	15.09	5
Zaporizhia	193319.1769	5.08	2718.3	16	138183.4433	5.08	138183.44	5.08	16
Ivano-Frankivsk	138183.4433	15.97	1392.7	3	222382.5145	15.97	218881.98	15.72	3
Kyiv region	222382.5145	10.40	2812.1	9	292439.6739	10.40	292208.63	10.39	9
Kropivnitskyi	292439.6739	4.08	2458.8	20	100318.8426	4.08	100318.84	4.08	20
Crimea	100318.8426	8.41	2608.1	12	219319.36	8.41	219319.36	8.41	12
Luhansk	219319.36	3.49	2668.3	22	93219.2911	3.49	93194.751	3.49	22
Lviv	93219.2911	8.15	2183.1	13	177944.2027	8.15	168864.13	7.74	14
Mykolaiv	177944.2027	3.14	2458.5	23	77238.17	3.14	77238.17	3.14	23
Odesa	77238.17	4.63	3331.3	19	154389.7469	4.63	154389.75	4.63	18
Poltava	154389.7469	4.97	2875	17	142789.7547	4.97	142550.19	4.96	17
Rivne	142789.7547	9.95	2005.1	10	199545.0296	9.95	199477.73	9.95	10
Sumy	199545.0296	7.49	2383.2	15	178589.3562	7.49	178589.36	7.49	15
Ternopil	178589.3562	8.92	1382.4	11	123349.0732	8.92	124185.58	8.98	11
Kharkiv	123349.0732	2.38	3141.8	26	74843.5995	2.38	74843.6	2.38	26
Kherson	74843.5995	11.22	2846.1	7	319315.9841	11.22	318695.14	11.20	7
Khmelnytskyi	319315.9841	15.18	2062.9	4	313084.3963	15.18	312579.33	15.15	4
Cherkasy	64746.0785	3.10	2 091 600	25	64746.0785	3.10	64595.961	3.09	25
Chernivtsi	313084.3963	12.80	809 600	6	103598.45	12.80	103598.45	12.80	6
Chernihiv	64746.0785	7.86	3 190 300	14	250720.2944	7.86	250537.35	7.85	13
Kyiv	103598.45	25.30	83600	2	21148.79	25.30	18092.36	21.64	2
Sevastopol	26241.02	30.37	86400	1	26241.02	30.37	26241.02	30.37	1
Total	4105522.247	6.80	60354.96		4105522.247	6.80	4085862.37	6.77	

Source: I. Verner (2021)

Some national parks are in the zone of humanitarian crisis. Other PAs are deprived of the opportunity to receive funding. For example, the PAs, where there is a large population of wild animals, in particular the Biosphere Reserve Askania-Nova (various animal species are collected and live freely here, some are in very limited quantities on a global scale, unique for all the world), national natural parks Azov-Syvasp, Dzharylhach, nature reserve Yelanets Steppe, as well as Mykolaiv, Kyiv, and Kharkiv zoos cannot buy feed for animals (Official website of Nature Reserve…, n.d.)

According to the calculations, PAsCide war phenomena is very danger because it has two types of consequences:

- the immediate impact – it is consequences that can be seen after shelling or bombing and evaluated as negative environmental influence (e.g. the pollution or destruction level).
- the long-term impact – it is consequences that cannot be evaluated after shelling. But this influence is a very aggressive one, because it is caused a lot of latent health problems, and unpredictable business restrictions and bans.

PAsCide is really dangerous war phenomena in Ukraine, because Ukraine is an agrarian land, and has plenty of unique ecosystems, that are ruined by the Russian troops. And now, it is impossible to evaluate the long-term consequences, which will have a gigantic influence on the health of Ukrainian people and business (as second level – affect).

The study highlights that PAsCide is a novel yet alarming wartime phenomenon in Ukraine. Given Ukraine's abundant green landscapes and unique ecosystems, the Russian invasion has inflicted significant damage, particularly in the southern regions. PAsCide could be regarded as a form of genocide with the objective of causing long-term harm to the Ukrainian nation. However, this phenomenon lacks adequate legislative, social, or political recognition and support.

So, analysing the budgetary dynamics of funding for PAs, it can be considered that the state without tools for economic and ecological growth and cooperation with representatives of the private sector of the economy, PAs will not have a sufficient number of resources that will meet today's needs. The number of expenditures for the preservation of the PAs (KFKV 0520) from the State Budget of Ukraine from the 2016 to 2020 period increased by UAH 275.736.8 which is 63.5%, however, considering the annual

official rate of inflation for this period, the amount of funding was increased by only 59.8%, each year due to inflationary movements in Ukraine, about 1.2% of financing volumes are levelled (Table 4).

Table 4. Analysis of the expenditures' degree from the State Budget of Ukraine for the preservation of PAs from 2016 to 2022 with a correlation to the inflation index

Year	The number of expenses for the preservation of PAs (CFKV 0520) (thousand hryvnias)	The coefficient of the inflation index for the year in % value	Amount of funds that are levelled due to inflation in the state in % value	Dynamics of the area of PAs (million hectares)	Costs per 1 ha of PAs (thousand hryvnias)	Costs per 1 ha of PAs (equivalent in USA dollars)
2016	142704.7	112.4	0.89%	3.985	35810.46	1338.58
2017	257649.2	113.7	0.88%	3.991	64557.55	2413.14
2018	292949.9	109.8	0.91%	3.985	73513.15	2747.90
2019	391009.5	100,8 (January 2019)	0.99%	4.085	95718.36	3577.92
2020	418441.5	105.0	1.23%	4.105	101934.59	3810,28
2021	530 599.9	110.0	1.05%	4.485	118305.44	4422.22
First part of 2022	646 677.6	104.5	1.04%	4.712	137 240.6	4732.4
After 24.02.2022	526677.6	113.9		1.24 (military invasion or occupied territories)		3612.2

Source: author's development, based on Laws of Ukraine "On the State Budget of Ukraine for 2016" (2015), "On the State Budget of Ukraine for 2017" (2016), "On the State Budget of Ukraine for 2018" (2017), "On the State Budget of Ukraine for 2019" (2018), "On the State Budget of Ukraine for 2020" (2019), "On the State Budget of Ukraine for 2021" (2020), "On the State Budget of Ukraine for 2022" (2021)

Due to the Russian invasion in Ukraine, the degree of funding decreased, so the PAs are in a catastrophic state. Numerous bombs are still on the soil. Some examples should be analysed. Russia uses the Aviation Thermobaric Bomb of Increased Power (ATBIP), nicknamed Father of All Bombs (FOAB), which is a Russian-designed, bomber-delivered thermobaric weapon. The bombed area is estimated from 90 m collapse to 2290 m shock wave (Center for Arms Control and Non-Proliferation, 2022) (Table 5).

Table 5. Area requirements due to the theoretical calculation of affected areas (based on TNT equivalent)

Distance from the epicentre of the explosion, m	Effects
up to 90 (1)	Complete destruction of reinforced structures
up to 170 (2)	Almost complete destruction of highly reinforced concrete structures. Complete destruction of unreinforced structures (residential buildings)
up to 300 (3)	Almost complete destruction of unfortified structures. Partial destruction of reinforced structures
up to 440 (4)	Partial destruction of unreinforced structures
up to 1 120 (5)	Shock wave breaks glass structures
up to 2 290 (6)	The shock wave can knock a person off their feet

Source: author's development, based on Federal Emergency Management Agency (2004)

ATBIP is comparable in destructive power of the explosion to tactical nuclear weapons – for example, one of the least powerful nuclear devices of Davy Crockett had a TNT equivalent of about 10-20 tons (very close to the smallest yield for a nuclear bomb). The power of the ATBIP, however, is only about 0.3% of the power of the Kid bomb dropped on Hiroshima (Center for Arms Control and Non-Proliferation, 2022). So, it is possible to analyse the effects of this bomb on the particular example. And then it is necessary to research the economical side effects as result of environmental and social destruction.

Track off a single example: Mykolaiv region is one of the most bombed parts of Ukrainian territory 01.01.2021, PAs of the Mykolaiv region has 147 objects with an actual area of 75,450.27 hectares, of which 8 are objects of national importance, 139 are of local importance. The percentage of PAs of the Mykolaiv region is 3.14% (Department of the Nature Reserve Fund…, 2021) (Table 6).

Table 6. Categorized territories related to national and local PAs of Mykolaiv region

No.	PAs category (name)	Objects
1.	Biosphere reserve	1
2.	National Natural Park	2
3.	Regional landscape park	5
4.	Reserve	61
5.	Reserve tracts	13
6.	Sights of nature	43
7.	Zoological parks of national significance	1
8.	Nature reserves	1
9.	Parks-monuments of garden and park art	19
10.	Total	147

Source: author's development, based on Department of the Nature Reserve Fund… (2021)

National nature park Bug Gard is located in the north of the Mykolaiv region. In 2008, the territory of the park was included in the list of seven natural wonders of Ukraine. The park covers the canyons and valleys of the Southern Bug and Mertvovod rivers. The unique landscape of Bug Grad is caused by the fact that its territory is one of the oldest land areas in Eurasia. The special ecosystem of the park has preserved dozens of endemic and relict species of plants and animals. The length of the park is 6138,13 he (National Park "Bug Gard", n.d.) (Fig. 1).

As per the Regulations governing the Bug Gard National Nature Park, the park's territory encompasses the following locally significant Protected Areas (Table 7).

Figure 1. National nature park Bug Gard, Mykolaiv Region, Ukraine, 2022
Source: Photo by T. Nikolaychuk

Table 7. The local meaning PAs in the National nature park Bug Gard

PAs (local importance)	Area
Ichthyological reserve South Bug	40.0 ha
A botanical monument of nature The mouth of the Bashkala river	5.0 ha
A geological monument of nature Protychansk rock	0.03 ha
A geological monumentof nature Turkish table	0.01 ha
Reserve Labirint	247.0 ha
Reserve Vasilieva pasika	252.0 ha
Reserve Livoberejjiya	226.0 ha
Reserve Litniy khytir Skarjinskogo	105. 7 ha

Source: author's development, based on Order of the Ministry of Environmental Protection No. 111 (2020)

Considering the destructive impact of the Aviation Thermobaric Bomb of Increased Power on the areas, it is possible to anticipate the environmental consequences, and as a result of these environmental effects, there may be economic repercussions (externalities) (Fig. 2).

According to our data: the affected area is about 170 m, including the reserve: a botanical monument of nature (the mouth of the Bashkala river – 5 he).The results clearly indicate that as our checkpoint moves farther away, the negative environmental impact of the bombing diminishes, while the potential for eco-business development increases. The detrimental environmental impacts have resulted in negative socioeconomic repercussions, affecting the overall environmental well-being of the local community. Although eco-business is commonly associated with environmental friendliness and sustainability, its feasibility diminishes when the territory is contaminated.

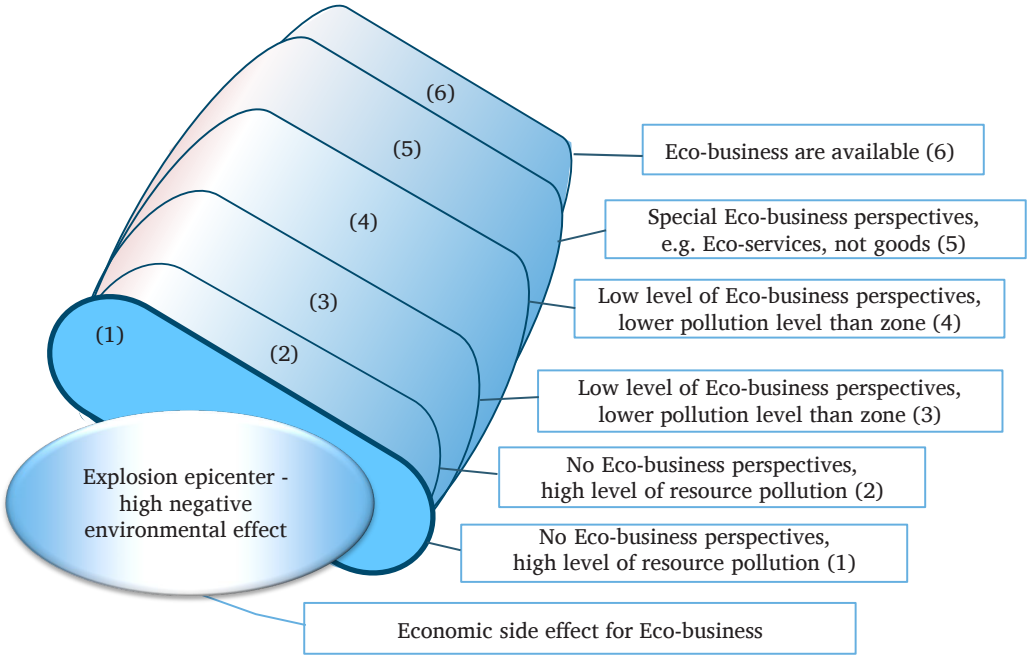

Figure 2. Connection between the environmental effect of shelling and economic side effects
Source: author's development

When examining the role of the Russian invasion in the global ecological crisis, it becomes apparent that the intentional targeting of protected areas, crucial components of the world's ecosystem, leads to what can be termed as PAs-Cide. This phenomenon parallels genocide, which involves the deliberate destruction of a people – often defined by ethnicity, nationality, race, or religious affiliation–in whole or in part. The term was coined by R. Lemkin (2008) in 1944, combining the Greek word γένος (genos, "race, people") with the Latin suffix – caedo ("act of killing") (Center for Arms Control and Non-Proliferation, 2022). But PAs destruction is more harmful as for Ukrainian, so for the whole EU-family. That is why it is necessary to separate the term PAsCide as war society phenomena which will lead to negative side effects in the whole society life.

According to the Law of Ukraine "On the Nature Reserve Fund of Ukraine" (1992) law on the nature reserve fund of Ukraine, Protected Areas (PAs) are defined as inhabited areas of land and water space, natural complexes, and objects that possess special environmental, scientific, aesthetic, recreational, and other values. These areas stand out for their role in preserving the natural diversity of landscapes, the gene pool of animal and plant life, and the maintenance of the overall ecological balance. Additionally, they contribute to background monitoring of the natural environment. So the Russian invasion leads to the negative transformations in all spheres of Ukrainian being, but the negative environmental impact could be very dangerous by itself. It couldn't be estimated at the collapse time, but it has long-term consequences.

Diverse socio-economic perspectives on protected areas

The protected areas in Ukraine harbour numerous resources with the potential to serve as focal points for the economic and ecological development of regions, particularly local communities. The investment appeal of the Nature Reserve Fund in the post-war period is closely tied to the resource potential these areas offer (Nikolaychuk, 2022).

Attracting investments to the sector of protected areas is currently a pressing challenge, given that assets within Ukraine's nature reserve system hold considerable economic and environmental potential, fostering innovative approaches to economic activities. When examining the ecological aspect of the protected area category, it is advisable to concentrate on its primary geographical characteristics. This involves delineating the morphological features of the area and closely monitoring the boundaries of the protected region. When analysing the "protected area" category from a legal standpoint, it's crucial to differentiate between the legal term and its definition.

From a socio-economic perspective, a protected area represents both an economic category and a socio-economic phenomenon. An example of a socio-economic approach is viewing protected areas as integral to environmental

management to meet the resource, conservation, and reproduction needs of the population and various sectors of the national economy.

Simultaneously, the existence of protected objects and territories in a region significantly enhances the investment appeal of both the overall region and local communities, as emphasized by T. Nikolaychuk (2022). The selling and destruction of Protected Areas (PAs) contribute to a decline in the collective levels of environmental, health, and social safety throughout Europe.

In the field of Genocide Studies, the obliteration of nonhuman beings and nature is often considered a distinct yet interconnected phenomenon known as ecocide – a term denoting the deliberate destruction of nonhuman nature (Eichler, 2020). As highlighted by P. Higgins *et al.* (2013), ecocide should be recognized internationally as a crime. Regrettably, for an extended period, the concept of ecocide lacked a precise legal definition. Even though it hasn't been legally articulated, its fundamental meaning is widely recognized. It refers to various actions and activities leading to severe devastation and destruction.

T. Lindgren (2017) views ecocide as a structurally recurring phenomenon that contributes to a severe disequilibrium in the Earth-system, impacting all planetary life. The author also suggests that ecocide could potentially serve as a method of genocide if it fragments or destroys crucial socioecological and cultural relationships between humans and nature. Practices leading to ecocide are often accountable for the destruction of ecological and social life-systems facing challenges due to worsening ecological conditions. C. Cullinan (2011) advocates for the establishment of a Manifesto for Earth Justice and the initiation of the evolution of earth jurisprudence. C.D. Stone (2012) raises the question whether the expansion of protection and rights, traditionally given to the previously disempowered, should also be extended to natural entities such as trees and other forms of biodiversity.

The modern society needs to require a legal framework that recognizes and protects the legal rights of not only the human population but also the geological and biological elements of the Earth community. A legal system that exclusively focuses on humans is impractical or sustainable in the long run. S. Mehta and S. Merz (2015) admit that the so-called war between people and the planet, as an attack on peaceful enjoyment of habitats of all species. K. Eman *et al.* (2009) assert that the increasing occurrence of environmental crimes is resulting in the disappearance of natural habitats, leading to the extinction of rare plant and animal species. Additionally, they note a rise in adverse health effects, such as abortions, births of handicapped babies, skin damage, allergies, headaches, and an increased incidence of cancer-based illnesses. These health issues are confirmed outcomes of environmental pollution, primarily caused by environmental crimes. The authors highlight the challenge of achieving a universally agreed definition for the term "environmental crime," as it originates from various legislative concepts, including environmental criminality, criminality of environmental protection, criminality of the environment, green crimes, crimes against the environment, and ecocide.

PAsCide, referring to crimes against the environment in protected areas, is a distinct category where the object of the crime is high-level protected territories. This phenomenon becomes particularly evident during military aggression, where the level of impact is substantial. Even during peacetime, this phenomenon persists. It is reasonable to suggest that the pollution of nature and the environment, which results in the devaluation of our surroundings, can also be labelled as "ecocide". This term pertains to the intentional destruction of the natural environment.

The deterioration of ecological well-being is intensifying due to factors such as the increase in the human population, economic growth, consumption patterns, and the impact of reckless technologies on the global environment. Additionally, there is a concerning decline in ecological awareness (Crist, 2013). Over an extended period, the relationship between tourism and the era of capitalism highlights that tourism/capitalism is not merely an economic system but also functions to exploit inexpensive natural resources, bodies, and ways of life to facilitate surplus extraction. This exploitation occurs through various forms of tourism and the acceptance of the externalities resulting from tourism activities (Hall, 2022). A. García Ruiz *et al.* (2022) observe a growing trend in eco-crimes, particularly in organized crime offences and the legal and illegal over-exploitation of marine resources.

Many researchers argue that ecocide can be viewed as a potential method of genocide, especially when environmental destruction leads to life conditions that fundamentally threaten the cultural, ethical, and/or physical existence of a social group (Crook & Short, 2014). Ecological crimes have trans-boundary implications and influence due to the global transfer of harms. Consequently, addressing issues of global environmental harm is a complex and multifaceted task for all countries (White, 2011). G. Wright (2011) points out that many scholars have focused on individual aspects of environmental crime, neglecting a broader theoretical impact. National and international institutions have prioritized other aspects of organized crime, often failing to adequately analyse the nuanced nature of transnational environmental crime and how countermeasures should be reflected in legislative processes and other initiatives.

Unfortunately, transnational environmental crime has received insufficient attention within the discourse of transnational organized crime and global law enforcement. "PAsCide" represents not only an environmentally hazardous phenomenon but also a market disruptor. This is because protected areas and other crucial territories could serve as the foundation for a new national market system in Ukraine. The nature-safe business, especially in the PAs territories, is implied not only as completely environmental neutral economic activity, but also as free impact on the costumers' health. In case the territory is polluted, the Eco-business couldn't be considered as costumers – safe service or products.

Furthermore, innovative start-up concepts related to Protected Areas (PAs) face challenges due to the impossibility of conducting economic activities under a PA brand (logo, trademark). Entrepreneurs seeking additional guarantees for nature-neutral development find limitations in this aspect. However, PAs could potentially benefit from constant investment flows. Currently, private legal investment tools are crucial for fostering new vectors of entrepreneurial activity, including inclusive economic endeavours within PAs. J. Hellman (2014) underscores the seriousness of environmental crimes as a growing international concern, causing significant harm to the environment and human health. Proposing environmental offences as international crimes could be a way to eliminate impunity, making it challenging for countries, companies, and individuals to

escape international criminal justice. Since environmental offences do not fall under crimes against humanity, J. Hellman suggests introducing a new core crime, ecocide, into the Rome Statute of the International Criminal Court.

While some researchers tend to view crimes against nature as a single category, it's essential to recognize that nature crimes, similar to social crimes, vary in their level of danger and impact on various areas, including the national economy, innovation, public health, and more. S. Bricknell (2010) highlights that environmental crime relies on individual states to implement national legislation and actively enforce against environmentally criminal behaviour within their borders.

J.G. Stewart (2010) draws attention to the social phenomenon of theft during wars, known as pillage. Despite the prohibition against pillage dating back to antiquity, it is considered a modern war crime enforceable before international and domestic criminal courts. While convictions occurred after World War II for businessmen involved in the pillage of natural resources, modern commercial actors are seldom held accountable for their role in the illegal exploitation of natural resources from contemporary conflict zones, even though pillage is routinely prosecuted in other contexts.

During the Russian invasion of Ukraine, pillage took place in all occupied territories of Ukraine, especially in PAs. One of the most harmful regions in this lens are the Mykolaiv and Kherson regions (Russian soldiers are destroying…, 2022). The Russian costs of the war against Ukraine has already amounted to more than 80 billion dollars, which is a quarter of the country's budget (Forbes: Russia spent…, 2022). But during the Russian invasion period, there was no monitoring of the pollution level of Ukrainian territories because of regular shelling and the degree the consumes scarce and non-renewable resources in occupied territories, and its impact on the national market.

V. Joksimovich (2000) argues that throughout world history, there have been numerous instances of incidental damage to the environment caused by war. The dropping of atomic bombs on Japan to conclude World War II stands out as the most obvious example. In fact, wartime environmental damage dates back to ancient times, with examples even found in the Bible.

However, the post-war landscape is experiencing changes due to psychological and social transformations in society. The development of ethical and normative rules for inspection and supervision is playing a crucial role. Deviant behaviour, viewed as a social phenomenon, can have negative impacts not only on the individual but also on others and even the economic well-being of the region (Nikolaychuk, 2022).

Roborgh and others express the opinion that Russia's invasion of Ukraine in February 2022 seems poised to create another humanitarian disaster in the 21st century, joining the protracted conflicts in Syria, Iraq, Yemen, Libya, Afghanistan, and Darfur, Sudan (Roborgh, 2021).

Many researchers claim to pay particular attention to the environmental crimes, but now the legislative system of Ukraine, the Law "On the Nature Reserve Fund of Ukraine" (1992), has no pieces dedicated to the crimes on these territories, as special types of crimes against Nature. The legislative recognition of social phenomena as PAsCide provides the opportunity to find additional tools to protect these important territories and to attract attention to the most damaged territories, establish renovation programs.The economic development of ecological systems is intricately linked to the mechanisms for implementing and utilizing financial services.

Analysing the socioeconomic side effects resulting from the environmental impact of bombings is an important aspect of understanding the broader consequences of conflict. Here's a simplified framework for such analysis (Table 8).

Table 8. Socioeconomic side effects from environmental damage

Impact area	Impact tools
1. Environmental Impact Assessment	To identify the locations and types of environmental damage caused by bombings, including damage to protected areas, infrastructure, and natural resources
	To assess the extent of the damage, considering factors like the size of the affected area, the severity of destruction, and contamination
2.Socioeconomic Impact Assessment	To analyse the socioeconomic consequences of the environmental damage, such as the disruption of local ecosystems, water sources, and agriculture
	To evaluate the direct and indirect effects on local communities, including displacement, loss of livelihoods, and reduced access to essential resources
3.Economic Analysis	To quantify the economic losses associated with the environmental damage, including infrastructure repair costs, reduced agricultural yields, and increased healthcare expenses
	To assess the impact on local businesses, employment opportunities, and overall economic productivity
4.Social and Public Health Impact	To examine the social consequences, such as increased stress and mental health issues within affected communities
	To investigate public health issues arising from environmental damage, including air and water pollution
5. Policy Implications	To identify potential policy responses to mitigate the socioeconomic side effects, such as restoration efforts, compensation mechanisms, and support for affected communities
	To consider the role of international assistance and cooperation in addressing these impacts
6. Long-Term Consequences	To assess the long-term socioeconomic repercussions, including the ability of communities to recover and rebuild
	To consider how the environmental and socioeconomic effects may persist over time

Source: author's development

A holistic approach to socio-economic development in protected areas, considering the extent of damage due to bombings in these regions and their potential for attracting investors, is currently lacking. In post-war Ukraine, the evaluation of PAs should consider factors such as the level of nearby infrastructure reconstruction and the degree of pollution. Key indicators for this assessment could encompass:tax revenues in local community budgets; economic activities in the region, including the presence of eco-startups, traditional businesses, and innovative business ventures; dynamics of labour and social migration within the local community; positive externalities generated by the PAs; socioeconomic stability in the region, including the sustainability of long-term projects; indicators related to business presence and territorial development.

The correlation between the damage to protected areas and the regional market's capacity is notably strong. Protected areas hold immense significance in every country, possessing substantial resource potential and the ability to regenerate even in challenging circumstances such as military aggression. It is evident that nature-based businesses can be established in areas affected by bombing and in their immediate vicinity. However, these territories have the capacity for self-restoration, and over time, they can be considered pristine once again. The duration required for these areas to self-cleanse should be subject to monitoring in further research endeavours. The proposed evaluation method aims to achieve the following outcomes: assessing the correlation between the level of destruction in different regions of Ukraine and the post-war assessment of PAs; encouraging businesses to create specialized infrastructure objects and invest in substantial civil infrastructure projects that enhance the overall value of the entire territory; establishing tools to strengthen the positive external effects of the new relationship between infrastructure development and PAs in post-war Ukraine, while also controlling negative effects; attracting "new" financial and investment players in the field of protected areas within the national economy, such as credit unions and insurance companies; increasing the investment appeal for business groups interested in offering eco-services; ensuring the effective development of ecological and economic regional inclusion systems, which will depend on the level of infrastructure reconstruction and the extent of pollution in PAs; identifying the most reliable approach to restoring or relocating social infrastructure networks and ensuring the availability of essential public services in the research areas.

Conclusions

The paper proposes new war phenomena description as a separate legislative definition with important environmental and social meaning, PAsCide. PAsCide is one of the most aggressive forms of war looses. PAsCide, like the war produced phenomena, could be heeled as genocide form, which is not possible to track off now because of the absence of legislative and social background. PAsCide is a form of PAs destruction, which causes immediate (first level) impact, e.g. pollution level or ecosystems destruction measure, and the hidden long – term impact, e.g. the negative side effect on Eco-business perspectives due to changes in regional ecosystems. Furthermore, it is currently challenging to assess the long-term repercussions, which are likely to exert a substantial impact on the well-being of the Ukrainian population and the business sector as a secondary consequence.

The devastation of protected areas during wartime can result in significant consequences, as most financial resources are allocated to strengthening the defence system or fulfilling the military's primary needs, rather than supporting renewable programs for protected areas. According to our research, the adverse effects on these protected areas may not become immediately apparent, given that many regions have access to self-renewable resources. Consequently, local authorities and the administrations of protected areas may not always be able to promptly identify and address negative consequences proactively.

The impact on regions can allow for the anticipation of environmental consequences, and these environmental effects, in turn, can lead to economic repercussions, often referred to as externalities. The relationship between the evident consequences and the concealed ones is contingent on the distance from the epicentre of the explosion. While it is possible to foresee and mitigate these externalities in the first three levels, the fourth level may necessitate monitoring and the subsequent implementation of long-term development projects that are closely tied to research efforts.

The scientific aim for further research it todiagnose the relationship between the assessment of protected areas (PAs) as assets within regions and the extent of destruction of industrial and civil infrastructure within local communities. The entails evaluating the impact of PAs' development as an additional socio-economic criterion, contributing to the growth and capabilities of a local community, as defined by the Ukrainian Methodology for forming capable local communities.

This diagnostic process will offer insights into the intricate interplay between the valuation of PAs, the condition of nearby infrastructure, and their collective influence on the investment attractiveness and capabilities of local communities and regions.

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Conflict of interest

None.

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Геноцид заповідних територій: основні аспекти

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Анотація. Оскільки заповідні території України дуже вразливі та унікальні, забруднення цих територій внаслідок військової агресії може мати надвичайно негативні наслідки не тільки для України, а й для всього світу, зокрема й для міжнародної економіки. Мета статті – дослідити повязаний з військовою агресією феномен геноциду заповідних територій як окремої форми геноциду і зв'язок між негативним впливом на навколишнє середовище та негативними коливаннями національного ринку. У дослідженні використано методи комплексного аналізу літератури, метод експертинх оцінок, що передбачає порівняння закодонних та українських наукових шкіл. Проаналізовано законодавчий підхід до дефініції «геноцид заповідних територій», здійснено моніторинг статитичних даних щодо рівня негавного впливу на території та обєкти природно-заповідного фонду України. Завдяки методу наукового узагальнення та графічно-фігурному прийому забезпечено візуалізоване формування результатів наукового дослідження. Для оцінки вторинних результатів обстрілів на регіони з високим рівнем захисту, а саме заповідні території та об'єкти, відповідно до різних досліджень проведено кількісний огляд літератури, зокрема метааналіз. Проведено обчислення, яке відображає розмір зруйнувань від бомбардування, яке надає можливість спостерігати за найбільш пошкодженими територіями й оцінювати потреби в їх відновленні. Виявлено безпосередні наслідки (перший рівень) і приховані довгострокові економічні наслідки на ринок, орієнтований на екологію, після війни. Уведено поняття геноциду заповідних територій, яке не лише допоможе висвітлити негативні наслідки та розмір завданих пошкоджень цим унікальним територіям та об'єктам, але також може бути використано як інструмент для юридичного виділення впливу на всю країну від рівня пошкодження заповідних територій та об'єктів. Це поняття може сприяти визначенню порушених прав заповідних територій та спонукати до збільшення інвестицій у цей сектор. Також дослідження може сприяти оцінці зв'язку між рівнем зруйнування довкілля і придатністю цих регіонів для екологічно спрямованих бізнес-проєктів

Ключові слова: заповідні території; екокатастрофа; післявоєнний період; геноцид; наслідки війни; рівень пошкодження

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Civic identity of youth as an important element of modern sociocultural transformation of society

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Abstract. The main purpose of the study is to identify the significance of civic identity for young people and its impact on modern socio-cultural processes in Kyrgyzstan. The methodology of the research is represented by systematic, socio-cultural, comparative, semiotic analyses, as well as the synthesis method. A survey of 117 university students was conducted to provide additional data on the civic identity of Kyrgyz youth. In addition, the development of civic identity among young people in China and Turkey was analysed for comparison. Despite differences in historical and cultural contexts, factors like education, media, and government policies impacted youth civic identity in all three countries. The study results showed that the civic identity of young people is one of the key factors in modern socio-cultural transformations of society, determining the lifestyle and value orientations of young people, influencing their perception of public roles and responsibility. It is determined that periods of social transformations, civic identity is able to take on a variety of manifestations, influencing the processes of socialisation among young people, and, ultimately, their ability to perceive and join the values prevailing in a particular society. In addition, the findings indicate that it is important to understand the level of influence of the cultural and historical context on the development of the civil identity of certain countries. The results emphasise the importance of adapting policies and government programmes to current socio-cultural realities. The significance of the findings is expressed in the actualisation of the issue under study. The

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results obtained enrich the theoretical understanding of civic identity and its role in the modern socio-cultural processes of Kyrgyzstan and the world, contributing to the field of socio-cultural transformations and the study of youth identity

Keywords: trends in society; social networks; cultural influence; values; public; political activity

Introduction

Modern society is in the process of constant development and, as a result, in the process of changes and the emergence of new trends. At present, the key factor in the development of the socio-cultural landscape of many countries is the youth, representing the most active and initiative part of society (Ikromjon, 2022). In general, civic identity refers to a sense of belonging and self-awareness of an individual as a member of a certain civil society or state. This concept is associated with the individual's awareness of their rights and duties as a citizen, and with a sense of acceptance and involvement in social and political processes (Borbodoev, 2021; Granados-Sánchez, 2023). Civic identity plays an important role in the development of the personality of the younger generation and influences all socio-cultural transformations. Y. Ikromjon (2022) calls youth the backbone of society and speaks of the urgent need to develop civic identity among this particular stratum of the population. The researcher notes that this task becomes particularly relevant precisely in the era of globalisation.

Nowadays, the world has witnessed a number of social changes that cover the political, economic and cultural aspects of society. Globalisation, information technologies, migration processes and other factors actively affect modern society, causing the need to adapt to new realities (Granados-Sánchez, 2023). These changes form new socio-cultural contexts and require a deeper understanding of the dynamics of the civic identity of young people in these conditions. Kyrgyz researcher Zh.M. Borbodoev (2021) notes that the development of identity is influenced by many factors, including social, political, linguistic, religious, and historical. The researcher focuses on the development of the ethno-national identity of the population of Kyrgyzstan. In turn, the development of ethnic identity of the population directly affects the development of civic identity.

The development of society leads to the appearance of new social and political institutions, which, in turn, lead to the formation of a civil position of the population. Thus, opening up new horizons and causing social and cultural changes, young people, as the most active representative of society, become the driving force of development, and the study of their civic identity becomes of key importance. Nevertheless, the development of the civic identity of young people in the post-Soviet space is a global socio-cultural problem. Kyrgyz researchers A.S. Kaliev and K. Inoyatov (2023) discuss the need to preserve cultural, national traditional values that were ignored and oppressed during the Soviet past. The researchers insist that the self-awareness of Kyrgyz citizens should become the basis of the education of society, covering the branches of education and culture. In the Decree of the President of the Kyrgyz Republic No. 39 "The Concept for the Development of Civil Identity of Kyrgyz Zharany in the Kyrgyz Republic for the Period 2021-2026" (2020), a programme for the development of civil and social responsibility among the population is presented. Thus, the Kyrgyz Republic is aimed at the development of the civil identity of the population of the country, focusing on working with the young population of the country.

Civil identity, unlike other forms of identity (such as tribal, ethnic, national, religious and many others), includes several forms of identity at once, which makes it the most complex and, therefore, the least stable and difficult to achieve. This opinion is shared by A.R. Jusubaliev and S. Kamchybekova (2017). Consequently, the process of developing a civic identity is an extremely difficult task. Its achievement cannot be ensured only by simple statements, good intentions or even the urgent need to maintain peace between ethnic and religious groups within the country. As part of this process, it is important to understand that any modern multi-ethnic and multi-confessional society, including Kyrgyz society, can become an object of influence of external forces and interests. J. Bessant (2021) notes that the civic identity of young people can take on a variety of forms, reflecting many aspects of their socio-cultural reality. And it is important to understand what factors form this identity, and how it affects the processes of transformation of society.

Thus, the purpose of this study is to analyse the civic identity of youth in terms of the level of its influence on modern socio-cultural transformations in Kyrgyz society. The importance of this topic lies in the fact that understanding the civic identity of youth and its impact on socio-cultural processes is critically important for shaping the future of society and ensuring its sustainability and development.

Materials and methods

The theoretical materials in the current study are the research papers by modern scientists. These papers are aimed at analysing the level of influence of youth on the transformation of society and investigating how the civic identity of young people in different countries develops and what follows. All the materials used, including papers, abstracts, official statistical data and regulatory documents that act as the methodological basis of the current study, are freely available on the Internet. To achieve the main goal of the current research, such methods of cognition as synthesis, socio-cultural, comparative, and semiotic analyses were used. The combination of the chosen methods allowed considering the civic identity of youth from different points of view, including sociological, cultural, historical, and semiotic aspects, and also makes it possible to better understand the essence and influence of the civic identity of youth on the development of society.

System analysis was used to investigate youth civic identity as part of a broader sociocultural system of society. The analysis revealed which factors and processes have the greatest impact on the civic identity of young people. Socio-cultural analysis revealed the issues of socio-cultural transformation in modern society, based on the investigation of cultural and social factors that influence the development and perception of civic identity of young people around the world and Kyrgyzstan in particular. The study included an analysis of language, religious practices, educational systems and media influences that influence the development of values and beliefs of young people regarding their civic identity.

Comparative analysis revealed similarities and differences in the civic identity of young people in different countries (China, Turkey, and Kyrgyzstan). Due to this method, it was determined how various historical, cultural and social contexts influence the development of civic identity among young people. Semiotic analysis was used to investigate what meanings and values are associated with the civic identity of Kyrgyz youth and how young people express their identity and position. Synthesis, in turn, was used as a generalising method, in order to integrate various aspects of the study obtained from different sources and through the use of different methods. The synthesis allowed establishing a comprehensive understanding of the civic identity of the youth of Kyrgyzstan and its impact on socio-cultural processes in modern society.

All the selected and used methods of analysis, within the framework of the current study, were supported by a survey among 117 1st-2nd year students of Kyrgyz State University named after I. Arabaev (aged from 17 to 19 years). The survey was conducted anonymously in written form through a Google form questionnaire during September 2023. The students were informed about the purpose of the survey and gave consent prior to participating. The questionnaire contained multiple-choice and short-answer questions about their civic identity, sense of connection to Kyrgyzstan, and political and social views. Responses were collected anonymously with no collection of personal identifying information. Permission to conduct the survey was obtained from university administration and professors. Students participated voluntarily with the option to opt-out or skip any questions they preferred not to answer. The survey provided additional data to supplement the theoretical research on understanding civic identity among contemporary Kyrgyz youth.

Results and discussion

Civil identity is a concept that includes a set of personal and social identifications associated with belonging to a particular state or society (Magill *et al.*, 2022). It includes not only the awareness of each individual as a citizen of a particular country, but also a sense of belonging to certain values, norms and ideas characteristic of a given society. Civic identity excludes a narrow focus on ethnic or religious affiliation and emphasises active civic participation and responsibility to society. In the modern world, civic identity plays a critical role. It promotes socio-cultural integration, allowing people from different ethnic, cultural and religious groups to unite in one society. Civic identity also motivates citizens to actively participate in the political life of the country (including voting, as well as civic engagement) and strengthens democratic processes. It contributes to the development of society and the improvement of the quality of life of citizens. Given that young people are the most active participants in all social and political processes, and also represent the development potential for any country, it is necessary to clearly understand the level of development of civic identity among this stratum of society. Thus, the study of the civic identity of young people is a multidimensional process that involves the use of various theoretical and empirical approaches to understand this phenomenon and find the main development trends.

In modern research, the civic identity of young people is considered from the standpoint of the influence of three main factors – social, cultural, and political (Yang & Hoskins, 2020). For a clear understanding of how the development of the civic identity of young people affects modern socio-cultural transformations in various countries, all these factors should be considered. Moreover, comparative analysis can also be an effective tool. Thus, as part of the current study, the level of development of the civic identity of young people in such countries as Turkey, China, and Kyrgyzstan was determined. Turkey, being a bridge between East and West, has a multi-layered history and cultural heritage, which creates a unique environment for the development of civic identity (Crocetti *et al.*, 2023; Orman & Demiral, 2023). Turkish youth face many factors, including the influence of secularism, political changes and cultural differences that affect their ideas about civic identity. Turkey's civic identity is based on the context of the country's rich history and culture, and current socio-political and economic changes. Thus, the historical context has a significant impact on the civic identity of young people. National symbols and leaders (for example, such as M. Atatürk and the cult of Atatürkism) leave a mark on the young people's idea of their citizenship (Öktem & Tezcür, 2020). The cult of Atatürkism and the period of reforms at the beginning of the 20th century formed a civic identity based on secularism and nationalism. In modern Turkey of the 21st century, the ideas of Turkish identity peculiar to the direction of Atatürkism have also been preserved.

The political situation also plays a significant role in determining the civic identity of young people. Discussions about secularism and religious issues, as well as political transformations, affect how young people define their civic identity. The existing disagreements and dialogue between society and the state largely determine the future of Turkey. It should be noted that the educational system and the media space also form the civic identity of young people (Yabanci, 2021). Educational programmes and information sources have a direct impact on how Turkish youth understand their national identity and their role in society. Ultimately, social activity and participation in social and political movements are a sign of how actively the civic identity of young people is expressed (Barrett & Pachi, 2019). Thus, in 2023, Turkish youth took an active part in volunteer projects and work with public organisations in connection with the elimination of the consequences of the Turkish earthquakes, which is a clear indicator of their civic identity (Kahramanmaras and hatay earthquakes report, 2023).

Speaking about the situation with the development of the civic identity of Chinese youth, it should be noted that China also has a rich cultural history and traditional values, for example, Confucianism, which influence the ideas of young Chinese about their identity in modern times. It is also important to understand that China aims to build a society with a single national idea. However, there are many ethnic groups living in the country, speaking different dialects and having differences in traditions, and maintaining a unified Chinese identity is a complex process. In the era of globalisation, Chinese online platforms and social networks have become important means of forming and expressing civic identity. Notably, China has a closed system of Internet access, restricting citizens from accessing popular global websites and social networks such as Google, Facebook, Instagram, or Twitter (Huaibin & Yidan, 2023). The Chinese apps WeChat and Weibo were developed to replace these apps. Such state regulation allows manufacturing the necessary trends in society, limiting the content consumed. What influenc-

es the development of a narrower civic identity focused on Chinese culture and values (Fu, 2021). The political context and values also influence the civic identity of Chinese youth. The state ideology promoted by the Chinese government emphasises patriotism, socialism, and the Chinese dream of greatness, which also forms ideas about civic identity.

Speaking about the development of the Kyrgyz civic identity, it should be noted that Soviet propaganda influenced its development for many years. Thus, during this period, an active ideological indoctrination was carried out in Kyrgyzstan. Communist ideology was planted as the dominant one, limiting the diversity of political and socio-cultural beliefs. This gave a certain shade of civic identity, focused on the ideological values of the Soviet Union. In addition, the Soviet government actively persecuted religious and cultural expressions that could conflict with communist ideology. This led to the restriction of religious practice and the suppression of traditional cultural manifestations, which influenced the development of civic identity considering the cultural characteristics of Kyrgyzstan. Despite these limitations, it is worth noting that the Soviet era still had a positive impact, contributing to the development of infrastructure. Nowadays, the Kyrgyz Republic faces an important task of eradicating post-Soviet ideology and forming a clear pro-Kyrgyz civic identity and modern youth. As part of this process, the Government of Kyrgyzstan is actively working to update educational programmes and introduce cultural and civic education, which includes the study of Kyrgyz history, culture and language, and training in the skills of active civic participation. There are a number of state and public initiatives aimed at involving young people in active civic activities.

In addition, young people actively use the Internet and social media to exchange information and opinions, which creates an opportunity for the development of civic identity through online activism and the exchange of civic ideas. The current study was based on a survey. The survey provided respondents with a choice of 6 answer options:

1. “Very strong connection”: the survey participant feels a deep and strong connection with the country of Kyrgyzstan (the respondent has a strong sense of belonging to the Kyrgyz culture, history, nation and/or active participation in the socio-cultural and public spheres of Kyrgyzstan).

2. “Strong connection”: the survey participant has a level of connection with the country, which is characterised by a fairly strong level of connection (interest in Kyrgyz culture and history, participation in various social and cultural events, and active communication with Kyrgyz citizens).

3. “Average connection”: the survey participant has a connection with the country of Kyrgyzstan at an average level (which includes interest in Kyrgyzstan, but without clearly expressed strong attachment or active participation in civic initiatives).

4. “Weak connection”: the survey participant has a very limited or practically absent connection with the country (characterised by a lack of interest in the country, its culture and history, and an almost complete lack of desire for active interaction with other citizens of Kyrgyzstan).

5. “No connection”: the survey participant feels a complete lack of connection with Kyrgyzstan (has no interests or obligations towards the country).

6. “Difficult to answer’: the survey participant cannot unambiguously determine his level of connection with Kyrgyzstan or doubts his answer.

According to the results of a survey of 1st-2nd year students of Kyrgyz State University named after I. Arabaev, the civic identity of Kyrgyz youth is poorly expressed (Fig. 1).

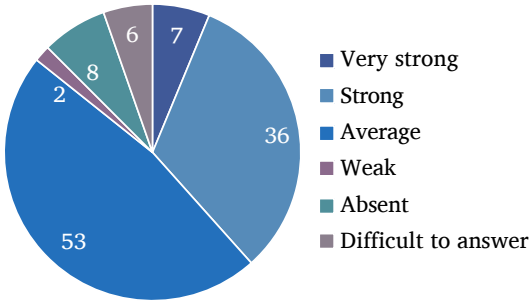

Figure 1. Results of the survey on the question “Your level of connection with Kyrgyzstan”
Source: composed by the authors

More than half of the students surveyed note only an average level of communication with the country. Thus, the data obtained emphasise the importance of ethnic identity and cultural ties in the development of students’ identity, and also indicate the need for events and educational programmes aimed at strengthening civic identity and active participation of young people in civil affairs of Kyrgyzstan. Moreover, an important issue in the analysis of respondents’ self-identification (Fig. 2). During the study, the participants were asked the question: “Who do you think you are in the first place?” and the answer options were provided (“Citizen of the Kyrgyz Republic”, “Representative of my nationality”, “Representative of my religion”, “Resident of the country”, “Other”). This question was aimed at assessing which aspects of identity are most important for the interviewed students. The answer options were provided to clarify which aspects of identity respondents consider the most significant and close to themselves.

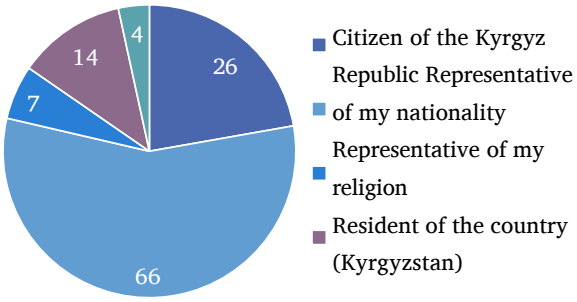

Figure 2. Results of the survey on the question “Who do you think you are in the first place?”
Source: composed by the authors

It is determined that the survey participants focus on ethnic identity as the most significant aspect of their self-identification. The importance of ethnicity and cultural ties in the development of students’ identity confirms the need to consider this factor when developing educational and socio-cultural programmes. In turn, speaking about the identification of the interviewed students from the standpoint of citizenship and patriotism, it is worth noting that the majority of respondents said about the importance of feeling a sense of love towards their homeland (Fig. 3).

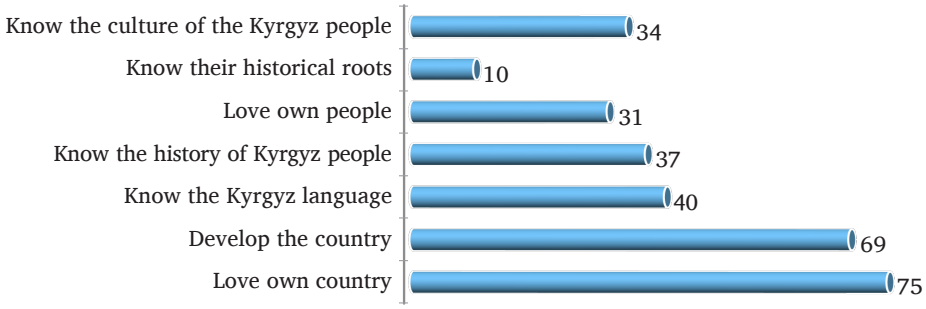

Figure 3. Results of the survey on the question "What does it mean for you to be a patriot of Kyrgyzstan?"
Source: composed by the authors

The results indicate the importance of cultural and linguistic aspects in the development of civic identity and the need for educational and patriotic initiatives that help strengthen the ties of the younger generation with the cultural and historical heritage of their country. According to the data obtained, it can be concluded that the younger generation of Kyrgyzstan sees the expression of patriotism as the presence of love for the homeland, the desire to develop the country, knowledge of the Kyrgyz language, and the history and culture of the people. Speaking about the identification of respondents as citizens of Kyrgyzstan, most consider themselves citizens of the country. The main criterion for the definition of "citizen", according to respondents, is the presence of a passport and the definition of Kyrgyzstan as a homeland (Fig. 4).

Figure 4. Results of the survey on the question "What does it mean for you to be a citizen of the Kyrgyz Republic?"
Source: composed by the authors

The results of the survey indicate that the majority of respondents perceive the civil identity of the Kyrgyz Republic as a multifaceted and complex concept. For the majority of respondents, citizenship is associated with the presence of a country's passport and recognition of Kyrgyzstan as their homeland. However, in addition to formal attributes, respondents emphasise the importance of knowledge of the history, traditions, and culture of the country in the development of identity. This indicates the importance of cultural and educational aspects in the civic education of young people. In addition, the respondents believe that the expression of a political position also plays a role in civic identity, which emphasises active civic participation and interest in the political sphere as one of the aspects of the perception of oneself as a citizen of the country. The study emphasised that the civic identity of young people plays an important role in modern society and has a significant impact on its socio-cultural transformation. This identity encompasses values, beliefs, and feelings of belonging to a particular society and state. It is important to understand that the civic identity of young people is developed under the influence of many factors, and it can have both a positive and negative impact on society. Speaking about the influence of individual groups on the development of the identity of the youth of Kyrgyzstan, it was determined that respondents feel the main connection with their family (Fig. 5).

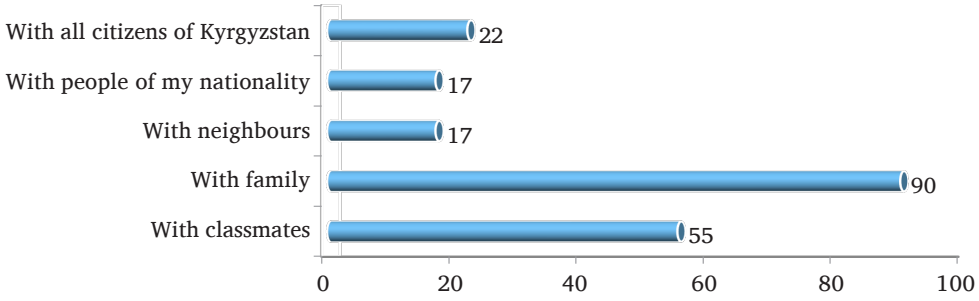

Figure 5. Results of the survey on the question "Which of the above groups do you feel a closer connection with?"
Source: composed by the authors

The results of this question emphasise the importance of family and close relationships in the development of civic identity, since the majority of respondents preferred this particular answer option. However, it is also clear that the educational environment represented by classmates, in addition, such social groups as neighbours, are of great importance for the development of ties with society among young people. National identity also plays a role in their perception of connection with Kyrgyzstan. It is also important that young people feel supported by society, the state, and the family (Fig. 6).

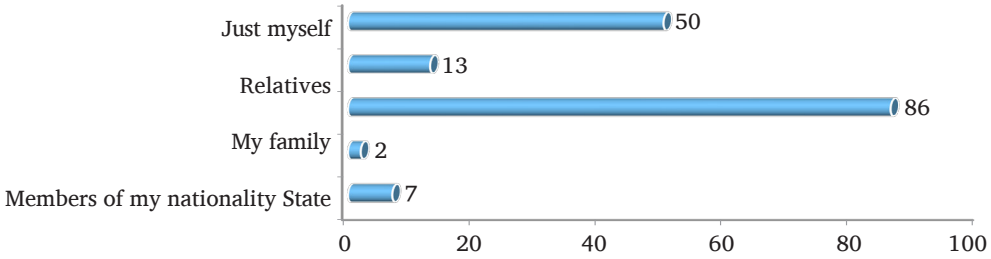

Figure 6. Results of the survey on the question "In whose support do you believe more?"
Source: composed by the authors

In general, the results emphasise the role of family and self-sufficiency in the development of identity, and also raise the question of trust in state institutions, which may require attention in the context of civic education and strengthening the civic identity of young people in Kyrgyzstan. Summing up, it should be noted that the data obtained indicate a relatively low level of civic identity among the interviewed students. Less than half of the survey participants feel a strong connection with the country. Moreover, the majority of respondents emphasise their identity on ethnic roots and close relationships within the family. Both the educational environment and social groups turned out to be important factors, while the level of trust in state institutions turned out to be low. These data emphasise the need to work to strengthen civic identity among the youth of Kyrgyzstan. It is also important to pay attention to strengthening trust in state institutions and creating conditions for active participation of young people in shaping the future of the country.

On the one hand, the active civic identity of young people contributes to the socio-cultural transformation of society, pushing young people to participate in public life, active civic activities and political processes within the country. Young people with a strong civic identity are usually more interested in solving socio-cultural problems and are ready to look for innovative solutions. Its activity can contribute to changing cultural norms, enriching cultural diversity, and strengthening social ties. On the other hand, the civic identity of young people can cause conflicts and tension in society, especially if it is associated with radical beliefs or political and religious ideology (Mirra & Garcia, 2020). This, in turn, can lead to sociocultural divisions and disputes. In addition, if the civic identity of young people is not balanced and does not include respect for diversity, it can create a negative impact on society, leading to discrimination and marginalisation of certain groups.

Thus, the results of the study emphasise that for the successful development of the civic identity of young people, a clear ideology is needed that would determine the vector of the country's development, the nature of both domestic and foreign policy, and set value guidelines at the national level. It is important that the development of the civic identity of young people be accompanied by educational programmes that promote the development of tolerance, intercultural understanding, and social responsibility. This will help to combine youth activism with constructive and positive changes in society and contribute to a more harmonious socio-cultural transformation. The civic identity of young people can be a strong driving force for socio-cultural changes for the better.

The issue of the influence of the civic identity of the young population on the socio-cultural transformation of society is important both from the standpoint of the development of economic, cultural, political, and social spheres. This issue has a direct impact on the development of national consciousness and self-identity of the civilian population. All this determines the relevance of investigating this topic by many world researchers.

R.J. Chaskin *et al.* (2018) conducted a study aimed at analysing the tools that stimulate the participation of young people in civil and political life. Its main aspects included the definition of the concept of "youth" and discussion of its meaning in the context of political and civic participation. The results of the study demonstrate the importance of providing support to young people in their participation in the civil and political life of countries. The analysis showed that there are different ways and tools to achieve this goal, and they may vary depending on the country and the international community. Speaking about the Kyrgyz youth, the survey conducted as part of the current study highlights the desire of young people to be involved in political processes within the Kyrgyz Republic. In addition, the interviewed students highlight the possibility of influencing political and civil changes in the country as one of the main characteristics in the issue of self-identification as a citizen. Thus, it is really important to understand that the younger generation is interested in participating in domestic processes and defines this as an opportunity to express their civic identity.

The paper authored by D. Anvar (2022) examines the importance of increasing social activity among young people for the process of forming a civil society. The researcher analysed various types of social activity that young people can carry out, which determines their impact on society. The author focuses on the importance of youth participation in the development of civil society. The researcher notes that due to various public initiatives and activities, young people can influence the development of this social phenomenon. He also explores the challenges and prospects facing young people in the context of social activity and participation in social processes. The researcher states that young people may experience a lack of motivation to participate in public life and social activity of the country, which may be due to

various factors, including apathy, lack of understanding of the importance of their role in society, and a lack of interesting and motivating opportunities for participation. The study also draws attention to the challenges associated with political and socio-cultural discrimination of young people. Inequality of opportunities and access to resources can hinder the participation of young people in public and political life. However, the researcher suggests that, despite all the existing challenges, the development of the civic identity of young people has a positive impact on the development of society. It is worth noting that at the moment the Government of the Kyrgyz Republic also sees the need for the development of civic identity among the population of the country, including young people. The study showed that there is a problem associated with the current level of development of the civil identity of Kyrgyz youth. This leads to significant stagnation in the further development of the country. It is determined that, at the moment, in order to form a clear policy regarding the development of civil identity among Kyrgyz youth, special attention should be paid to the post-Soviet "heritage". Modern Kyrgyz youth see the need to study the culture, traditions, history, and language of their country and strive to avoid outside influence.

Thus, the Internet and social networks can be one of effective tools in the framework of the development of civic identity among the young population. E.B. Asyltayeva and Sh.A. Ishmukhamedov (2023) talk about the high potential of using social networks and mass media in the context of the development of civic identity among young people. Researchers note that young people who receive information through the Internet and social networks have the same level of civic identification. The results of their study demonstrate the existing differences in the hierarchy of identities in the minds of young people receiving information through traditional mass media. Thus, the authors call social networks the main source of information for the younger generation, and the Internet is actively involved in the development of the hierarchy of values and civic identity of young people. The authors believe that in the countries of the post-Soviet space, given the low level of development of civil identity, it is necessary to consider the mass media as one of the important tools. The obtained results also reflect the influence of social networks and the Internet on the development of the civic identity of young people in different countries. However, the current study was not aimed at investigating the topic of the level of influence of these tools on the process of development of civic identity. The research focused on understanding the term "civic identity" and studying it from the standpoint of an element of the modern sociocultural transformation of society. These aspects are a distinctive feature of the current research work. However, the results also reflect a high level of influence of social networks on the development of civic identity among the population. A striking example of such an impact and confirmation of the effectiveness of social networks and the Internet is China's national policy, which restricts Chinese citizens from accessing the World Wide Web and creating a strict and limited pro-China information agenda.

L. Wray-Lake (2019) examined the process of young people becoming politically active, especially among children and adolescents. The researcher focused on the dynamics and factors influencing the development of political activity in children and adolescents. One of the key aspects that the author pays attention to is the education of political consciousness. Children gradually learn to understand political concepts and issues, and it is important that they gain knowledge about politics and its importance. Family education also plays an essential role in shaping children's political beliefs. Parents can influence children's awareness of political issues and active participation in public life. In addition, education and training, in particular, the school curriculum can influence the development of political activity. Schools can create conditions for discussing political issues and participating in projects related to public activities. An important element is the interaction with peers. The ability to discuss and exchange political thoughts with peers can encourage children to be active. Public participation in various initiatives and activities is another way to stimulate political activity among young people. Active participation in public initiatives, clubs, organisations and other activities can contribute to the development of civic skills and responsibility. In addition, it is important to take into account the example of politically active adults and leaders. The example of such persons can inspire young people, showing them the importance of participation in social and political processes. The study was based on the investigation of the development of civic identity among the 1st and 2nd year university students. However, the development of a civic position and identity can be more effective, starting with working with the younger generation (for example, in high school). It is also worth noting that the development of civic identity among young people can be more active in terms of their participation in the social, cultural, and political life of the country, as they begin to feel responsible for certain transformations in society, and also realise the importance of their activities.

Summing up, it should be noted that the development of civic identity, both among the youth of Kyrgyzstan and among the young population of other countries, plays a key role in the socio-cultural transformation of society, contributing to its sustainable development, diversity, and social harmony. This is what makes civic identity an important component of modern society and its future.

Conclusions

This research paper analysed civic identity among young people in Kyrgyzstan in order to understand its impact on contemporary socio-cultural transformations in Kyrgyz society. The study examined the theoretical aspects of civic identity, its role in the modern world, and specific aspects of the development of civic identity among the youth of Kyrgyzstan. In addition, as part of the study, the experience of the development of civic identity among young people was analysed, using the examples of countries such as China and Turkey. The analysis revealed that the civic identity of young people plays an important role in the development of an active civil society. Young people with a strong civic identity are more inclined to participate in social and political processes and contribute to the development of the country, thereby strengthening the social fabric and reducing socio-cultural conflicts. It should be noted that civic identity also facilitates the preservation of cultural identities and traditions. Young people who value their citizenship are more willing to preserve and develop the cultural heritage of their nation, which is important for socio-cultural stability and diversity. However, it should be borne in mind that civil

identity can also cause conflicts, especially in conditions of diversity of ethnic and religious groups. Therefore, it is important to strive for a balanced development of civic identity, considering respect for diversity and pluralism.

The findings demonstrated that modern Kyrgyz youth express interest in political, social and cultural events within the country, and also see the need to study the history of the country and the Kyrgyz language. In addition, it was revealed that the active participation of the state, educational institutions and public organisations is necessary for the development of the civic identity of young people. Thus, the civic identity of young people is an important element of the modern socio-cultural transformation of Kyrgyz society. This phenomenon has a significant impact on the strengthening of society, the preservation of cultural values and the development of an active civil society. Thus, the development of the civic identity of young people becomes a key task to ensure the sustainable development of society in the future. The study was aimed at providing an extensive and in-depth understanding of the role of civic identity in modern socio-cultural dynamics. It can serve as a basis for the development of effective strategies and programmes aimed at supporting the active citizenship of young people and ensuring the sustainable development of Kyrgyz society. The scientific novelty of this study lies in its in-depth examination of the complex factors shaping youth civic identity in Kyrgyzstan and its impact on contemporary sociocultural transformations. Very little research has analysed this issue, especially in relation to post-Soviet countries like Kyrgyzstan. This paper helps fill this gap.

The survey conducted provided valuable additional insights into the civic identity of Kyrgyz university students. However, as a small sample at one university, the results cannot be generalized to all Kyrgyz youth. Further large-scale research is needed to fully understand this complex issue. The survey did indicate a strong role for ethnic and cultural identities compared to civic identification. More research into effective educational and policy programs to balance and strengthen youth civic engagement would contribute greatly to supporting positive social development. Directions for further study include more comparative analysis of successful civic education programmes around the world and their possible adaptation to the Kyrgyz context. In addition, large-scale surveys and interviews are needed to produce generalisable findings on the evolving perspectives of youth in Kyrgyzstan. Other areas of research include tracking the effectiveness of current government initiatives on youth civic identity in Kyrgyzstan, and sociological research on cultural value shifts across generations.

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None.

Conflict of interest

None.

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Громадянська ідентичність молоді як важливий елемент сучасної соціокультурної трансформації суспільства

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Анотація. Основна мета дослідження – виявити значимість громадянської ідентичності для молоді та її вплив на сучасні соціокультурні процеси в Киргизстані. Методологія дослідження представлена системним, соціокультурним, порівняльним, семіотичним аналізами, а також методом синтезу. Для отримання додаткових даних про громадянську ідентичність киргизької молоді опитано 117 студентів університету. Крім того, для порівняння проаналізовано розвиток громадянської ідентичності серед молоді в Китаї та Туреччині. Незважаючи на відмінності в історичному та культурному контекстах, такі фактори, як освіта, медіа та державна політика, вплинули на громадянську ідентичність молоді в усіх трьох країнах. Результати дослідження показали, що громадянська ідентичність молоді – один з ключових чинників сучасних соціокультурних трансформацій суспільства, що визначає стиль життя та ціннісні орієнтації молоді, впливає на те, як вона сприймає суспільну роль та відповідальність. Визначено, що в періоди суспільних трансформацій громадянська ідентичність здатна

набувати найрізноманітніших проявів, впливаючи на процеси соціалізації молоді та на її здатність сприймати та долучатися до цінностей, що панують у конкретному суспільстві. Отримані дані вказують на важливість розуміти рівень впливу культурно-історичного контексту на розвиток громадянської ідентичності окремих країн. Результати підкреслюють важливість адаптації політики та державних програм до поточних соціокультурних реалій. Значущість висновків виражається в актуалізації досліджуваного питання. Отримані результати збагачують теоретичні уявлення про громадянську ідентичність та її роль у сучасних соціокультурних процесах Киргизстану та світу, сприяючи галузі соціокультурних трансформацій та дослідження молодіжної ідентичності

Ключові слова: тенденції в суспільстві; соціальні мережі; культурний вплив; цінності; громадськість; політична діяльність

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Evolution of family relationship in Kyrgyzstan

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Abstract. The relevance of the study is determined by the observed changes in the structure, role models, and functions of the family in Kyrgyzstan over the last decade. Consequently, there is a need to form beliefs and values that may qualitatively differ from previous ones and influence the socialisation of the younger generation in the process of creating new family institutions. The purpose of the study is to clarify the role and conduct a deep analysis of various aspects, such as psychological, biological, religious studies, and others, to identify patterns and problems that people face in marriage, and to provide recommendations for improving individual well-being. Among the methods used, statistical, analytical, comparative, and others are noteworthy. The study on the evolution of family relations, covering various aspects, provides important conclusions about changes in this context. It presents an increase in the diversity of family structures, with some remaining more traditional and others being more adaptive to modern changes. It was found that education and migration play a key role in shaping family relations, influencing partner choices and family decisions. Religious and philosophical beliefs remain important factors shaping family values. The study highlights the impact of biological factors, such as health and genetics, on family decisions, especially in the context of childbirth and child-rearing. All aspects collectively provide a deep understanding of how family relationships evolve in contemporary Kyrgyzstan. The practical value of

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the study lies in the development of adaptive family policies, educational programs, support for family counselling, and psychological assistance to strengthen families

Keywords: role models; individual well-being; partners; values; decision-making

Introduction

Strengthening family ties and developing effective family policies have a direct impact on societal well-being and stability. Stable and healthy family relationships contribute to the reduction of social conflicts, the decrease in domestic violence, the improvement of child welfare, and the psychological well-being of citizens (Prime *et al.*, 2020).

The research issues on the evolution of family relationships in modern Kyrgyzstan encompass a range of complex questions. Among them are changing roles and expectations in families, the multi-ethnic nature of society, the influence of cultural and religious factors, and biological aspects. Exploring these aspects is an integral part in light of rapid sociocultural changes and presents challenges for family well-being. The development of effective family policies and support programmes requires in-depth analysis and an interdisciplinary approach. All these issues form a complex problem that is crucial for ensuring family stability.

In the study by G.T. Karabalaeva (2023) analysed the influence of Islamic culture on the formation of priority values of the family: love, mutual understanding, respect. The author emphasised that the theoretical foundations of family upbringing are rooted in the understanding of human life as holistic and encompassing various aspects: worldview, religious, ethical. She pointed out the significant role of family pedagogy over many centuries in the process of shaping moral and ethical norms. The conclusion was drawn that the religious and cultural components are crucial for family upbringing and influence the formation of moral values and norms in the family and society as a whole.

D.A. Osmonova (2018) described the impact of the Islamic Renaissance on the women's community of Kyrgyzstan and revealed the features of the interaction of gender and Islam. The author draws attention to the influence of Islam on women and their status in society and notes possible manifestations of discrimination under the guise of religious traditions. Special attention is paid to religious practices and attributes for women, such as wearing the hijab. The paper also discusses the revival of mass legitimation of marriage in the form of "nikah" and issues of polygamy. The cases of involvement and participation of women in religious extremist organisations are analysed.

The article written by G.S. Tokoeva (2018) described the influence of the socio-philosophical aspect on family relations. In the context of sociocultural dynamics and philosophical beliefs, she examined how families are formed, function, and evolve. The author analysed sociocultural norms and values that can influence roles and responsibilities within the family, ethical dilemmas they face, and changes in family values under the influence of social and philosophical trends. She emphasised the role of philosophy and ideology in shaping family values and decisions.

In the study by A.A. Dimitrova (2021), attention is drawn to how hereditary factors affect interaction within the family: discussions about health, genetic disorders, and their impact on joint decisions. The author analysed the influence of biological aspects, such as pregnancy, childbirth, and child-rearing, on family relationships. The paper explores how the health of family members is reflected in their relationships.

In her study, K.R. Ruban (2023) described how emotional well-being, stress levels, and overall mental well-being can influence interaction within the family. She focused on the importance of conflict resolution and emotion management in the family context. The role of psychological support and counselling in maintaining family relationships was emphasised. The study proposed methods for conflict resolution and emotion management in the family context.

Previous studies conducted by the authors explore various aspects of the influence of cultural, religious, and biological factors on family relationships and values. They also consider the importance of psychological well-being and support in the family. However, research has not yet covered aspects of the development and dynamics of family relationships in modern Kyrgyzstan. Therefore, this topic remains relevant and requires further research to better understand its changes and impact on family well-being. The purpose of the study is to analyse changes in contemporary family relationships, their dynamics, and their impact on societal processes. The study is also oriented towards examining the evolution of family relationships, including changes in family structure, spousal roles, and the dynamics of family values. The main tasks of the study include a literature review and theoretical foundations, identifying trends and influencing factors to better understand sociocultural changes in society and their impact on family structures, and analysing statistical data on families in 2000-2022 years.

Materials and methods

The research on the evolution of relationships in Kyrgyzstan families was conducted using various methods that allowed for a more detailed exploration of the theoretical content of the issue. The analytical method helped systematise and structure a vast amount of information and data collected during the study. This method facilitated the identification of theoretical concepts and factors that have the greatest influence on the evolution of family relationships. The analytical method provided a scientific basis for the research, allowing for conclusions and theoretical generalizations based on evidence. The comparative method allowed for identifying common trends and features of family relationships in Kyrgyzstan in the context of other cultures or countries. This helped understand what is unique to the culture and what is shared with other societies.

Comparative analysis in the study of the evolution of family relationships in modern Kyrgyzstan made the conclusions more compelling and contributed to the development of knowledge on this issue. The statistical method has allowed making forecasts and predictions regarding future trends in family relationships based on current data. The statistical method contributed to the quantitative analysis of marriage and divorce statistics, age of marriage, dynamics of changes in family relationships, and other parameters.

This method helped identify trends and patterns in changes in family relationships in Kyrgyzstan. The use of the statistical method contributes to the objectivity of conclusions since it is based on facts and data rather than just opinions or assumptions.

The synthesis method allowed examining the issue from various perspectives and considering all aspects, contributing to a more comprehensive understanding of the evolution of family relationships in Kyrgyzstan. It helped avoid a narrow specialised approach and consider multiple factors influencing family relationships. The functional method helped understand the functions that family relationships perform in society, including psychological aspects (support, role structuring), social aspects (socialisation, economic support), religious aspects (adherence to religious norms), and biological aspects (continuation of the lineage). By deeply analysing each aspect of family relationships, the concretisation method allowed identifying features, norms, and values influencing family interactions in each specific area. This method helped gain a profound understanding of various aspects of family relationships, leading to more precise formulation of conclusions. Through the generalisation method, key patterns were identified, such as the average age of marriage, trends in marriages and relationship stability, fertility, and life expectancy, characterising changes in families. This method also contributed to formulating recommendations applicable for further improving family well-being.

Using each research method, it was possible to examine family relationships from multiple perspectives, identify key factors, highlight unique features, and synthesise conclusions. This combined approach enriched the understanding of the evolution of family relationships in Kyrgyzstan, providing fundamental insights and recommendations for further research and the development of programs aimed at improving the quality of family interactions in the country.

Results

Families in Kyrgyzstan are undergoing changes due to the modernisation of society, increased education, and gender equality. Traditional roles of men and women in the family may change, leading to new dynamics within families. Demographic changes, such as declining birth rates and changes in the age of first marriage, influence the structure and nature of family relationships (Karabalaeva & Kalibekova, 2019).

Statistical data examined in the study allow assessing the stability of family unions, family planning changes, and demographic and sociocultural factors influencing family dynamics (Table 1). Life expectancy by gender also provides insights into differences in family roles and their impact on longevity (Table 1).

Table 1. Factors influencing the evolution of family relationships

Areas of interest	Gender	2000	2005	2010	2015	2020	2022
Age of marriage (average)	F	22.2	23.1	23.3	23.6	23	24.1
	M	25.1	26.5	26.5	26.2	26.5	28
Marriages		24294	37321	50362	52043	39747	48232
Divorces		5348	6097	8155	8588	9128	12187
Life expectancy	F	72.4	71.9	73.5	74.8	76	76.3
	M	64.9	64.2	65.3	66.7	67.8	68
Birth rate	F	47204	53305	71325	78802	76958	72893
	M	49566	56534	74798	84650	81154	77332

Source: user satisfaction survey of the national Statistical Committee of the Kyrgyz Republic (2023)

The analysis of the presented statistical data gave an idea of what trends can affect the evolution of family relations in Kyrgyzstan. The increase in the average age of women and men at marriage indicates that young people now devote more time to education, career growth, and personal development before marriage. This can contribute to a more mature and stable family relationship, as partners know themselves and their expectations better. An increase in the number of marriages from 2000 to 2015, and then a decrease by 2022, may indicate a higher demand for marriages in the first half of the period, possibly related to economic or socio-cultural factors. However, the increase in divorces also means that family relationships may be less stable and may require more in-depth research and support. An increase in life expectancy for women and men may mean that a married couple can spend more time in marriage and living together. This can encourage longer-term and sustainable family relationships. An increase in the birth rate from 2000 to 2015 may have an impact on family dynamics. However, the decline in the birth rate after 2015 may mean that families face less intense pressure in terms of increasing family responsibilities.

Based on these data, it can be assumed that family relations in Kyrgyzstan are becoming focused on individual growth and development and can also become stable and harmonious at a more mature age of partners. Nevertheless, the increase in the number of divorces also highlights the importance of supporting families and developing mechanisms for resolving conflicts within marriages to ensure the long-term well-being of the relationship.

The psychological aspect plays an important role in the evolution of family relationships, and its influence can be viewed from different standpoints. Evolution of the perception of the family: at the beginning of human history, the family was primarily an institution for ensuring survival and reproduction. However, over time, psychological aspects, such as emotional connection, became more important. Today, the family is considered not only as an economic unit but also as a source of emotional support and psychological security. Psychological emotional connection between family members formed the basis for the development of family relationships. The relationship between spouses, parents, and children is determined by emotional closeness and mutual understanding. It is important to note that each family

member has its own unique psychology. Differences in characters, needs, stories, and values can create both positive and negative dynamics in a family. Conflicts and compromises are often associated with various psychological aspects within the family. Psychological aspects influence the ways of communication within the family. Communication skills, the ability to listen and express feelings can significantly improve the quality of family relationships. Constructive conflict resolution and the ability to express love and support can make family relationships healthier. Family relationships can face various psychological crises, such as a midlife crisis, parenting problems, loss of loved ones, and others. The family's reaction to these crises and the way they overcome them depend on psychological factors. Evolution of roles in the family: these aspects also affect the change of roles within the family. With the change in gender norms and economic conditions, the roles of husband and wife can become equal. This change requires adaptation and revision of psychological expectations. Psychotherapy and family counselling can also have a positive impact on family relationships. Specialists can help families resolve conflicts, teach them how to manage emotions, and improve communication. The psychological aspect plays a significant role in the evolution of family relationships, shaping emotional closeness, determining communication methods and interactions between family members, and influencing family roles and values (Daks *et al.*, 2020; Eales *et al.*, 2021). The influence of the social aspect on the evolution of family relationships is of great importance, as societal and cultural factors have a substantial impact on how family relationships are formed, developed, and changed. Social changes in gender roles have a profound impact on family relationships (Zhu *et al.*, 2023). In the past, traditional gender roles determined what a man and a woman should do within the family. With the development of gender equality, family relationships have become more flexible and adaptive, allowing family members to choose roles based on their abilities and interests.

Sociocultural changes also affect the structure of families. The increase in divorce rates, the age of first marriage, the rise of single parents, and the diversity of family models (such as same-sex couples, multi-child families) shape new family dynamics. Cultural values can have a significant impact on family relationships. Religious and ethnic factors, value systems, and expectations affect how families make decisions, raise children, and manage finances. Economic conditions and changes in the workplace also influence family relationships. Economic difficulties can create stress in the family, and workloads can affect the available time for family activities. Media and public opinions: media and public opinions can shape the perception of what "ideal" family relationships should be. These influences can impact the expectations and behaviour of family members. Laws and government policies also influence family relationships, including issues related to marriage, divorce, children's rights, and ways to protect families. Social changes in lifestyle, such as increased mobility, impact family relationships. Technology also creates new ways of communication between family members. Understanding and adapting to sociocultural changes can help families cope with challenges (Prime *et al.*, 2020). The philosophical aspect influences the evolution of family relationships, providing a foundation for understanding the values, goals, and principles that underlie family life.

Philosophy forms the basis of ethics and morality that permeate family relationships. Philosophical concepts such as virtue, justice, responsibility, and respect establish the foundation for ethical principles upon which relationships within the family are built. Values and beliefs: philosophy helps to define the values that family members adhere to. This may include values related to religion, ethics, culture, education, and personal development. Values transmitted through philosophical beliefs form the basis for decision-making within the family. Philosophy can help people understand the nature of relationships within the family. Philosophical ideas about love, trust, freedom, and equality can be crucial for shaping healthy relationships within the family. Understanding roles and responsibilities influences the perception of roles and responsibilities within the family. It helps to define what it means to be a partner, parent, child, and what duties accompany these roles. Philosophical concepts can serve as a foundation for parenting methods within the family. Philosophy emphasising the importance of autonomy or collectivism can influence approaches to child-rearing. Conflict resolution and communication: philosophical ideas about dialogue, mutual respect, and conflict resolution can be applied in family relationships to improve communication and decision-making. Philosophy helps individuals realise the significance and meaning of family in their lives. Reflections on the essence of family and its place in society can be the basis for creating more harmonious and conscious relationships. The philosophical aspect forms the foundations of values, ethics, understanding of roles and responsibilities, parenting methods, and conflict resolution (Kusmardani *et al.*, 2022).

The biological aspect significantly influences the evolution of family relationships, as biology defines the foundations of reproduction, impacts the formation of emotional bonds, family roles, and other aspects. Biological factors determine the instincts of parenthood and caring for offspring. These instincts often shape the basic roles of parents in the family, including protection, care, and nurturing offspring. Physiological differences between genders influence the formation of gender roles in the family. Women's biology affects the possibility of pregnancy and childbirth, which can influence the distribution of responsibilities within the family. Biological processes, such as hormone secretion, influence the formation of emotional bonds in the family. Oxytocin (the bonding hormone) plays a role in strengthening connections between parents and children. Genetics also influences individual characteristics, behaviour, and tendencies towards certain emotions. Basic biological needs such as nutrition, sleep, and sexuality also influence family relationships. Satisfying these needs plays a crucial role in strengthening relationships. The biological aspect influences the health of family members, which, in turn, affects relationships. Caring for the health and physical well-being of family members is a key element for sustainable and strong relationships. Biology determines heredity, influencing the similarity and differences between family members. This can form the basis for emotional connections and interaction in the family. Throughout life, human biology changes, which can impact family relationships. Physical ageing, health changes, or hormonal fluctuations can affect family roles and relationships. Understanding the biological foundations of family life helps better recognise the natural needs and characteristics of each family member (Posey *et al.*, 2019).

The influence of the religious aspect on the evolution of family relationships in Kyrgyzstan is significant, considering the religious diversity in this country.

Islam and Orthodoxy are the two main religions, and their influence on family relationships can be examined from various angles. Islamic law (Sharia) and Orthodox Christian law influence the process of marriage and family relationships. In Islam, marriage is considered a sacred commitment, and adherence to rituals is essential. Religious rites and customs can also determine which family traditions are observed. Religion can influence the definition of roles and responsibilities within the family. In Islam, spouses can be assigned clearly defined roles, and it is important to observe these roles in everyday life. Religious teachings also influence the approach to raising children and caring for older family members. Religion often serves as the basis for the formation of family values. Religious families attach great importance to spiritual values such as morality, honesty, compassion, and loyalty. Religious beliefs affect attitudes toward poverty, mercy, and charity. Divorce and family conflicts: religious teachings influence family conflicts and divorces. Depending on the religion, divorce may be forbidden, restricted, or allowed under certain conditions. Religious rites and holidays: rites and holidays can be significant events in a family's life. This may include wedding ceremonies, prayers, rituals honouring children, and socialising with other believers at religious events. The influence of the religious aspect on family relationships also depends on the sociocultural context. In Kyrgyzstan, there is diversity in ethnic groups and religious trends, leading to different interpretations and practices. Religion can serve as a foundation for strengthening family relationships and a source of conflict, depending on how religious teachings are interpreted and practiced in a specific family (Osmonova, 2019).

The integration of all these aspects helps create a balanced and sustainable family environment that contributes to the happiness, satisfaction, and harmony among its members. Improving family interactions in Kyrgyzstan requires considering various aspects, including cultural, religious, and social characteristics of the country (Table 2).

Table 2. Clear and organized overview of the various aspects related to family dynamics and relationships in Kyrgyzstan

Family Aspect	Description
Joint discussion and decision-making	Increasing awareness and discussing important decisions with spouses and children for mutual understanding and coordination of interests.
Respect for cultural and religious traditions	Acknowledging and adhering to cultural and religious traditions is crucial in Kyrgyzstan's family life, impacting daily routines and celebrations.
Communication and interaction	Developing communication and listening skills within the family to prevent conflicts and solve problems together.
Education and self-improvement	Focusing on family education and personal development to foster conscious and educated families.
Gender roles and equality	Striving for equality and respect between genders within the family, including dividing duties and responsibilities and collaborating on household and parenting matters.
Family values and religious upbringing	Supporting and cultivating family values rooted in religious and cultural traditions, teaching moral norms to strengthen family bonds.
Support and respect for the older generation	Recognizing the vital role of older family members and showing support and respect to strengthen family ties.
Resolution of family conflicts	Developing strategies for resolving family conflicts, such as constructive dialogues, seeking compromises, and involving external consultants when necessary.
Joint family events	Organizing shared events and celebrations to enhance family cohesion.
Support and counseling	Encouraging seeking support from spiritual leaders, psychologists, or family consultants in cases of serious family issues.

Source: developed by the authors based on D. Osmonova (2019)

Improving family relationships in Kyrgyzstan requires a balanced approach, considering both cultural and modern aspects of family life. Families that can combine respect for traditions with openness to change and development can create a happy and harmonious future.

Discussion

Analysing statistical data and various aspects has allowed for a deeper understanding of the relationships between these factors and the level of satisfaction with family life in Kyrgyzstan. The findings have highlighted unique features of this society, shed light on contemporary issues, and pointed to future opportunities. This not only expanded knowledge about the development of family relationships but also indicated new areas for future research. The study by K.B. Nielsen & A.G. Nilsen (2021) analyses the evolution of family relationships in India, where Hinduism is the predominant faith. They focus on adhering to dharmic duties (righteous actions) in marriage, as these values strengthen family bonds. People believe in reincarnation and karma, so they strive for healthy family relationships. The authors described factors influencing family life: aranyaka (the man's retreat to the forest for the study of spiritual texts, which can exert pressure on family life), yoga and meditation (helps cope with stress and enhance emotional well-being), caste affiliation (has a decisive influence on spouse selection), and the role of women in the family (faith imposes clearly defined roles for women: maintaining well-being, household support, and childcare). Hinduism and Islam are two distinct religious traditions, each influencing family life with its own teachings, rituals, and values (Table 3).

Table 3. A comparison of family aspects in Hinduism and Islam

Aspect	Differences
Monogamy and Polygamy	In Islam, polygamy is permitted under certain conditions. Monogamy is more common in Hinduism.
Marriage Rituals	Hindu marriage rituals may involve numerous rites and traditions. Islamic marriage ceremonies are simpler and based on Islamic prescriptions.
Role of Women	In Islam, there are specific expectations regarding the role of women, including their responsibilities in the family and society. In Hinduism, the role of women may vary depending on region and caste. Women may have more freedom in choosing their roles.
Aspect	**Common features**
Family Structure	Both Hinduism and Islam consider the family an important element of society. They emphasize the value of family relationships and family support.
Rituals and Traditions	Both religions have rituals associated with marriage, childbirth, and significant family events. Religious ceremonies often play a crucial role in family life.
Family Values	Both Hinduism and Islam advocate family values such as respect for elders, caring for children, and adherence to moral norms within the family.

Source: developed by the authors based on K.B. Nielsen & A.G. Nilsen (2021)

It is important to note that within each of these religious traditions, there is a diversity of currents and interpretations, and practices of family life may vary depending on cultural and regional contexts. Statistical data from Bulgaria on marriages, divorces, and the average age of marriage reveal certain indicators. The average age for marriages (men/women) was as follows: 2010 – 30/26.9, 2015 – 30.9/27.8, 2020 – 32.5/29.4, 2022 – 33/30.1. There is a consistent increase in the age of marriage entry for both men and women. From time to time during this period, the age at marriage entry increased, reflecting changes in lifestyle priorities, career goals, and economic circumstances. Number of marriages and divorces: 2010 – 24286/11012, 2015 – 27720/10483, 2020 – 22172/9015, 2022 – 26013/9525 (Marriage and divorce, 2023).

The number of marriages increased from 2010 to 2015, but from 2015 to 2020, there was a decrease. However, by 2022, the number of marriages has increased again. This may indicate fluctuations in marriage and the influence of various socio-cultural factors on the decision to marry. The total number of divorces decreased from 2010 to 2020 but then increased slightly by 2022. This may indicate that, despite changes in the number of marriages, the stability in the relationship remains at a level prone to a decrease in divorces. Men have a more significant increase in the average age at marriage compared to women. The age gap between men and women at marriage increased from 2010 to 2022. Both states demonstrate similar trends in the increasing average age of marriage entry over time, reflecting changes in life priorities and socio-cultural factors. The number of marriages and divorces in the countries fluctuates but generally shows relative stability in relationships in Bulgaria and growth in Kyrgyzstan. It is important to note that Kyrgyzstan lags behind Bulgaria in the average age of marriage entry and has lower indicators of marriages and divorces overall.

A study by J.D. Hamadani *et al.* (2020) examined the impact of the economic aspect on family life. The authors emphasise that unemployment or low income put pressure on relationships, causing stress and conflicts. They analysed how economic conditions affect the distribution of roles in the family. The researchers concluded that financial stability is an important factor for the family, and difficulties can cause divorce. Economic factors play an important role in family life. However, families that can plan and solve financial issues together usually have more stability. Economic preparedness for the unexpected also plays a crucial role in family well-being. In the paper by the researchers, the impact of economic aspects on family life is examined. The author draws attention to the fact that different political views, participation in events can cause tension and disagreement. It was emphasised that the political situation (changes in the laws or government of the country) affects the rights and interests of families. Ways to adapt to such changes were suggested. The study by D.T. Shek (2020) presents an interesting view on the influence of the political aspect on family relations and the dynamics of family relations. Political beliefs and participation in political events can cause disagreements within families. This is especially true in the modern world, where the political situation can be tense and diverse. To improve the research on the impact of the political aspect on family relations, it is also important to consider the context of families of different cultures, income levels, and social groups for a more complete understanding of how politics affects family dynamics and how families cope with such challenges.

A. Brown (2019) described how cultural foundations and traditions influence family values, the roles of spouses and their expectations of marriage. She considered ways to overcome conflicts related to differences in communication styles, perception of norms and values. She concluded that cultural factors influence the education and professional opportunities of the family. Cultural factors can indeed have an impact on education and professional opportunities. Stereotypes (age, gender, ethnic origin) and expectations (choice of spouse, profession, career development) can create inequality in access to education and employment opportunities, which affects the economic situation of the family. In this context, it is important to strive to create more inclusive and equitable educational and professional environments where cultural differences are respected and valued. This issue can be expanded by comparing the cultural impact in different

communities, analysing the adaptation of cultural differences within the family and the impact on education and career opportunities. Additional research may draw attention to effective strategies for resolving conflicts generated by cultural differences to improve families' well-being and create practical approaches to support family relationships.

B. Harris (2020) analysed how social networks, applications, video communication affect the communication of spouses. They provide new connections but can lead to isolation and a lack of personal communication. The author emphasised that the use of modern technologies promotes learning and skill development but at the same time, affects sleep, physical activity and even emotional well-being. It is important to establish rules for the use of technology within the family, which will help strengthen mutual understanding between spouses. Technology is a powerful tool for strengthening mutual understanding and maintaining communication, but only if the spouses take responsibility for the correct use and balance between the virtual and real world. To maintain this balance, the spouses can agree on the time they allocate to each other without devices. They can also discuss what types of communication they consider a priority and what activities can be shared to maintain a quality relationship.

D.R. Rai & M.R. Dangal (2021) described the impact of the migration aspect on the dynamics of family relations. Migration can create separation between spouses, affect their interaction and the level of intimacy, which leads to stress and a sense of isolation, which can cause divorce. Researchers have proposed ways to adapt relationships to emotional changes during separation. Migration can have a serious impact on family relationships, and adaptation to these changes requires effort. It is important to remember that every family is unique, and there is no universal solution. However, open communication, support, and joint efforts can help a couple cope with emotions during separation and strengthen the relationship successfully. For a more complete understanding of this issue, additional research is needed, including cultural aspects of separation, the effectiveness of various support methods, the impact of separation on children, financial aspects, and the development of innovative strategies for successfully overcoming emotional challenges during separation.

As noted by M.J. Thomas (2019), partner education influences the dynamics and structure of relationships. A high level of education promotes equality of relations and joint decision-making. The author emphasised that education improves communication and understanding between partners, reduces the number of conflicts, and promotes competent support for each other in achieving success. The educational aspect is also reflected in the approaches to the upbringing of children. Education contributes to the development of communication and understanding skills. Partners with a high level of education can correctly express their thoughts and feelings and understand each other's point of view, which reduces the likelihood of misunderstandings in the relationship. For a deeper understanding of the impact of the educational aspect, additional research is required. They may include an analysis of the impact of education on conflict resolution processes, the role of education in the formation of values in children, the economic aspects of family well-being, and the development of support strategies to strengthen family relationships.

During the discussion, various factors of influence on the well-being of the family were considered and analysed. Deep exploration of these aspects can help develop effective approaches to support healthy family relationships based on education and mutual understanding between spouses. The analysis of various aspects of family relationships plays a crucial role in improving the quality of family life. Understanding the dynamics of communication, roles, and conflicts within the family helps create programs to enhance relationships. This not only contributes to the emotional well-being of family members, especially children, but also prevents breakdowns in marital relationships. In addition, healthy family ties positively impact societal stability and well-being.

Conclusions

The purpose of this study was to examine the evolution of family relations in the context of modern Kyrgyz families. The main attention was paid to the dynamics of changes in the structure of families, roles and values within them. This study helped to identify the impact of these changes on a wide range of social processes. The importance of examining family relations in time and space was emphasised to understand and evaluate the impact of these changes on societal transformations.

The results of the study showed that family relations in Kyrgyzstan are evolving under the influence of various factors, including cultural changes, psychological factors, religious influences, and biological aspects. Family structures are becoming more flexible and adaptive, which reflects modern society. It is important to provide support and resources for families to help them effectively adapt to changes and develop healthy and sustainable relationships. This study also highlighted the importance of understanding various aspects of family relationships in a particular culture and society to develop targeted strategies and policies to support families.

The practical value of the findings lies in their potential use for the development of programmes and strategies aimed at improving family relationships, establishing more effective family policies, and creating resources to enhance counselling services for families, providing individual support and addressing specific problems faced by spouses in Kyrgyzstan. Integrating this information into educational courses and programs can improve public understanding of family relationships in Kyrgyzstan.

For further investigation of the evolution of family relationships in contemporary Kyrgyz society, several trajectories can be considered. Exploring the dynamics of various family structures, including the influence of digital technologies and social media on family ties, is one avenue. Moreover, analysing economic factors such as employment and income, which play a crucial role in family life, is important. Psychological aspects, including stress, adaptation, and intra-family relationships, also represent significant interests for further research. Exploring the connection between family relationships and art, religion, and analysing the evolution of these aspects from ancient times to the present, will contribute to improving the quality of family life.

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Conflict of interest

None.

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Еволюція сімейних відносин у суспільстві Киргизстану

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Анотація. Актуальність дослідження зумовлена тим, що в останні десятиліття спостерігаються зміни у структурі, рольових моделях та функціях сім'ї в Киргизстані, а отже, з'являється потреба у формуванні переконань та цінностей, які можуть якісно відрізнятись від попередніх та впливають на соціалізацію молодого покоління у процесі створення нових сімейних інститутів Метою дослідження є роз'яснення ролі та глибокий аналіз різних аспектів, таких як психологічний, біологічний, релігієзнавчий та інші, виявлення закономірностей та проблем, з якими стикаються люди у шлюбі, а також надання рекомендацій для покращення індивідуального благополуччя. Серед використаних методів слід зазначити: статистичний, аналітичний, порівняльний та інші. У дослідженні з еволюції сімейних відносин, що охоплює різні аспекти, подано важливі висновки про зміни у цьому контексті. У ньому представлено збільшення різноманітності сімейних структур, які залишаються більш традиційними і тих, які адаптивніші до сучасних змін. Було виявлено, що освіта та міграція відіграють ключову роль у формуванні сімейних відносин, впливаючи на вибір партнерів та сімейні рішення. Релігійні та філософські переконання залишаються важливими факторами, що формують сімейні цінності. У дослідженні звернено увагу на вплив біологічних факторів, таких як здоров'я та генетика, на сімейні рішення, особливо у контексті народження та виховання дітей. Усі аспекти спільно надають глибоке розуміння того, як сімейні стосунки еволюціонують у сучасному Киргизстані. Практична цінність дослідження полягає у розробці адаптивних сімейних політик, освітніх програм, підтримці сімейного консультування та психологічної допомоги, що сприяє зміцненню сімей

Ключові слова: рольові моделі; індивідуальний добробут; партнери; цінності; прийняття рішень

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Labour relations in Kyrgyzstan and mechanisms for improving the environment in the training of qualified personnel

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Abstract. The relevance of this study is due to the problems of migration of the population of the Kyrgyz Republic due to unfavourable labour market conditions. In accordance with this, the purpose of the study is to find out the features of the current environment in the training of qualified personnel. Methods of logical analysis, synthesis, comparative-legal, formal-legal, and legal hermeneutics are used in the study to fulfil the tasks set. In the course of the study conducted, statistical data on the state of the labour market in the Kyrgyz Republic as of September 2023, by regions and years, are examined. According to this analysis, it is noted that in the context of years, the unemployment rate decreased by 4.5%, which indicates the effectiveness of the measures taken. The risks that exist in the implementation of state programmes to reduce unemployment were examined. These included limited budgetary resources of state bodies and the potential of employees of state bodies and local self-government bodies, increased migration due to the lack of jobs in Kyrgyzstan that provide more favourable conditions. A comparative legal analysis of the experience of the USA and Japan was conducted. This allowed identifying a number of features, namely: the active development of communication between management and staff, the introduction of human resource management structures, productivity improvement, effective staff selection, management, productivity incentives and employee certification, loyalty programmes for employees etc. The practical value of the results obtained consists in providing recommendations that will allow government agencies to eliminate current problems, reduce unemployment and increase labour productivity in Kyrgyzstan

Keywords: employee; labour market; digitalisation; foreign experience; investment policy; human capital

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Introduction

Digitalisation of the economy is a process of development and implementation of innovative technologies in economic activity. This is accompanied by the creation of certain legal, organisational, socio-economic, and other conditions, which has a positive impact on many aspects of public life and is a key factor in economic development. This process covers a much wider range of areas than exclusively economic, and leads to changes in the labour market. At the moment, there are a number of problems in the Kyrgyz Republic that are associated with population migration and rising unemployment. In accordance with this, quite an urgent issue is the training of qualified workers, which will be able to improve the field of labour relations in the conditions of digitalisation.

Notably, the scientific doctrine identifies both positive and negative consequences of digitalisation for the labour market. In the studies of K.I. Ismanaliev *et al.* (2021), considerable attention is paid to the interrelationships between labour and technology, employment, and investment activity in the context of explaining economic dynamics. The authors raised the question of the possible risks of the spread of technological unemployment in connection with the new industrial revolution, which was accompanied by the expansion of machine production. The possibilities of economical use of labour may outpace the development of new ways of its application in accordance with the position of R.D. Kalbaeva and D. Seydakmatova (2020). Currently, the key determinants of the technological transformation of production and the labour market are digital and information and communication technologies, which represent the fourth wave of the industrial revolution, as described by S.M. Kasymova *et al.* (2021). The authors point out that in addition to the potentially positive impact of new technologies on economic growth, it is important to consider their potential negative impact on the labour market, especially in the short term. Technological breakthroughs and automation can replace labour with capital, depriving workers of earnings or forcing them to retrain for work in other fields.

U.B. Islamova and A.A. Nishanova (2022) highlight remote employment as a source of growth in this economy, which is becoming preferable for an increasing number of workers as an alternative to standard full-time employment. However, this new level of “flexibility” is often accompanied by unstable working conditions, which can undermine the achieved legal and social guarantees for employees. In analysing the segment of the digital labour market, including issues of labour rights and social security, M.V. Khalilova and J.V. Guseva (2022) draw analogies with the early industrial revolution, when such issues did not exist.

Analysing the positive aspects of digitalisation, it should be noted the acceleration of economic growth, increased labour productivity and global competitiveness, increased competition in the digital sector, e-commerce and network business, and the expansion of opportunities for creating additional value. In addition, it is worth mentioning the improvement of the welfare and quality of life of the population and the reduction of public spending in the social field due to the spread of telemedicine and online education. However, some researchers express concerns about the negative impact of digitalisation, which is largely due to changes in the labour market and in the nature of labour relations. Advances in machine learning, robotics, and artificial intelligence inevitably lead to automation, changes in the demand for labour, and the redistribution of jobs. However, automation will not be limited to physical labour, dangerous production operations, or monotonous tasks. It also poses a threat to workers performing intellectual, cognitive, or analytical activities. At this stage, there is a need to identify and assess the possible risks faced by the subjects of labour relations and to develop mechanisms to reduce them through actions both on the market and on the part of state regulation. The implementation of the analysis of the behaviour of labour market participants is an effective tool for assessing the prospects and consequences of the impact of digitalisation. An increase in risks for subjects of labour relations in the short term, including both employees and employers accompanies the increase in the scale of digitalisation of the economy. This includes an increase in the costs of opportunism, the level of social insecurity of workers, the growth of income inequality, and other aspects. In the long term, digitalisation can help to increase the efficiency of interactions and stabilise the labour market at the equilibrium level by reducing the costs associated with the formality of labour relations.

Based on the above, the purpose of this study is to identify possible risks that may arise in the subjects of labour relations during the training of qualified personnel due to the digitalisation process. In accordance with this, it is necessary to perform a range of tasks, namely, to examine the current problematic aspects of state regulation of labour relations in Kyrgyzstan, highlight the features of training qualified personnel and develop recommendations for the system of state regulation of the labour market.

Materials and methods

This study was conducted using various types of analysis methods. The functional analysis method was applied to analyse the labour market and its requirements for qualified personnel to determine what skills and competencies are necessary for successful employment and assess the training needs among the workforce. This method allowed determining the key functions and role of training qualified personnel in labour relations and the modern process of digitalisation in the Kyrgyz Republic. The method of logical analysis was used to examine the current state of the labour market in the Kyrgyz Republic. It allowed examining various factors that can affect the state of the labour market, identifying problems and risks faced by employees and employers. The method of statistical analysis provided an opportunity to examine data on the state of the labour market in the Kyrgyz Republic. Thus, the indicators of the unemployment rate in the context of years, employment, and unemployment indicators as of September 2023 and by region were examined.

The formal legal method was applied to examine the provisions of the Law of the Kyrgyz Republic No. 214 “"On Promoting Employment of the Population”” (2015). This allowed identifying its basic norms, the definition of the rights and obligations of citizens, employers, and state bodies in the field of employment promotion, and analysing its impact on employment practices and socio-economic development in the Kyrgyz Republic. The method of legal hermeneutics helped to interpret the legal text more reasonably in the context of changing circumstances and social changes. The dogmatic method allowed for a more detailed linguistic analysis of the text, including the meaning of words, phrases, and expressions used in legal documents to identify which legal

terms and concepts have a specific meaning in the context of the branch of law under study. The comparative legal method was introduced to analyse the experience of such states as the USA, Japan, and the Kyrgyz Republic. In accordance with this, this method helped to identify the characteristic features of ensuring the legal mechanism of labour relations and the training of qualified personnel in the countries under consideration, highlighting similarities and differences in this context. The analogy method provided an opportunity to determine the role of digital technologies and digitalisation in general in terms of the impact on the modern labour market in the Kyrgyz Republic. The method of abstraction allowed focusing on a separate aspect of the study – the mechanism of training qualified personnel. This concept, its inherent features and principles, the current state in the modern process of digitalisation were described in more detail.

The deduction method provided an opportunity to identify key aspects of the labour market in Kyrgyzstan based on practical implementation. The induction method, in turn, based on the provided statistical data and problems, allowed assessing the current state of labour relations in the state. The synthesis method was used to develop recommendations based on the results of the analysis for the authorities to improve the state of the labour market, support employment, and improve the effectiveness of the training of appropriately qualified workers.

Results

The state of labour relations in the Kyrgyz Republic

The current stage of development of the world economy is characterised by the introduction of digital technologies and computer information into an increasingly wide range of human activities. This changes the image of socio-economic relations, opens up new employment opportunities, and provides public and private services via the Internet. The formation of the digital economy is not only the result of natural evolution and scientific-technological progress but also the consistent implementation of the "digital programme" by leading countries in the field of economic development. This covers all aspects of public administration, from the creation of information and communication infrastructure to training support programmes. The labour market is becoming an institution that, in the conditions of universal digitalisation, determines the requirements for the quantitative and qualitative composition of the labour force, regulates the supply and demand for workers with the appropriate skills. Therewith, it excludes those who are unable to adapt to modern conditions.

The main reason for digital changes is the substantial development of information technologies in modern society, including both hardware and software capable of performing a wide range of tasks. On the one hand, this is a positive trend, as it contributes to increasing production efficiency, reducing operating costs, and improving the quality of products and services. This can lead to an increase in entrepreneurial activity, the development of new methods of training and employment, and an increase in labour mobility and activity of the studying-age population. On the other hand, it causes a number of problems, both economic and social. Among the negative consequences, it is worth highlighting the growth of unemployment, the increase in the costs of retraining and relocation of workers, and the need to develop and finance programmes to promote employment, stimulate entrepreneurial activity, and provide social assistance and support to citizens. The labour market is an economic system in which many participants take part, including the state, employers, employees, trade unions, and other structures. It is worth considering statistical data to assess the modern labour market in Kyrgyzstan (Table 1).

Table 1. Statistical data of the modern labour market

Criteria	Indicator
Economically active population	2,712,700 people
Employed population	2,581,100 people
Number of unemployed	131,600 people
General unemployment rate	4.9%
Official unemployment rate (as of September 2023)	2.7%
The number of unemployed who are registered with the employment service	96,000 people
Number of officially registered unemployed	72,000 people

Source: Ministry of Labour, Social Security and Migration of the Kyrgyz Republic (2023a)

As of September 1, 2023, 16,480 vacancies were announced to the employment services, mainly in the field of working specialities. However, there were 5,876 unclaimed jobs, and for every vacancy, there were 16 people. The number of citizens who applied to employment services by September 1, 2023, amounted to 107,253 people. Of these, 75,266 people received consultations on labour and employment legislation, vocational training, retraining opportunities, and choosing a profession. During this period, 122 unemployed citizens were assigned unemployment benefits. One of the main goals of the employment service is to assist in finding employment, and during the reporting period, they were able to help employ 11,239 unemployed citizens. In addition, assistance in employment is implemented through active measures in the labour market. With an increase in the unemployment rate and a shortage of jobs, the main area becomes the training of unemployed citizens. The employment services sent 4,376 unemployed citizens for vocational training to increase their competitiveness in the labour market, considering the need for labour in various professions. This training was focused on professions in demand in the labour market, such as gas welder, hairdresser, computer operator, accountant with 1C skills, cook, seamstress, tailor, office manager, electrician, and driver. In addition, 8,801 unemployed citizens were sent to paid community service as part of temporary employment. Active measures in the labour market, such as education and vocational training, included 13,177 unemployed citizens. Therewith, 82 unemployed citizens receive unemployment benefits. Quite remarkable is the consideration of statistical data on employment by region (Table 2).

Table 2. Statistical data by region as of October 1, 2023

Region	Registered	Received consultations	Employed	Referred to vocational training	Employed after training	Referred to public services	Registered, total	Registered as officially unemployed
Kyrgyz Republic	29,643	58,736	6,949	3,817	1,456	7,892	100,566	75,211
Bishkek	3,615	4,954	2,129	1,075	659	552	7,456	6,642
Osh	875	1,158	313	147	11	885	6,054	3,200
Osh region	7,537	11,478	409	615	66	1,453	21,525	17,049
Chui region	2,379	8,661	1,096	285	191	920	6,587	5,956
Issyk-Kul region	1,882	7,364	790	535	213	1,154	5,351	4,229
Jalal-Abad region	7,030	11,098	1,063	563	149	774	29,352	20,492
Naryn region	969	6,328	295	123	91	307	3,666	2,761
Batken region	4,002	4,182	415	207	31	1,179	15,485	11,637
Talas region	1,354	3,153	439	267	45	668	5,090	3,245

Source: Ministry of Labour, Social Security and Migration of the Kyrgyz Republic (2023b)

Notably, the Government adopted Law of the Kyrgyz Republic No. 214 "On Promoting Employment of the Population" (2015), which establishes the legal, economic, and organisational foundations of the national policy of promoting employment, including state guarantees to ensure the constitutional rights of citizens to work and social protection from unemployment. Nevertheless, today, there are several key problems: an insufficient number of jobs with an appropriate salary level, an imbalance in the economic development of regions, which affects internal migration, limited involvement of local state administrations and local self-government bodies in the implementation of measures to promote employment, the discrepancy between the level of vocational education needs labour market, low level of social guarantees for employees, and unorganised external labour migration. According to the data of the National Statistical Committee of the Kyrgyz Republic, the unemployment rate in % ratio in the context of years is shown in Figure 1.

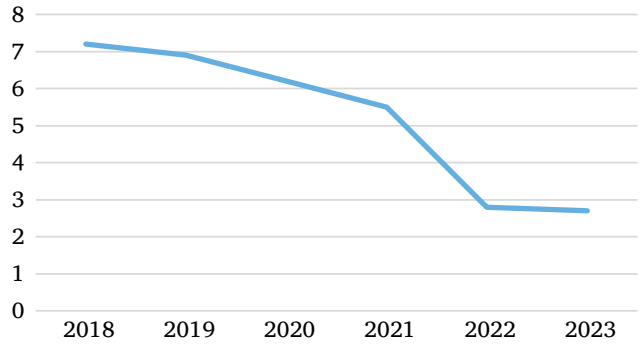

Figure 1. Unemployment rate in the Kyrgyz Republic, %
Source: Unemployment rate in Kyrgyzstan (2023)

The data provided allow concluding that in the context of years, the unemployment rate decreased by 4.5%, which indicates the effectiveness of the measures taken. Therewith, as in all fields, there are risks when implementing state programmes to reduce unemployment. Among the risks of an economic nature, limited budgetary resources of state bodies are notable, organisational – the limited potential of employees of state bodies and local self-government bodies, socio-economic - an increase in migration due to the lack of jobs in Kyrgyzstan that provide more favourable conditions (wages, labour safety, social package, etc.). Notably, the education system directly affects the employment situation in the country. In the near future, it is likely that this education system will not be able to serve as a platform for creating competitive advantages for the Kyrgyz economy. The solution of these complex problems of the national labour market is possible only with a consistent national policy in the fields of migration policy, education, healthcare, and regional development.

Thus, in the current economic context, it is necessary to take a number of measures. First of all, develop projects to maximise the use of skilled labour, identifying promising industries and retraining workers for them; it is important to stimulate the creation of small and medium-sized enterprises, including the provision of preferential loans to support the development of entrepreneurship; to develop a set of measures to ensure the stability and dynamic development of rural areas, paying special attention to the development of rural to determine the main areas of organisational activities aimed at supporting the increase in labour productivity and ensuring economic growth. The proposed measures will provide an opportunity to increase the level of employment of the population, train highly qualified workers, and reduce unemployment rates in Kyrgyzstan.

US experience in regulating labour relations

It is necessary to consider the world experience in increasing the social motivation of labour relations. In social development, the importance of motivation and its roots acquire a diverse meaning and meaning. It is especially worth highlighting the social value of work-related motives that have become a priority. Motivation in the workplace plays an important role in determining the reasons for interaction between employees. In the USA, Japan, and Western Europe, there is a growing interest in the study of issues of increasing labour productivity. Labour law and these legal relations in the United States have developed differently in comparison with other developed countries in Europe. The main reason is that the relationship between employers and employees in America is very different from the class and social struggle

in other countries (Ozkeser, 2019). American workers are struggling not only to improve their social status and career advancement but also to improve working conditions, access to quality medical care and higher pensions. In the US, there is little social inequality between business owners and employees. The main difference between employees and employers is not in social status but in the difference in income and the right to dispose of them. This historical feature of America has also influenced relations in production. For a long time, there has been a shortage of skilled labour in the United States. Many industrial crises arose due to the lack of trained personnel, according to which skilled workers were always in demand. Since employers competed for labour, workers were given the opportunity to demand higher wages and better working conditions (Murtiningsih, 2020).

It is worth mentioning such a phenomenon as "golden parachutes", which have been used since the 1980s as a corporate governance tool in response to the turbulent time of corporate takeovers. At that time in the USA, the legal regulation of labour relations was based on the Anglo-Saxon tradition and included regulations protecting the rights of workers. However, at the time of the introduction of the "golden parachutes", this was based on the principle of "hiring at will". This meant that it was not the laws but rather the beliefs of researchers and judges that confirmed the right of both the employee and the employer to terminate the employment relationship at any time without the need to comply with any formal procedures and obligations unless a written agreement between them settled it. In accordance with general practice, the dismissal of an employee in the United States did not provide compensation, which meant that top managers dismissed in connection with corporate takeovers lost their jobs, income, career prospects, and status.

In the USA, "golden parachutes" perform such functions as: provide guaranteed employment to the head in the event of a takeover of the company; serve as a means of protection against unfriendly takeovers since information about "golden parachutes" is usually available to competitors; help resolve conflicts of interest between management personnel and shareholders before the takeover, encouraging the head to complete this process successfully; they are used as a means to attract the best personnel, especially in the case of firms in a difficult financial situation and interested in the possibility of a takeover instead of liquidation or bankruptcy. The direct dependence of the "golden parachute" on the net profit of the organisation is provided in the case when such conditions are determined by the employment contract. If there is no such connection, and the dismissal of the head occurred by the decision of the owner of the company and is not related to any actions or guilt of the head, then it turns out that the court has neither grounds nor authority to review the owner's decision.

Notably, the legislation of Kyrgyzstan does not provide effective means that would allow to correctly resolve disputes in this area, which led to inconsistent judicial practice and, as a result, violation of the rights of employees to additional payments. In this regard, it should be mentioned that it is necessary to amend the Labour Code to cover these payments with the general term "compensation to an employee for early termination of an employment relationship through no fault of his own" and to define the procedure for establishing such payments to protect the interests of the employee. In the absence of legislative grounds, the courts should provide clear explanations regarding the legal nature and purpose of payments in case of early termination of employment relations. This also applies to additional guarantees, and the courts should approve the assumption of good faith in the actions of the employee and the obligation to fulfil the terms of the employment contract on the part of the employer in resolving labour disputes. The authorities should point out the need for a detailed analysis of the circumstances related to the conclusion of an agreement on payments for early termination of employment relations, including the reasons for its conclusion and specific obligations set out in the employment contract.

It is quite important to provide the courts with a method for assessing the amount of payments for early termination of employment relations based on international experience. Therewith, one should consider the position of the employee, their business reputation, the circumstances that accompanied the hiring (especially if they are related to the conclusion of an agreement on compensation for early termination of employment relations), the duration of the employment contract, and the amount and structure of remuneration that the employee could receive while remaining in an employment relationship with the employer. If the payment is related to the takeover of the organisation, the court must also take this factor into account in favour of the employee. The courts must consider the presence or absence of direct restrictions on payments established by the constituent documents or local regulations of the employer to assess the terms of the employment contract regarding the right to payment in the event of early termination of employment relations. The absence of such restrictions should be interpreted in favour of the employee since the owner or the board of directors, when making a decision on early termination of the employment relationship, assumes the obligation to pay appropriate compensation to the manager. This will provide an opportunity to regulate certain aspects of labour relations and protect the interests of employees.

Features of Japan's experience in increasing labour productivity

The main focus in Japan was the analysis of the relationship between the characteristics of technology and the problems of labour productivity. Based on this, the Japanese "Kaisen" system was created, which was a form of labour organisation (Kalleberg, 2020). The main feature of this system was that the company considered working conditions and wages in Japan and each of its employees on an equal footing, paying attention to the studying environment and the corresponding conditions. The motivational factors that define this concept and stimulate high labour productivity include such aspects as the provision of jobs and the possibility of career advancement, wages, working conditions, job content, and the internal working atmosphere and relations between management and employees. One of the key elements of this system is the selection, training, and education of employees so that they show loyalty to the company and constantly improve their skills. This ensures continuous education and development of the workforce. Japanese workers rarely take vacations and study regularly, which leads to a very low level of work absences (0.8-1.6%) compared to other countries (Khang *et al.*, 2023). This is largely due to the benefits for both the company and the production. In addition to ensuring the permanent employment of a Japanese employee

within the company, the contract also determines the improvement of their standard of living, the development of intellectual abilities and the education of children. That is, the company and the employee are considered as interrelated components of a single system, the contract is based on the mutual consent of both parties and the employee's free choice of profession. In this case, the company undertakes to provide the employee with the established rights and freedoms. For example, the basic principle of SONY Corporation is to treat its employees as family members; the same labour practice applies in Sweden.

A rather necessary aspect is the liberation of the labour market from excessive demand for labour, which in turn leads to a decrease in the unemployment rate. The implementation of agreements corresponding to the demographic situation in the country will create a system of continuous employment for each employee. Notably, another motivating factor for the labour activity of Japanese workers is the length of service and the corresponding payment. Older people receive higher salaries regardless of the quality of their work or abilities. This process is considered a special form of motivation in all developed countries. This encourages employees to work more productively and increases their confidence in the future. That is why it serves as a motivating factor for young workers, encouraging them to stay in the same workplace. Moving to another company means the loss of seniority since work experience is considered only within one firm or company. However, regardless of age and work experience, modern Japanese companies are now also paying attention to matching professional skills. This is an essential requirement in the modern world. Such a system can reduce the wage fund but increases the contribution of individual work. The income distribution system is also rapidly expanding, where the amount of remuneration depends on the profit of the enterprise. A feature of modern personnel management is the creation of a system for enriching the content of labour and employee involvement in management. One of the main ways of involvement is the formation of self-government groups. These groups make up 90% of Japan's workforce (Ainsworth & Knox, 2022). Initially, such quality clubs were created to control the quality of goods in stores. Currently, they are considered as a means of building confidence in the company and a way to increase its responsibility in its activities. Through these small groups, Japanese managers delegate their authority to the workshop level, increasing the responsibility of the masters for successful production. There are other methods that help to stimulate the initiative of employees, namely, such as notebooks for opinions and suggestions.

The quality of management is related to the purpose of the enterprise and its position in the market. In the Kyrgyz Republic, activities have been implemented to improve the level of social protection. For example, due to state measures of social support, the state has its own characteristics and advantages in comparison with other countries of the post-Soviet space. It should be mentioned that the social protection policy in the country should include the following components: a policy to prevent poverty, that is, to guarantee a decent level of income for workers; a policy aimed at comprehensive support for disabled people; employment policy, including the activities of the labour exchange, which promotes the employment of persons who have lost their jobs. The implementation of this policy considers specific services provided by the Ministries of Labour, Social Protection, and Finance, including pensions, social security, the activities of the labour exchange, and the creation of a favourable working environment in the team. As noted from the analysis, various forms of communication between management and staff are actively developing in Japan, such as official meetings, morning rallies, seminars, and other events. A special aspect is the introduction of human resource management structures, as in the experience of Japan and the United States, from which common features can be distinguished. In the two countries, the main goal remains to increase productivity. Japanese corporations can use the methods of American personnel selection, management, productivity incentives, and employee certification to achieve this. However, there are differences. For example, Japanese firms and corporations strongly emphasise the promotion of loyalty to the company.

The above allows concluding that the key task of improving the level of training of qualified workers, increasing employment rates and eliminating unemployment is the introduction of completely new approaches both in the activities of state structures and private enterprises. This will provide an opportunity to improve the efficiency of the labour relations segment substantially.

Discussion

The duality of the modern economy manifests itself in two opposite areas of its development: pervasive digitalisation and simultaneous social orientation. On the one hand, this is due to the psychological aspects of the interaction of the individual in the context of "man – machine", and on the other – the possibility of transition to the individualisation of each individual in the conditions of digital transformation, as noted by R. Fenech *et al.* (2019). It should be added to the position of the authors that the need to consider all factors affecting the motivation of people's actions at various stages of life, their psychological characteristics and needs, is becoming one of the main areas in economic theory and practice. In this context, the key characteristics of an individual necessarily include an analysis of his professional activity aimed at the effective self-development of the individual in a modern digital society. There is a wide range of scientific aspects of the labour process that determine the role of a person as an integral element in production and economic activity. One of the main concepts in this field is the concept of "cadres", despite its relatively new origin. In the beginning, it was used to denote the permanent composition of military units, and in the modern economy, it refers to a set of specialists with the necessary training, education, skills, and experience in the relevant field of activity (Duggan *et al.*, 2020).

G. Anwar and N.N. Abdullah (2021) write that one of the stable phraseological phrases associated with the concept of "cadres" is "personnel training". Based on this position of the authors, the word "preparation" primarily means preventive activities and is considered in the context of preliminary measures or the learning process. That is, "personnel training" means the formation of a quantitative and qualitative composition of employees within a certain economic system to ensure its effective functioning. Therewith, in accordance with the principle of synergy of scientific concepts, in the digital economy, the term "personnel training" has a deeper meaning, which is explained both by the evolution of scientific ideas about the labour economy and the complex internal content of this concept.

Digitalisation, as mentioned by M.T. Alshurideh *et al.* (2023), had a substantial impact on all aspects of the labour process. It is necessary to agree with this statement, and the special characteristics of modern relations in the field of production and labour include changes in the structure of employment in various sectors of the economy, an increase in the number of jobs in the managerial and technical fields, an increase in the gap between highly and low-skilled professionals, changes in motivation and the process of hiring labour, and the development of flexible forms of employment and intellectual-creative activity. Considering these changes, the personnel training system should also undergo transformation both from the outside, providing the labour market with specialists with digital competence, and from the inside, modernising the training process itself using innovative digital technologies.

The COVID-19 pandemic had a special impact on accelerating the digitalisation of the training system, as stated by D. Vrontis *et al.* (2022). In the conditions of mass closure of enterprises and institutions, employees faced the need to master knowledge, skills, and abilities in the field of information and communication technologies or their updating. The need for appropriate educational programmes, retraining and advanced training, including online training, has increased markedly. All participants in relations in the field of production and labour, including government agencies and individual employees, have shown interest in the development of the digital educational services market. However, the personnel training system was not ready for such a sharp increase in demand for specialists for the digital economy, partly due to the lack of an extensive theoretical and methodological base necessary to determine the quantitative and qualitative characteristics of digital industrial and labour relations.

The relatively short stage of the digital transformation of the economy, which began in the 90s of the twentieth century, has not yet allowed developing a systematic approach to the use of terminology in the process of personnel training in new production conditions, according to M. Thite (2020). In connection with this position, it is advisable to mention that the digital economy has a number of characteristic features, such as the use of digital technologies, electronic goods and services, network business, and digital assets that form a new socio-cultural reality. However, these signs do not cover the essence of industrial and labour relations that arise in digitalisation and support the functioning of digital economy institutions. This means that the labour economy should develop appropriate terms for the digital economy in general and for the main characteristics of its components, including the personnel training process.

In modern economic literature, the concept of "personnel training" is considered from two main points of view: as a long-term process and as a resource element of economic activity. From the first standpoint, this includes measures and means aimed at ensuring the normal functioning of the labour market, the implementation of plans, programmes and projects, maintaining a stable balance in quantitative and qualitative terms in the field of labour, preventing violations in compliance with regulations and contracts in the field of personnel management, as indicated by J.Y. Yong *et al.* (2020). From the second standpoint, it is a synonym for the concept of "staffing" and is a key resource describing staffing and its quality, which is an important element in the resource support of production and determines the characteristics of the functioning of the enterprise, according to M.A. Kareem and I.J. Hussein (2019). Based on these positions, an integral task in managing both the formation of the staff and working with it is to influence the training process for a specific purpose. The main purpose of this impact is to create an organisation's workforce that meets its needs both quantitatively and qualitatively. This approach to staffing prevails in many studies, mainly aimed at solving the problems of the functioning of individual enterprises and organisations and not at regional or sectoral economic systems.

Despite the widespread use of the second standpoint among researchers, it is more appropriate to use the term "staffing" in this context. R. Peccei and K. van de Voorde (2019) write that this formulation allows including in the field of research both personnel support for the functioning of individual enterprises and socio-psychological aspects of motivation and improvement of working conditions of employees. That is, based on this position, the process of forming a personnel training system does not begin at the stage of hiring specialists but also at the stage of their training in institutions of secondary and higher professional education and continues until the end of their working life. A balanced organisational and economic mechanism of interaction between the education system and various participants in the commodity market, including executive authorities, manufacturers and infrastructure facilities in the industrial and social fields, is required to ensure the effective operation of such a system. The theoretical basis for assessing the quantitative and qualitative aspects of the personnel training system is human resources, human capital, personal potentials, and their structural components. They form the incoming physical and intellectual flows of this system, and the output is a set of individuals with certain professional competencies (knowledge, skills, abilities) and a certain level of their application (qualifications). In the conditions of the digital economy, the process of personnel training takes on a new dimension – intellectual and personnel support, as indicated by K. Stachová *et al.* (2019). It is worth agreeing with this, which is due to the constant expansion of functions and tasks performed by employees. In this context, various organisational, economic, and legal components are being formed, and measures that are implemented by the management of the enterprise and are aimed at achieving the goals of the economic entity, creating and effectively using human resources and their intellectual capabilities to strengthen business processes and increase the competitiveness of the enterprise.

Thus, the process of personnel training should be understood as the process of formation and effective management of human capital aimed at achieving balance in quantitative and qualitative terms in the labour market and its participants. In this context, the main characteristics of the personnel training process include educational, sectoral, and regional components. Education as a separate system and branch of the economy not only takes part in the formation of personnel at the stage of obtaining basic professional knowledge and skills but also provides an increase in the personnel potential of employees throughout their entire working life. The ways of such interaction may vary, including advanced training courses, internships, and obtaining additional or second professional education. Personnel training is a complex and multidimensional concept that was formed and developed under the influence of various theoretical concepts

in the field of economics. Modern conditions of digitalisation not only change the usual mechanisms of labour activity and industrial and labour relations but also impose completely new requirements on the intellectual abilities of the individual. Notably, even considering the substantial development of medicine and psychology, there are limitations in the intellectual capabilities of a person at the present stage. These limitations should be considered both in the practical work of institutional labour market participants and in the development of methodological approaches to the examination of the personnel training process in the digital economy.

Conclusions

This study was conducted to examine the current state of the labour market in the Kyrgyz Republic and identify the features of the mechanism for training qualified personnel. It was noted that despite the range of measures taken by state structures, today there are several main problems: insufficient number of jobs with decent wages, an imbalance in the economic development of various regions, which affects internal migration, limited involvement of local state administrations, and local governments in the implementation of measures to promote employment.

Based on the analysis of statistical data, it was concluded that from 2018 to September 2023, the unemployment rate decreased by 4.5%. This indicates the effectiveness of the measures taken by state bodies. The risks that arise during the implementation of state programmes to reduce unemployment were also considered. Among the economic risks, limited budgetary resources of state bodies were noted, organisational – limited potential of employees of state bodies and local self-government bodies, socio-economic – increased migration due to the lack of jobs on the territory of the Kyrgyz Republic that provide more favourable conditions. It was identified that the education system has a direct impact on the situation of the labour market in the country. In the near future, it is possible that the national education system will not be able to create competitive advantages for the Kyrgyz economy. The solution to these complex problems of the national labour market is possible only with a consistent national policy in the areas of migration policy, education, healthcare, and regional development. A set of measures was proposed to resolve the above problematic aspects and eliminate risks. An analysis of the experience of the USA and Japan was also conducted. This led to the conclusion that various forms of interaction between management and employees are actively developing in Japan, such as official meetings, morning rallies, seminars, and other events. One of the important aspects is the introduction of human resource management structures, which is common to the experience of Japan and the USA. It was noted that in the two countries, the main goal remains to increase productivity. Methods of personnel selection, management, performance stimulation, and employee certification can be used to achieve this goal.

Based on the above, it was concluded that the key task for improving the level of training of skilled workers, increasing employment, and eliminating unemployment is the introduction of new approaches both in the activities of state structures and in private enterprises. Subsequent studies will be aimed at conducting a comparative legal analysis of the labour market in post-Soviet countries.

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Conflict of interest

None.

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Трудові відносини в Киргизстані та механізми поліпшення середовища підготовки кваліфікованих кадрів

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Анотація. Актуальність дослідження зумовлено проблемами міграції населення Киргизької Республіки через несприятливу кон'юнктуру ринку праці. Відповідно до цього мета дослідження – вивчити особливості сучасних умов підготовки кваліфікованих кадрів. Для того щоб виконати поставлені завдання, у дослідженні використано методи логічного аналізу, синтезу, порівняльно-правової, формально-юридичної та юридичної герменевтики. У процесі проведеного дослідження вивчено статистичні дані про стан ринку праці в Киргизькій Республіці станом на вересень 2023 року в розрізі регіонів і років. Відповідно до цього аналізу зазначено, що рівень безробіття знизився на 4,5%, що свідчить про ефективність заходів, яких ужила держава. Розглянуто ризики, які існують під час реалізації державних програм щодо зниження безробіття: обмеженість бюджетних ресурсів державних органів та потенціалу працівників державних органів та органів місцевого самоврядування, посилення міграції через відсутність у Киргизстані робочих місць із достатньо сприятливими умовами. Проведено порівняльно-правовий аналіз досвіду США та Японії. Це дало змогу виявити низку особливостей, а саме: активний розвиток комунікації між керівництвом і персоналом, впровадження структур управління персоналом, підвищення продуктивності праці, ефективний підбір персоналу, управління, стимулювання продуктивності та атестація працівників, програми лояльності для працівників тощо. Практична цінність отриманих результатів полягає в тому, що надано рекомендації, дотримавшись яких державні органи матимуть змогу усунути наявні проблеми, знизити рівень безробіття та підвищити продуктивність праці в Киргизстані

Ключові слова: працівник; ринок праці; цифровізація; зарубіжний досвід; інвестиційна політика; людський капітал

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Ethical and legal aspects of editing a patient's genome for non-medical purposes

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Abstract. The need for knowledge of one's own biological nature was a crucial impetus for scientific-technological progress in the fields of molecular biology, chemistry, and genetic engineering, which soon turned into a way to control human genetic material and its evolution. Although the procedure for reconstructing the personality genome is designed to protect humanity from hereditary or oncological diseases, there is still a huge risk of using this technology to modify intellectual abilities or physical characteristics. The purpose of this study is to describe and characterize the moral, ethical, and legal factors that arise in using technology to correct a person's genetic code for non-medical reasons. Through systematic analysis and dialectical method, the current state of the legislative framework in the field of editing the biological material of the individual was investigated, while the generalisation method allowed identifying the main bioethical dilemmas associated with a certain problem. Exploring the possibility of changing the human genome through the prism of its interdependence with globalising metamorphoses in society, the key threats of the use of technology, its impact on the formation of the latest ethical standards, and compliance with the fundamental rights and freedoms of the patient were identified. Therewith, focusing on identifying gaps in the regulatory regulation of the human genome correction procedure, recommendations were made to improve the international legal foundation in this area of legal relations. In general, the chosen subject contains a considerable number of still unexplored aspects,

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so this study is designed to draw the scientific community's attention to the problem of editing a person's biological identity for non-medical purposes

Keywords: the fourth generation of human rights; nature of the individual; civil rights of the patient; innovative technologies; the right to privacy

Introduction

As a phenomenon of conceptual changes in society, humans are inextricably linked with the constant transformations of cultural, social and political landscapes, being the root cause of global metamorphoses, such as digitalisation or progress in genetics and genomics. Such transformations not only reflect the immediate needs of humanity but also radically reconsider international legal principles and fundamental legal categories, the leading of which is the concept of human rights. Throughout world history, the approach to understanding and applying fundamental freedoms of the individual has repeatedly undergone substantial modifications, adapting to new challenges and opportunities. Due to the fact that fundamental human rights simultaneously represent both the cause and mechanism for improving social standards, supplemented and developed in accordance with globalisation changes, they cannot be defined as a static or unchanging phenomenon but rather as a transgressive concept that has a dynamic and evolutionary character, not limited to the requirements of stability (Bufacchi, 2018). Thus, going beyond established interpretations and considering human rights in an unconventional context as a tool for achieving progress, individual rights and freedoms support a continuous debate about how unstoppable ideological and technological development obliges society to review generally accepted institutions, one of which is the right of the person to their own genome.

Considering the continuous development of innovative technologies in bioengineering and biochemistry and their gradual introduction into the population's life, the world community is faced with the task of protecting a person's biological identity and genetic health. With the advent of Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR) technology, the issue of controlling one's genome has become more acute than ever, affecting moral and ethical dilemmas and regulatory aspects. However, despite the considerable potential of the human genome correction procedure as a potential "vaccine" against hereditary syndromes or oncological diseases, the risk of manipulating genetic information to modify the external characteristics or psychological aspects of a person is also on the agenda.

The chosen problem does not remain without the attention of the scientific community. For example, considering gene modification as a component of the fourth generation of human rights, S. Perepolkin *et al.* (2021) expressed concerns about the possibility of artificially improving the physical characteristics of patients. Therewith, investigating the prospects for the use of CRISPR, S. Komisarenko and S. Romanyuk (2020) emphasise that the technology is absolutely revolutionary in nature, but to fully realise all these opportunities and overcome moral absolutism, it is necessary to make it safer to use, and Yu. Turyanskyy (2020) highlights that funding in the areas of risk assessment, prevention, and management should be a priority in the field of gene editing. In the study by B. Ostrovska (2021), the impact of genome modification on human dignity was reviewed, concluding that in the context of maintaining a balance between the freedom of scientific research and the individual good of each individual, it remains relevant to conduct a diverse debate for making decisions about the moral and ethical acceptability of using genome editing technology. S. Sumchenko and O. Naumkina (2020) also focused on a philosophical understanding of the application of human genome reconstruction technology, highlighting the threat of commercialisation of biomedicine, which can create a new figure of a "business researcher". Since the possibility of DNA reconstruction not only creates some new legal conflicts, but also forces us to reconsider previously existing issues, it is quite appropriate to consider its impact on the reform of modern public standards (Krekora-Zając, 2020).

Thus, this study is aimed at analysing the legal framework in the field of human genome editing, and investigating existing ethical dilemmas associated with non-medical intervention in the human genetic code.

Materials and methods

The methodological foundation of the paper was the methods of system analysis, generalisation, and the dialectical method. Firstly, the generalisation method allowed characterising the moral and ethical aspects that society faces in connection with using human genome editing technology in general and for non-medical reasons in particular. The difference between the correction of somatic cells of a person and its germline and how such an intervention affects not only the patient but also the future generation was outlined. In addition, using the above-mentioned method, the place of the right to reconstruct one's own identity in the system of the fourth generation of human rights and their role in the formation of modern social standards, and the impact of technological innovations (primarily CRISPR) and globalisation challenges on the modification of the institution of individual rights, in particular, the category of somatic rights, were determined.

The method of system analysis provided an opportunity to examine the legal framework in the field of intervention in human genetic material, which includes the following normative legal acts: Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997), Universal Declaration on the Human Genome and Human Rights (1997), and International Declaration on Human Genetic Data (2003). Therewith, attention was focused on the Strategic Action Plan on Human Rights and Technologies in Biomedicine (2020-2025) (Council of Europe, 2019), and A review by the European Parliamentary Research Service of the legislation, governance, and principles of governance in the field of human genome editing regulatory act (Nordberg & Antunes, 2022). In addition, the method of system analysis identified the existing gaps in the legislative regulation of this field of relations, outlined the diverse positions of researchers on the expediency of its improvement, legal terminology, and regulatory requirements that should be highlighted in the content of leading transnational legal

documents, which allowed providing recommendations for its reform in accordance with modern requirements.

Therewith, it is advisable to note the dialectical method, which was used to examine and consider diverse aspects of patient rights in the process of correcting the genetic code of the individual, in particular, the right to human dignity, non-discrimination, protection of personal data, and their relationship with the formation of public ethical standards. Different standpoints were presented regarding the correlation of the identified fundamental human benefits of using the DNA editing procedure in the context of non-medical intervention. In addition to international legal acts, the necessary materials for this study were the papers of Chinese, Korean, African, Polish, German, Spanish, Portuguese, Hungarian, Belgian, Turkish, British, American, Canadian, and Ukrainian researchers, helping to objectively study the subject of artificial manipulation of human biological nature through its bioethical and moral components and regulatory aspects.

Results

The scientific and technological revolution, cultural assimilation, achievements in the fields of biochemistry, medicine and bioengineering, the speed of expansion of cyberspace – globalisation challenges cover a considerable range of transformational processes in almost every area of the functioning of society, which generates not only the reconstruction of human legal consciousness but also a rethinking of the correlation and impact of innovations on the life of the population and individuals in particular. The spread of a new paradigm never occurs instantly, especially in the context of interference in the field of private life or health, and therefore, the formation of a thoroughly new generation of human rights, the emergence of which is primarily associated with the development of the latest technological achievements can be stated (Hilbert, 2020). Although the fourth generation of human rights is still in its infancy, it has substantially enriched the system of human rights and freedoms. There are many researchers, including Ukrainian authors O. Ivanii *et al.* (2020), emphasising that the latest generation of human rights is associated with a specific object – a person, namely their body and organism, and despite the maintenance of this concept, it is advisable to supplement the above opinion, which will clearly demonstrate the unbreakable link between the international challenges of our time and the expansion of the category of human rights and the issue of their provision. Figure 1 shows the defining distribution of new rights, which can also be described as rights to a safe environment, digital and somatic rights.

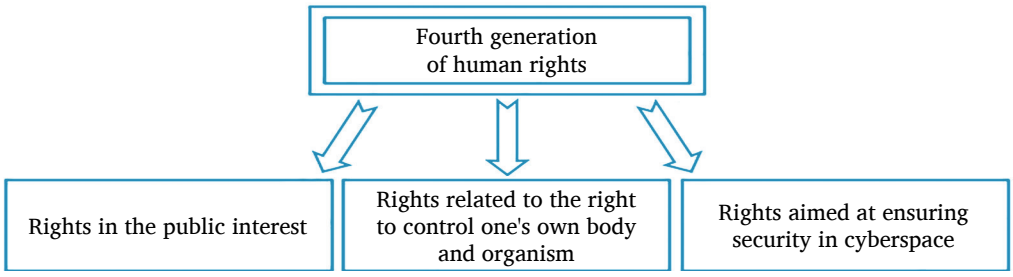

Figure 1. Fourth-generation classification of human rights

Source: compiled by the authors

An example of modern rights to a healthy environment is the so-called Mother Earth rights, recognised by the courts of Ecuador and Bolivia, which, although they do not interpret a person as the addressee of these rights, simultaneously serve as a tool for ensuring the human right to clean air, water, soil and a method of combating climate change (Berros, 2021). In turn, the functioning of digital (virtual) rights, for example, the right to digital self-determination or security in cyberspace, is a consequence of the continuous spread of information-communication technologies and offences committed through their application. Despite the fact that the subject of digitalisation and its impact on human life and its fundamental freedoms causes considerable interest among researchers (Brkan *et al.*, 2020), calls for the protection of virtual rights of the population have already led to numerous resonant projects and political statements at the national and transnational levels (Karppinen & Puukko, 2020), just the last group of rights of the new generation – somatic rights – require additional discussion because their implementation affects not only scientific-technological progress but also issues of law, ethical perception, and even religion.

Unlike other legal categories, somatic rights interact most closely with the person themselves because they are directly related to the right to dispose of one's own personality, so this should include the right to artificial reproduction, cloning, surgical sex correction. Special attention should be paid to the somatic right to one's own genome, or rather the ability and right to edit it, which, due to medical, legal, and moral uncertainty, has not yet been properly disclosed. B. Prainsack (2014) defines a "genome" as "any data representing the sequence of nucleotides in our genome", while A.D. Goldman and L.F. Landweber (2016) define the concept of "genome" as an information core, which often, but not necessarily, manifests itself as DNA, which programmes a diverse range of functional capabilities and contributes to the functioning of the body. However, scientific discoveries in chemistry, genetic engineering, and microbiology are now forcing society to consider the genome category not only in terms of the information needed to create cells and maintain an organism but also as a method of manipulating the genetic code of a person.

Recently, the issue of editing the human genome is no longer a purely theoretical hypothesis since its relationship with gene or biotechnology is dichotomous because, on the one hand, the procedure for correcting the biological nature of the individual determines the further course of application of innovative technologies, whether limiting their use, or encouraging their development, but, on the other hand, the latest changes in the fields of cell engineering or genetics

are the factor that creates opportunities for manipulating human genetic material, which can be used for both medical and non-medical purposes. How the benefits are used will ultimately depend on the efforts made both in the laboratory and outside it (Carroll, 2016). It is advisable to agree with the statement of the Chinese researcher S. Liu (2020), who compared personality genome editing technology with a double-edged sword, correlating evident advantages with substantial disadvantages. For example, the genome correction procedure allows replacing a "damaged" due to an inherited mutation gene, thereby contributing to the treatment of diseases such as immunodeficiency virus, haemophilia, or cystic fibrosis, and is a method of modifying a person's physical characteristics or cognitive abilities. In other words, this technology can be used to treat individuals and improve or completely change their physical abilities before or after birth (Perepolkin *et al.*, 2021). Thus, the issue of legal regulation of the procedure for the transformation of human hereditary material is more acute than ever since from now on, the procedure for genome reconstruction can be not only a limited medical tool but also a factor in the emergence of transnational moral and ethical dilemmas.

Notably, the subject of editing the personality genome is marked by a rather limited legislative foundation, which creates a huge opportunity for the abuse of genetic modification. It is impossible not to mention the Universal Declaration on the Human Genome and Human Rights (1997) and the International Declaration on Human Genetic Data (2003), but these documents only focus on the implementation of fundamental human rights in the context of genetic research. The only act, the norms of which directly regulate the scope of personality DNA correction, is the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997). Article 13 of the Convention establishes in its text the possibility of editing the genome of a person only for medical, diagnostic, or preventive purposes and only if its purpose is not to modify the genetic material transmitted to descendants, so it is appropriate to investigate this provision in more detail. First, from the content of Article 13, it can be concluded that, although there are certain restrictions, the activity in question does not expressly prohibit genetic engineering. Secondly, by not allowing the procedure of editing the germ line of the genome (modification of genetic material passed on to descendants), the legislator does not recognise illegal interference with the human genome in its somatic cells, the differences of which are clearly demonstrated by Figure 2.

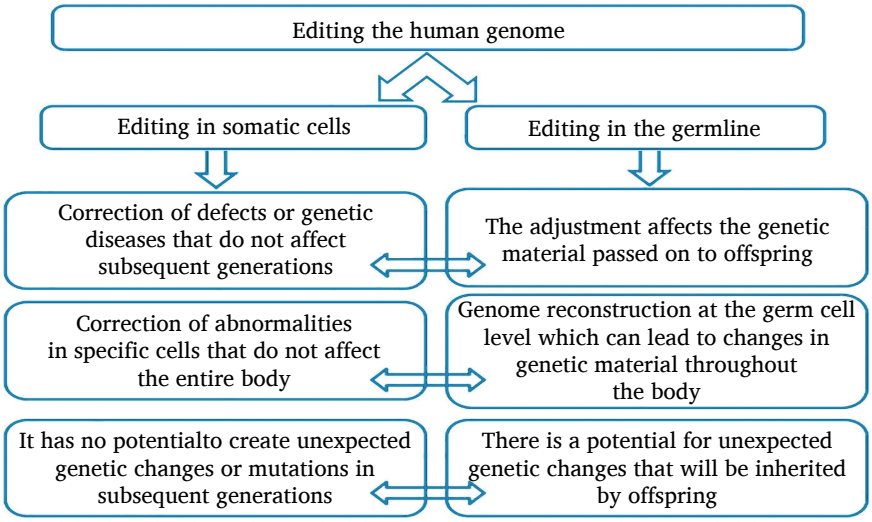

Figure 2. Genome editing discrepancies in somatic and germ cells
Source: compiled by the authors

E. Birney (2023), deputy director general of the European Molecular Biology Laboratory (EMBL), emphasises that there is a substantial difference in understanding between modifying damaged genes – or editing DNA – and "improving" the potential lives of humans and their descendants. It is important to understand that such differences between varieties of genome editing procedures are essential from the standpoint of legislation, but due to the lack of proper legal regulation, this only creates legal and bioethical dilemmas, one of which is the lack of at least an indicative list of diseases that allow interference with the genome of a person. In other words, the interpretation of medical or non-medical intervention is not conducted within the framework of regulatory permits or prohibitions but depends on laboratories and their employees. For example, pigmented neuralgic nevus, which manifests itself in the form of pigmented spots on the skin and does not affect the functional capabilities of the body in any way, is a genetic disease, so it is de facto one of the candidates for gene modification, but serves as a more potential example of improving external characteristics than changes in internal characteristics of the body. The practice of modifying physical characteristics for the better completely destroys the principle of individuality, which not only threatens the emergence of criteria for an ideal person, but also ignores the issues of implementing the individual's fundamental rights (Perepolkin *et al.*, 2021).

Many researchers, including R. Andorno (2002), emphasise the absolute importance of fundamental human rights in the context of the permissibility of using innovative biological technologies for a particular person. According to Article 10 of the Universal Declaration on the

Human Genome and Human Rights (1997), no research, especially in the field of genetics and medicine, should take precedence over the basic freedoms of each individual. In the context of interference with the human genome, which determines its individual characteristics, the issue of protecting patient autonomy is raised, which includes respect for human dignity, confidentiality of personal information, and discriminatory consequences. Although it is advisable to cite the opinion of B. Gregg (2022), who rejects the idea that individual rights and freedoms somehow arise from genetic identity, it is as important to consider the hypothesis that its destruction can spoil the unique biological nature of the individual. Similarly, the risk of commercialisation, in which private businesses focus their efforts on modifying a particular person's mental or physical characteristics for their own enrichment, and human genes or cells become objects of patenting, should not be neglected (Shozi, 2021). Therewith, one of the main factors of dignity is the patient's privacy because there are such issues as ways to obtain the consent of a person or their refusal, the prospect of leaving the study, collecting personal information about the subject, predisposition to a certain disease (Niemiec & Howard, 2020). In turn, T. Ishii and I. de Miguel Berian (2019) draw attention to the fact that children who were conceived using genetically modified cells or embryos are subject to long-term monitoring and surveillance, which threatens not only the right to privacy but also creates opportunities for unauthorised access to the subject's personal data. Therewith, due to the uniqueness of combinations of genetic variants, confidentiality in the exchange of personal data should be conducted considering the prevention of potential discriminatory and social consequences (Terzi, 2018). In particular, it is not only about preventing the formation of stigma and restrictions in relation to a certain group of people but also about creating an elite society with "improved" external and internal characteristics.

Thus, it is reasonable to emphasise that changing a person's genetic code and minimising potential adverse consequences requires further discussion and regulatory regulation. Ensuring a balance between scientific and technological progress and the protection of fundamental human rights is the leading and most difficult task facing the international community today. Non-medical genome editing and continuous innovation development are accompanied by considerable ethical and legal conflicts that require coordinated cooperation between legislators, researchers, and the public, both on the national level and internationally.

Discussion

The introduction of the latest technologies and scientific research related to them is quite difficult to control because the originality effect causes a lack of legal regulation and public analysis. Therefore, it becomes possible to accurately assess the potential risks of an individual innovation only over time when the latest tools become part of the culture and human infrastructure. The procedure for correcting a person's genetic code causes considerable discussion, mainly focusing on its consequences and public attitudes. Notably, the idea of treating hereditary diseases itself has a huge potential in the context of improving the healthcare sector. For example, Korean researchers, including S.B. Moon *et al.* (2019) note the positive effect of genetic engineering, which now opens up new therapeutic prospects for the treatment of almost four thousand rare genetic diseases. Similarly, this opinion is supported by J. Lee *et al.* (2020), emphasising that editing the genetic code not only slows down the progression of genetically determined diseases but also includes gene therapy for patients with difficult-to-treat diseases such as cancer.

However, despite the considerable possibilities of gene modification, it is worth agreeing with the reasoning of the Jordanian researcher A.M. Khalil (2020), highlighting concerns that bioethical and regulatory conflicts will only increase with the rapid revolution in biotechnology, given the possibility of manipulating the human genetic code and the unpredictability of this procedure. Although genetics allows recognising a gene in the genome associated with the disease, there is no absolute guarantee that its reconstruction will lead to the desired result. Therewith, interference in the work of the genome, the target orientation of which does not correspond to the medical purpose, there is a potential (and very real) probability of having children with improved traits, which will not only lead to the depreciation of children with disabilities but also endanger the very essence of genetic diversity (Espinosa, 2019).

Therewith, the lack of clear legislative regulation aimed at regulating the procedure for editing human DNA and establishing infallible rules for the use of gene modification technology is of great concern. According to the above-mentioned data, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997) relies only on the transnational normative consolidation of the correction of the personality genome, which, however, leaves a considerable number of legal gaps. Despite the indisputable lack of regulatory control, experts have not yet unanimously agreed on its regulation. In general, the issue of creating specialised legislation does not cause discussions because it is the last line of defence of social management (Liu, 2020). However, according to the Polish researcher D. Krekora-Zając (2020), the belief that legislative regulation will prohibit editing human genes in an extra-medical area, looks rather illusory, and O. Feeney *et al.* (2021) argue that although genome reconstruction requires regulation and, in the optimal variant, it will include the latest international legal framework, the path to it is still too long, but even after appropriate adoption, it will lack satisfactory flexibility.

Notably, the steering committee for Human Rights in the fields of Biomedicine and Health (CDBIO) (2022) undertook to examine the existing moral, ethical, and legal problems associated with the technology of editing the human genetic code, which could indicate the need to improve or completely modify Article 13 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Council of Europe, 2019). The European Parliamentary Research Service also puts on the agenda the issue of balancing potential benefits and unintentional harm to the patient, controlling gene editing technology and combining public values with the area of using these innovations, but so far, such normative consolidation remains only at the level of public and scientific discussions (Nordberg & Antunes, 2022). Currently, no country in the world has recorded direct permission to reconstruct the genome in the germ line (Baylis *et al.*, 2020), however, as Yu. Turianskyi (2020) rightly pointed out, purely prohibitive prescriptions cannot achieve favourable consequences.

Thus, the importance of a quick regulatory regulation

of the procedure for modifying the genetic inheritance of a person leaves no doubt because a considerable list of critical components has not yet found a proper settlement – justification for the punishment for correcting genetic material for non-medical reasons, whether it is the patient's consent, including such aspects as methods of obtaining it, its volume, the list of persons authorised to provide it. Given the potential for manipulating the individual biological code of a person, the transformation of the methodology of legal management of genetic engineering technologies is a key factor in minimising negative consequences for individuals and society in general. Attention should also be paid to the lack of terminological interpretation of the concept of "non-medical purpose of influencing the genome of a person" because views on where to draw the line between preventive, therapeutic and non-medical intervention differ in different cases, which, in turn, affects the determination of the level of legality or lawlessness in the implementation of this procedure (Waltz *et al.,* 2021).

In addition, given the profound impact of genome editing on the patient's fundamental rights and Freedoms, a substantial number of researchers suggest using an approach that primarily establishes guarantees for the protection of human rights to direct control over the reconstruction of the genetic code of a particular individual (Wang *et al.*, 2022). It is important to emphasise that the human rights system does not veto gene modification but rather is a tool for integrating two fundamental factors – responsibility for illegal interference in human biological nature and compensation for potential harm and compliance with international legal standards in the field of human rights protection. The Portuguese researcher V.L. Raposo (2019) put forward the idea that using human dignity as a reason to prohibit editing gene information (or banning any other practice) is tempting only because of the simplicity of the argument. This statement can be supported only in the context of considering genetic engineering as a method of treating, for example, cancer, diabetes, or tuberculosis, but given the technological possibilities of artificial modification of psychological, physical, behavioural, or cognitive aspects of an individual, which in no way affect the functional abilities of the body, this reasoning requires a comprehensive study, with the involvement of experts in the field of medicine, biology, psychology, law, and civil society.

Despite the limitless possibilities of progress that the latest methods of correcting the human genetic code bring, new socio-ethical, moral, and bioethical dilemmas are constantly emerging, which can be a warning about their use (Ayanoğlu *et al.*, 2020). It seems impossible to find a consensus on the ethics and legitimacy of the procedure for modifying the human genome, especially its implementation for non-medical reasons, for military, or discriminatory purposes. The lack of a legislative foundation, the continuous development of genetic engineering, the practical lack of transparent practices, and substantial concerns about the inevitable harm to individual rights and future generations prevent the formation of a unified policy to protect human genetic health and ensure control over the confidentiality of genetic data and their own genome. The international community should establish a stable dialogue between experts in the relevant fields and civil society and achieve the implementation of moral, bioethical and legal analysis in further scientific research.

Conclusions

The main purpose of writing this paper was to investigate the regulatory and bioethical factors that arise in connection with using human genome editing technology for extra-medical reasons. Thus, summarising all of the above, it is advisable to summarise the following results.

The legal regulation of the procedure for reconstructing the patient's genetic code at the international level contains a considerable number of gaps that prevent the formation of a holistic policy for regulating and monitoring the process of gene modification. The lack of an extensive legislative framework that would focus on preventing and controlling potential risks associated with artificial manipulation of the human genome is of considerable concern: legal interpretation of the concept of "interference for non-medical reasons", an indicative list of applicants for modification, obtaining patient consent, imposing penalties for illegal interference in the functioning of the human body, compensation for damage in the event of adverse consequences. The legal consolidation of each of these categories is urgent since they are not only a component of the management mechanism for the use of the latest technologies but also those factors that cause an urgent need to implement fundamental human rights in scientific progress in the field of genetic engineering and biomedicine.

Although the international community focuses on establishing effective tools for protecting the rights of each individual and society in general, it is possible to achieve a positive result only by applying a comprehensive approach that provides for both the establishment of the latest standards, rules, and prohibitions in accordance with globalisation changes, and the reform of the existing legal apparatus – from civil law to legislation regulating the conduct of clinical experiments.

The moral component of the procedure for correcting the patient's genome is still on the agenda, especially in the context of intervention for non-medical purposes, because the issue of preserving the unique biological nature of the individual affects the issues of ethical standards, and the preservation of human dignity or intervention in the evolutionary process. Changes in physical characteristics or cognitive abilities create a potential risk of irreparable damage to the individual's identity in the long run, so it is important to maintain a balance between introducing innovative technologies in human infrastructure and preserving bioethical principles. In general, the issue of editing the human genome for non-medical purposes remains a poorly researched subject that requires further public discussion in terms of ethical perspectives, medicine, legal aspects, and philosophy.

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Conflict of interest

None.

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Етичні та правові аспекти редагування генома пацієнта в немедичних цілях

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Анотація. Потреба в пізнанні власної біологічної природи стала вирішальним поштовхом до науково-технологічного прогресу в галузях молекулярної біології, хімії та генної інженерії, що невдовзі перетворилося на спосіб контролювання генетичного матеріалу людини та її еволюції. Хоча процедура реконструювання геному особистості покликана захистити людство від спадкових чи онкологічних захворювань, залишається колосальний ризик використання цієї технології задля модифікації інтелектуальних здібностей чи фізичних характеристик. Мета проведення дослідження – окреслити та схарактеризувати морально-етичні й правові фактори, що постають у зв'язку з використанням технології коригування генетичного коду особи з немедичних міркувань. За допомогою системного аналізу та діалектичного методу досліджено стан законодавчої бази у сфері редагування біологічного матеріалу особистості, водночас метод узагальнення дозволив розкрити основні біоетичні дилеми, пов'язані з визначеною проблематикою. Досліджено можливість видозміни геному людини через призму її взаємозалежності з глобалізаційними метаморфозами в суспільстві, окреслено ключові загрози застосування технології, її впливу на формування новітніх етичних стандартів та дотримання основоположних прав та свобод пацієнта. Акцентовано увагу на виявленні прогалин у нормативному регулюванні процедури корекції людського геному та надано рекомендації з приводу вдосконалення міжнародно-правового фундаменту в окресленій сфері правовідносин. Загалом обрана тематика містить низку недосліджених аспектів, тож стаття покликана привернути увагу наукової спільноти до проблеми редагування біологічної ідентичності людини в позамедичних цілях

Ключові слова: четверте покоління прав людини; коригування біологічної природи особистості; цивільні права пацієнта; інноваційні технології; право на приватність

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Termination of the contract by the breaching party in Civil Code of China

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Abstract. Civil law and regulations governing civil legal relations are an inportant issue in the legal system of every country in the world. Understanding the authority to end a contract and the possibilities of terminating it, especially by a party that does not fulfil its terms in good faith, is very relevant in the realities of the modern world. This study aims to investigate the fundamental principles and possibilities of contract termination for a party in breach of obligations under the Civil Code of the People's Republic of China (PRC). To achieve this goal, the author uses systemic and structural, dialectical, historical and formal legal methods, comparative legal methods, analytical and synthetical, and others. The investigation established that the status of a contract is crucial in the modern world, including in the PRC. According to international customs, contracts must be unconditionally fulfilled, but sometimes situations arise that lead to early termination or cancellation of a particular contract, so the results of this study can be a foundation for a more fundamental comprehension of the conditions and possibilities of termination of a contract by the party that has breached it, while minimising losses and risks in the future. The results of this study will be especially relevant for potential partners planning to sign a contract in China, as they will help them understand the specifics of compliance with the contract terms and conditions and help them take legally correct actions in case the contract terms are no longer fulfilled. It is also important to understand how to avoid similar situations when signing civil contracts and what needs to be done to fulfil the contract in full

Keywords: cancellation of the contract; civil legal relations; opportunistic behaviour; arbitration; legal impasse

Introduction

The dynamic nature of the socio-economic and legal development of modern states requires continuous improvement of contractual systems. Hence, the pressing task for all nations, including the People's Republic of China (PRC), is to revamp the legal framework to align with contemporary standards and realities. In jurisdictions guided by the rule of law, the primary basis for civil law is typically the Civil Code.

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The Civil Code of the People's Republic of China (2020) implemented noteworthy modifications and enhancements to legislation, specifically concerning the regulations governing the termination of obligations in contract implementation. As noted by W. Liming (2022), a contractual deadlock typically arises when one party is unable to fulfill a long-term contract due to shifts in the economy, productivity, or other factors, and the other party declines to terminate the contract. The second paragraph of Article 580 of the Civil Code of the PRC (2020) grants the right to terminate the contract to the party failing to fulfill its obligations. Chinese legislation has confirmed this right, which has sparked discussions in academic and legal circles about the correctness of such a decision.

In his work, Chinese scholar P. Xiao (2022) asserts that actual performance and damages stand as the primary remedies for breach of contract, yet he does not specify the sequence in which they should be applied. Notably, a claim for debt does not encompass actual performance, as it involves a negative evaluation of the breach of contract, and the utilisation of damages is constrained by the challenge of determining the benefit of performance. Consequently, neither remedy inherently holds precedence in a broad context.

A generally accepted principle of contract law is the duty to fulfill a contract with honesty, a judgement recognized by the global legal community. The same principles are used in the Civil Code of the PRC (2020). According to the generally accepted rule that no one can benefit from his own unlawful behaviour, the law provides the bad faith party with the entitlement to cancel the contract if that party has intentionally breached the terms of the contract and failed to fulfil its obligations.

H. Shiyuan (2023) examines in detail in his article the provision of long-term contracts in China with legal protection by the judiciary and the executive branch of government. The problematic of the study is that Article 580 of the Civil Code of the PRC (2020) provides for a new approach to judicial termination, which may provide some improvement, but only for cases related to the fulfilment of a non-monetary obligation. This rule does not apply to the fulfillment of a financial duty.

Some scholars, notably Z. Sun (2020), contend that the second paragraph of Article 580 in the Civil Code of the PRC (2020) grants the party failing to meet its obligation the right to request contract termination. This forms the basis for the appeal by the party in default. This provision represents a common legal scenario for contract termination, stipulating that the non-performing party has the authority to terminate the contract. In 2019, Article 48 of the "Minutes of the Working Conference of the National Court of Civil and Commercial Proceedings" explicitly embraced the concept of a contractual impasse.

T. Zhang (2012) provides an intriguing illustration in his work, citing the case of Xinyu Company v. Feng Yumei, which involves a dispute related to a sales contract. In this case, the right to terminate the contract, bestowed upon the party in default, was the initial clause to take effect. After that, the court ordered a trial to resolve the issue of contractual impasse. In the PRC, there is a legal practice of contract termination by a party that does not fulfil its terms (Han, 2017). Chinese and foreign legal scholars are increasingly turning to the basic provisions on the form and substance of the contract, trying to adapt it more and more to the current conditions.

This study was conducted to examine the main ways of contract termination under Chinese law, as well as to understand the aspects of contract termination in China by a party that does not fulfil its terms.

Materials and methods

Using the systemic-structural method, the author identified the main aspects of the study and described the priority areas of possible changes in legal contractual relations in civil matters in the PRC. The dialectical method became the methodological basis for searching for information and outlining the fundamental features or traits of the legal framework for regulating the performance of contracts in the PRC. The use of the dialectical method also made it possible to analyse and describe the multidimensional nature of the legal nature of contractual relations in general.

Due to the use of the analysis method, it was possible to study the developments of scholars in the context of contract law, and to identify inconsistencies in the provisions of legal acts regulating contractual relations in civil cases in the PRC. The article uses the synthesis method to analyse the provisions of the Civil Code of the PRC (2020). The method of systematic analysis was used to study the general theoretical and methodological foundations of legal regulation of contractual relations and their nature. Using the methods of generalization and abstraction, as well as the methods of synthesis and analysis, the author managed to study not solely the primary content, but also the details of the provisions of the Civil Code of the PRC (2020) relating to termination of contracts by a party which has not fulfilled its obligations.

The systematic approach was used as a method which allowed the author to identify the peculiarities, problematic aspects and the status of protection of legal provisions in the legislation of the PRC. Specifically, the systemic-structural method of research has provided avenues for thoroughly elucidating the legal nature of concepts and categories within civil law. Through the application of structural and functional analysis to the elements of the civil law system, the author successfully clarified the core aspects of civil law relations, the structure of obligations, civil law sanctions, and other pertinent elements.

The use of historical, comparative legal, and formal logical research methods made it possible to analyse the stages and processes of formation and further development of legal regulation of contract law in civil relations in the PRC. These methods were used in the interpretation of civil law provisions both directly in practice (in the process of creating laws, in the systematization and implementation of civil law) and for scientific purposes to provide a doctrinal interpretation, as well as in the formulation of scientific concepts, classifications of legal facts, types of contracts, objects of civil rights, etc. The interdisciplinary method allowed the author to study the peculiarities of contract law as an integral element of civil legal relations.

When considering the provisions of the Civil Code of the PRC (2020) and the regulatory framework governing contractual relations (Order of the President…, 1999), the author used the normative and dogmatic method of research. The comparative legal method was employed to examine and draw comparisons between the stipulations of legislation in the PRC. The comparative method was used for a better understanding and application of legal norms, as well as to identify gaps and shortcomings in civil law, its

improvement and unification. In addition, using documentary analysis and the method of comparison, the author formed a concept of understanding the peculiarities of termination of a contract by a party that has not fulfilled it in the PRC.

Using the methods of systematization and generalization, the author describes, systemizes and summarizes the terminology of the subject under study, in particular, the definitions of the concepts of "contractual impasse", "opportunistic behaviour", "termination of contract", "legal deadlock", "arbitration", etc.

In the course of the research, the author examined the Civil Code of the People's Republic of China (2020) alongside the provisions of the Order of the President of the People's Republic of China No. 44, "Civil Procedure Law of the People's Republic of China" (1991), and the Order of the President of the People's Republic of China No. 15, "Contract Law of the People's Republic of China" (1999).

Results

Civil legal relationships encompass both property-related and personal non-property-related legal connections. As a foundational branch of law, civil law is grounded in the principles of legal equality, voluntary consent, and the autonomy of property for participants engaged in civil legal relationships. Civil law norms regulate a wide range of legal relations, including the functioning of such legal institutions as the institute of property rights, the institute of inheritance, and the institute of civil liability (Bachvarova, 2019). To grasp the intricacies of Chinese legislation in civil and contract law, it's crucial to delineate the regulatory framework that underpins civil legal relationships in China. The Civil Code of the PRC (2020) governs all conceivable types of legal civil relations in the country. When delving into the specifics of the right to terminate a contract, it's noteworthy that the timeframe for exercising this right is typically stipulated by law or through contractual agreements between the parties, and this holds true for the PRC as well. The principal distinctions brought about by the new Civil Code of the PRC (2020) predominantly impact three key facets of contractual relations: time limits of invoking the right to terminate a contract; the possibility and timing of contract termination through litigation or arbitration; the possibility of contract termination by the party that has breached or failed to perform the contract.

This was written in detail by lawyers from the international legal digital platform Conventus Law (Seto, 2020). This research was focused on the analysis of changes in the rights to terminate a contract by the party that breached it and the study of their features.

If there is neither a legal provision establishing such a right nor an agreement between the parties regarding the timeframe for exercising the right to terminate the contract, and a party neglects to act within a reasonable period upon the other party's request, the right is forfeited. According to Article 564 of the Civil Code of the PRC (2020), if the duration for exercising the right to terminate a contract is either stipulated by law or agreed upon by the parties, and neither party exercises the right after the specified period has lapsed, the right is extinguished. This rule is crucial in ensuring the equitable treatment of all parties involved in a contract. In cases where neither the law nor the parties define such a possibility or timeframe, and the right is not exercised within one year from the date the party entitled to terminate the contract fails to act within a reasonable time following the other party's request, the right becomes obsolete and is considered waived. This approach to respecting the rights of the parties is crucial for maximizing the effectiveness of the contract itself, but if the contract cannot be completed or terminated at the stage of performance, this leads to a problematic situation. In this scenario, alternative measures must be employed to safeguard the rights of the contracting parties. Given that the essence of a contract always involves the establishment, modification, or termination of civil legal relations between the parties, these essential components cannot be circumvented (Bayern, 2015). The process of fulfilment of agreements, from conclusion to full implementation of a contract, always goes through the stages in Figure 1.

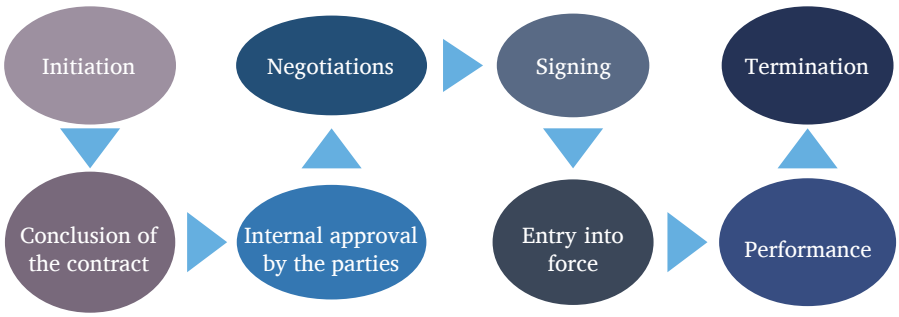

Figure 1. Stages of the process of fulfilment of agreements
Source: authors of the investigation, based on "The 7 stages of contract management and contract lifecycle" (2022)

In China, the conclusion of a contract depends on the joint intentions of the parties, and in the vast majority of cases, this occurs when both parties agree on their common goals. The problem that arises during the execution of a contract is called "contract impasse", and the situation when a contract cannot be proved to be valid until it is concluded or its performance is monitored is called "legal deadlock" (Kinanis & Papavarnava, 2022). In this case, the contract is valid on the basis of its legal force, and the debtor is unable to fulfil its obligations for valid reasons, it is the debtor's responsibility, and it may start the process of contract termination. The party that does not breach the contract does not have such a right. In addition, both parties may be deprived of the opportunity to terminate the agreement through negotiations or otherwise if the creditor had the opportunity to do so at the beginning but later lost it and was unable to use it. The contractual duties emanating from the contractual obligation in these two circumstances cannot be

resolved by termination. An impasse in a contract prevents the debtor from fully and effectively exercising the creditor's rights (Friedman, 1968). Due to contractual obligations in this case, the debtor, also known as the non-performing party, cannot fulfil its contractual obligations. In addition, both parties usually lose efficiency due to the long-term instability of the relationship between rights and obligations. Granting the party in breach the authority to terminate the contract in the event of a contractual impasse can release contractual obligations more quickly and efficiently, preventing the parties from being held to the terms of the contract for a long period of time by termination.

It is important to note that the effectiveness of a contract is determined by national laws that assess the strength of the contract. A contract enters the performance stage when it is concluded and becomes effective. All parties are obliged to comply with the legal aspect of the contract, i.e., to strictly fulfil its terms and their legal obligations, and to ensure all rights of other contracting parties. One party becomes liable to the other for a breach of contract when it fails to fulfill its contractual obligations, whether in part or in full. Despite a breach by one party at any point during implementation, the contract persists. The defaulting party is still obligated to fulfill its contractual duties as outlined in the agreement if such performance remains feasible. However, if the contract's objectives have been met for all involved parties, and no other conflicts arise, it is advisable to terminate the contract. Grounds for contract termination may also include deposit, confusion, or dismissal in addition to performance or performance-related termination. The legal lock feature of the contract will no longer be effective, and the parties will no longer be bound by it if the contract is terminated for cancellation, deposit, confusion, or release.

Given that the two main principles of contract law are fairness and equity (Markovits, 2021), a party may keep the contract in force and not exercise the right of termination. In this case, the legal obligations of the contract will remain binding on both parties. In some cases, the benefits gained by the party in good faith and the harm caused to the party not in good faith by not exercising The ability to terminate the contract could be substantially compromised, suggesting that the party acting in good faith may have exploited its rights in this context. Clearly, in such a situation, the party declines to terminate the contract and insists that the non-performing party fulfill its obligations to continue to perform the contract if there is evidence that the good faith party is abusing its rights.

With regard to the entitlement to terminate a contract, it is generally accepted that the party in non-default has and exercises this right, but the party in compliance usually does not have this right. Looking at Article 562 of the Civil Code of the PRC (2020), there are three different types of contract termination: contractual termination, agreement termination and judicial termination (Jiang & von Appen, 2022). The term "termination of the agreement" (also known as "mutual termination") describes a decision taken by the parties to terminate the original contract and enter into a new contract for this purpose. It is not a termination of a contract based on an application by one party, but rather the termination of a previous contract by entering into a second contract, which is the essence of contract cancellation. This is not a correct legal termination of a contract, as it is fundamentally different from the termination of a contract under civil law. When a contract is terminated, there are two contracts: the original contract and the contract that completes the original contract. Since both statutory termination and termination by negotiation are considered unilateral terminations, they must be used to terminate contracts under civil law. This right to terminate arises for two reasons: first, it relies on the arrangement established between the parties prior to the signing of the contract; and second, it stems from clear legal provisions.

The theory of "effective breach" was introduced in China more than thirty years ago and has garnered some support, although its overall recognition within the Chinese legal system, judicial practice, and academia is not widespread. Criticisms of the effective breach theory revolve around two main aspects: factual and evaluative. However, meeting the two necessary conditions for applying the effective breach theory is generally challenging: the contract can be performed instead, and the benefits of performance can be accurately determined (Wang, 2011). As a result, a breach of contract may not always lead to efficient resource allocation. The sole legal recourse for a party in breach is typically to terminate the contract. The right to terminate a contract for a party acting in good faith is a common law right, whereas the right to terminate a contract for a defaulting party is a unique legal right that can only be exercised in the event of a contractual impasse. In such situations, the party failing to meet its contractual obligations can submit a claim for termination to the relevant authorities. Parties fulfilling the terms of a contract in good faith have the option to terminate the contract, although they typically refrain from doing so (Bakung *et al.*, 2022). Contracts in a deadlock generally remain in force and often do not benefit either party. Legal provisions typically grant the bona fide party the opportunity to exercise the right to terminate the contract, and this is also the case in the PRC. It's important to note that if the party acting in good faith chooses not to exercise the right to terminate the contract, termination becomes unavailable.

Article 577 of the Civil Code of the PRC (2020) stipulates that if one party fails to fulfill its contractual obligations or deviates from the agreed-upon performance, it is held accountable for default. This entails the obligation to either continue fulfilling its duties, take corrective actions, or compensate the other parties for any resulting losses. However, the Civil Code of the PRC (2020) primarily focuses on the legal consequences of default, leaving unanswered the question of how various remedies should be applied in the event of a contract breach. Actual performance adheres to the original agreements, while compensation for damages typically diverges from such performance, leading to distinct legal protection outcomes for parties acting in good faith.

In the current legal landscape of the PRC, the right to terminate a contract due to non-fulfillment can only be exercised through litigation or arbitration. For instance, the right to establish an organisation can be utilised for both private and public purposes in China, whereas the right to terminate a contract (akin to the right to enter into a contract) can be invoked through notice, legal proceedings, or arbitration (Rödl, 2013). There is a broad consensus that the party not in breach holds the right to terminate the contract, encompassing the option of complete termination. In contrast, the right to terminate a contract is more constrained for the party in default. Granting the defaulting

party the right to terminate a contract is a distinctive legal requirement. Consequently, all possible measures should be implemented to ensure the comprehensive protection of the rights of the party acting in good faith. Only the decision of a court or arbitral tribunal determines whether a contract is terminated, as judicial termination has a final effect that can fully resolve the differences between the parties (Dosani, 2020). In all cases, the use of the right of termination in the PRC entitles the recipient to provide compensation for damages caused by the agreement. The defaulting party will continue to be accountable for violating the terms of the contract even after the right to terminate has been exercised.

By way of judicial or arbitral decision, the contract is terminated, its binding force is removed, and the effect of "legal blocking" of the contract is eliminated when the defaulting party terminates the contract by means of public remedies. Neither party is obliged to continue to fulfil the terms of the contract, as it prohibits continued performance in the event of a deadlock and because the contractual obligations lose their legal effect to exist once a court or arbitration tribunal has ruled on its termination. Article 199 of the Civil Code of the PRC (2020) specifies that the right to terminate or cancel a contract is either prescribed by law or agreed upon by the parties, and its calculation starts from the date when the party holding such right becomes aware that it is effective. Once this designated period elapses, the right to withdraw, terminate, or exercise other related rights is forfeited (Civil Code, 2020). If a party neglects to invoke the right to terminate the contract after the expiration of the contractually specified period, that right ceases to exist, as outlined in Article 564 of the Civil Code of the PRC (2020). While the Chinese Civil Code does not explicitly address the pre-emption of the right to terminate a contract, there are no standardized court practices or regulations governing such pre-emption in termination cases. Unless otherwise stipulated by the party fulfilling its contractual obligations in good faith, the right of termination must be exercised within one year from the date the right is acquired, and it will be nullified if not utilised within that timeframe. Due to variations in different types of contracts, there are instances where the one-year period may not be enforceable in court.

To address this issue, it is valuable to refer to Article 564 of the Civil Code of the PRC (2020), which outlines the loss of the right to terminate a contract if neither party exercises such right within one year from the required date or fails to do so within a reasonable period after the other party's request (Seto & Li, 2022). Consequently, as per the legally stipulated rules, the termination period for the right to terminate a contract in the PRC is one year. This standardisation aids in unifying litigation rules, providing clear legal guidance for court practices, and avoiding a differentiated approach to various types of civil contracts in this context. In general, any civil contract can be terminated through three means. Firstly, by providing notice of termination, and secondly, by initiating litigation or applying for arbitration. Concerning the first method of contract termination, the termination moment is when the notice is received by the other party. In the case of termination through the commencement of litigation or arbitration, the termination time was not explicitly specified before the adoption of the Civil Code of the PRC (2020). In court practice, two methods are commonly employed to determine the termination time of a contract through the initiation of litigation or arbitration:

- the date when a copy of the complaint or arbitration claim is served on the other party;
- the date when the court or arbitration award becomes effective.

As per the stipulations in the Civil Code of the PRC (2020), the primary method for determining the moment of contract termination is applied when finished due to the initiation of litigation or arbitration. Consequently, when a contract is terminated through legal proceedings, the termination moment is when a copy of the complaint or an arbitration application is served on the other party.

Chinese law, under Article 110 of the Order of the President of the People's Republic of China No. 15 (1999), allows for a situation where a defaulting party is not obligated to continue fulfilling its non-monetary obligations under the contract. This provision aims to prevent a scenario where one party repeatedly demands the continuation of non-monetary obligations, while the other party that failed to fulfill its obligations seeks protection of its interests. To address this, PRC legislators introduced the concept of the right of the defaulting party to terminate the contract, without explicitly addressing the liability for breach of contract. Without the application of the principles of this concept, the contract cannot be terminated, leading to a deadlock. As highlighted earlier, Article 580 of the Civil Code of the PRC (2020) grants the parties the right to demand termination of the contract, and the term is properly understood as encompassing the defaulting party, thereby transferring the right to terminate the contract to the defaulting party while retaining its liability for breach of contract (Chen, 2021). This right of termination for the defaulting party specifically applies to non-monetary obligations and must be exercised through court or arbitration institutions; it cannot be invoked through legal means or agreement. This new provision in the Civil Code of the PRC (2020) contributes to resolving a contractual impasse based on the principle of good faith, facilitating a more straightforward resolution for all parties involved in the contractual process.

The Civil Code of the PRC (2020) outlines that good faith performance of the contract and damages are the primary remedies for breach of contract. However, it does not specify the procedure and possibility of their application, as neither remedy is universally applicable. Liability for breach of contract should be primarily determined based on the fulfillment of the contractual purpose and its effectiveness.

Discussion

There are generally two contrasting interpretations regarding whether the second paragraph of Article 580 of the Civil Code of the PRC (2020) permits a party in breach of a contract to legally terminate it in the event of an impasse. The first perspective supports the right of the defaulting party to terminate the contract, while the second rejects this right (Mai, 2022). To delve deeper into these viewpoints, it is beneficial to examine them more closely. Researchers advocating for the belief that the defaulting party should have the opportunity to terminate the contract in the event of a deadlock often adopt a one-sided approach. Those in favor of this stance may not always consider that such an option also significantly restricts the circumstances under which the contract may be terminated by the defaulting party. The primary rationale for endorsing the termination of a contract is often rooted in the fundamental principle of contract

law – efficiency. Efficiency, in this context, can manifest in one of two forms: promoting the growth of social wealth and actively preventing a decline in wealth (Fantoni, 2022). In a contractual deadlock, social wealth cannot increase, and the economic well-being of the party in deadlock diminishes. Allowing the defaulting party to terminate the contract can prevent a detrimental reduction in social wealth, aligning with the principle of efficiency. The second perspective is one of mandatory dismissal.

The termination of a contract is aimed at promptly releasing the defaulting party from its constraints, with the primary objective not being punishment or holding the defaulter liable. Granting the defaulting party the right to terminate the contract in the event of an impasse can expedite the release of the parties from its restrictions. However, it's crucial to note that the right to terminate does not absolve the defaulting party of its liability for breach of contract. Advocates of the second approach, who do not support giving the defaulting party the right to terminate the contract, assert that contracts should be meticulously adhered to, and the law should not provide the defaulting party with such termination rights. Among the opinions of scholars supporting this notion, the phrase "No one can be heard by referring to his own sinfulness" is often cited (Amianto, 2019). This principle serves as the foundation upon which numerous researchers, including those in civil law in the PRC, base their arguments. Generally, the reluctance to concede to a party that has, after entering into a contract, failed to fulfill its obligations can be understood. The main reasons for this reluctance include:

- Ignoring strict compliance with the contract. The right of the party that does not fulfil the contract to terminate the contract violates the concept of strict compliance with the contract, as it is an "institutional innovation" that significantly weakens the binding force of the contract.
- Violation of the basic rule of law that no party may benefit from a breach of contract. Breach of contract is unacceptable behaviour. Legal rights cannot be created by improper behaviour. When a contract is at an impasse, the party in default is the one who breaches the contract and acts in an improper manner.

Granting the defaulting party the right to terminate the contract may lead to opportunistic behavior, as it enhances the contractual rights of the defaulting party, allowing it to gain advantages contrary to basic legal principles (Chernykh, 2022). The purpose of the system is to deter opportunistic behavior, and enabling the defaulting party to terminate the contract in an impasse could increase the risk of opportunism, such as malicious breach of contract that undermines the binding force of the contract, and diminish the likelihood of the creditor's claim for continued performance and enforcement of its rights. These exceptional circumstances hinder the exercise of the creditor's rights and interests.

The unilateral termination of a contract by a party breaching its terms is a widely debated topic globally. Vietnamese scholar N.T. Trang (2017), for instance, explores the legal regulation possibilities in Vietnam, noting differences with the results of this study. According to the Vietnam Civil Code (2015), unilateral termination of a contract is recognized, with fines and compensation collected even after such termination. Despite distinctions, there are similarities, such as the provision that a contract will be terminated if the other party significantly breaches its obligations, ensuring proper fulfillment of the original contract terms. A comparable situation is observed in Italian law, where scholar A. Canella (2023) considers contract termination possibilities for a party not fulfilling its terms under the Italian Civil Code (1942). Similar to the PRC, Italian civil law allows for such a possibility, with specific provisions governing the process of unilateral contract termination: to study in detail the initial terms of the contract; to write a letter to the legal representative complaining about the failure to fulfil obligations under the contract; to assess the losses and request compensation; to apply to court or arbitration proceedings to resolve the conflict and terminate the contract.

As for the legislation of the England, P. Brampton (2022) believes that the Civil Law of his country provides for the possibility of unilateral termination of a contract, but this right can be easily lost if the right measures are not taken in time (Civil Law Act…, 1966). In his work, he emphasizes the importance of identifying all possible termination rights at the very beginning of the process and carefully choosing which one to exercise. In general, early termination of a contract should always be approached with great caution, as if a party intends to terminate a contract without having the legal right to do so, it may hold itself liable for the other party's losses caused by the wrongful termination. These losses can be very significant, especially if the contract is terminated at an early stage, i.e., at the beginning of a project. In the England, as in the PRC, a party may have either a general right of termination or a contractual right of termination, or in certain circumstances it may have both (Berman & Kim, 2015). As in the PRC, a party wishing to terminate a contract early must justify its decision by one of three conditions: violation of the original terms of the contract; serious breach of the "intermediate term" when the initial terms of the contract are fulfilled but very late; categorical refusal to fulfil the terms of the contract.

Similarly, to the PRC, after justifying the reasons for the desire to terminate the contract, the party that has breached its terms must apply to a judicial authority or an arbitration representative to resolve the conflict. Therefore, in the People's Republic of China (PRC), parties typically enter into a contract to achieve their financial benefits. However, if the fulfillment of contractual terms faces obstacles, the primary purpose of the contract, both legally and practically, cannot be realised. Conversely, meeting a debt obligation may involve excessively high fulfillment costs, surpassing the anticipated financial benefits from the successful implementation of the contract. Proper application of liability for breach of contract is crucial to safeguard the objective interests of the parties involved in the contractual process. In court proceedings, accurately applying liability for breach of contract is challenging due to diverse contract types, breach forms, and objective difficulties like information gaps. Therefore, to prevent the nullification of general termination principles in China for minor negligence and to discourage intentional breaches by the defaulting party, additional restrictions on the circumstances permitting the defaulting party to terminate the contract should be implemented.

Conclusions

The results of the investigation show that a party acting in good faith has the right to terminate a contract, a principle applicable in the civil law of the People's Republic of

China (PRC). The PRC Civil Code addresses the application of actual performance to monetary debts and excludes it for non-monetary debts. However, the code does not specify whether actual performance or compensation for damages should take precedence, leading to a lack of consensus in the theoretical community. In litigation, when a non-breaching party seeks to rescind a contract and claim damages while the contract is still performable, judges must judiciously interpret the rights to litigation and efficiency. Common disputes arising from contract breaches involve the non-defaulting party seeking continued performance and the defaulting party seeking damages or rescission. Judges are often faced with the dilemma of choosing between actual performance and compensation for damages.

The study reveals that the non-defaulting party can terminate the contract based on legal provisions and hold the defaulting party accountable for breaching the contract, especially when it hinders the contract's intended purpose. However, this exception doesn't apply if the defaulting party has the capacity to fulfill its obligations. Accelerating the development of a case database and adopting a categorical approach can guide the formulation of judicial interpretations related to the rules of liability for breach of contract. This ensures that the PRC Civil Code, as a fundamental law in a market economy, effectively regulates trade relations and organises the economy. Further research on the right to terminate contracts in the PRC by parties failing to comply with provisions can enhance understanding of the concept of a contractual impasse and explore changes in PRC legislation governing the roles of all parties in contracts.

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Conflict of interest

None.

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Розірвання контракту стороною, яка порушила зобов'язання в Цивільному кодексі Китаю

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Анотація. Важливе місце в правовій системі кожної держави світу належить цивільному праву та нормативно-правовим актам, які регулюють цивільні правовідносини. Дуже актуальне в реаліях сучасного світу розуміння права на розірвання контракту та можливостей припинення його дії, особливо коли це стосується сторони, що недобросовісно виконує його умови. Мета цього дослідження – вивчити основоположні принципи та можливості розірвання контракту для сторони, яка порушила зобов'язання, згідно із Цивільним кодексом Китайської Народної Республіки. Для досягнення поставленої мети застосовано системно-структурний, діалектичний, історико- та формально-правовий, порівняльно-правовий методи, методи аналізу й синтезу та інші. У процесі дослідження встановлено, що статус контракту має вирішальне значення в сучасному світі, зокрема і в КНР. Згідно з міжнародними звичаями, контракти повинні беззаперечно виконуватися, проте інколи виникають ситуації, які призводять до дострокового розірвання чи анулювання певного контракту, тому результати, які були досягнуті цим дослідженням, можуть стати основою для кращого розуміння умов та можливостей розірвання контракту для сторони, що його порушила, з мінімізацією втрат та ризиків на майбутнє. Особливо актуальними результати цього дослідження будуть для потенційних партнерів, які планують підписання контракту в Китаї, оскільки дають змогу зрозуміти особливості дотримання умов контракту та допоможуть вчинити юридично правильні дії, у разі якщо умови контракту перестануть виконуватися. Важливе також бачення того, як можна уникнути схожих ситуацій, підписуючи цивільні контракти, та що потрібно зробити, аби виконати контракт у повному обсязі

Ключові слова: анулювання контракту; цивільні правовідносини; опортуністична поведінка; арбітраж; юридичний глухий кут

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Legal aspects of the cybertechnology development and the cyberweapon use in the state defence sphere: Global and Ukrainian experience

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Abstract. The research relevance is determined by the development of the digital sphere, which entails an increase in the number of cybercrimes and cyberattacks that pose a threat to the security of people and organisations and can lead to serious consequences. The study aims to examine how cyber technologies are formed and developed, as well as how they are used in the field of state defence in Ukraine and some European Union countries, namely Germany, France, the United Kingdom, and Indonesia. In the course of the study, were used structural-functional and dialectical methods, the method of synthesis, logical and comparative analysis, and the method of generalisation. It is established that cybertechnologies are gaining more and more development both in the world and in Ukraine, and cyberweapons, due to their effectiveness and negative consequences, are equated with methods of mass destruction. That is why the issue of cyber defence is one of the main challenges of our time. Ukraine needs to adopt international experience to successfully formulate policies and create its own legal and organisational framework for cybersecurity. Using the experience of other countries, Ukrainian experts will be able to improve their technologies and strategies, strengthen defences in the information space, and develop new advanced defence systems. The importance of the National Coordination Centre for Cybersecurity should be emphasised. The body's work is focused on ensuring coordination of the activities of the

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national security and defence entities of Ukraine in the implementation of the cybersecurity strategy in the country and on improving the efficiency of the public administration system in the formation and implementation of the state policy in the field of cybersecurity. The study is practically important, since all the theoretical provisions, conclusions and recommendations can be used by legislators and other specialists to improve the system of legal guarantees of cybersecurity in the field of defence of the State

Keywords: virtual space; digital development; computer attacks; information wars; national security

Introduction

The problems related to cybersecurity have proved to be the most urgent and, at the same time, the most difficult to solve in the field of national security and defence for all nations around the world. Information and cyber elements play a systemic role in all forms of armed struggle, including military operations. This is especially true in times of crisis when the number of cyberattacks, and cyber incidents is growing significantly. Along with the digital revolution and the development of information technology, the number of cyber threats is growing. Every aspect of society's existence, the efficiency with which vital infrastructure, including public administration, as well as security and military operations, functions, are targets of cyberattacks, which in turn is truly creating a new security environment. The relevance of the problem is driven by efforts to develop cyberspace capabilities to ensure the protection of the state.

Currently, due to insufficient study of the legal and regulatory framework for the use of cyber technologies in Ukraine, as well as the lack of effective and accurate methods for detecting and countering cyber-attacks, several problems may arise, including disruption of critical infrastructures, information operations that can be used to manipulate public opinion, disinformation and destabilise the socio-political situation, and leaks of confidential information that can be used against the national interests of the state (Sopilko & Rapatska, 2023).

According to research by A. Pekhnik and Yu. Zavgorodnya (2021), cybertechnologies are gaining ground both globally and in Ukraine. This is noticeable not only in the commercial sphere but also in the political sphere (election processes, terrorism). New threats and trends in cybercrime are on the rise. As noted by L. Samchuk and D. Nastachenko (2023), cyberspace is a new environment created for the exchange of information and the use of cyber weapons due to the rapid development of information technology and modern digital space. According to Ukrainian legislation, "cyberspace" is an environment (virtual space) that facilitates public relations and/or communication and is created when compatible (linked) communication systems are in operation and electronic communications are available via the Internet and/or other means of international data transmission.

According to a study by Yu. Kohut (2020), the development of Ukrainian cybersecurity legislation is gradual, considering international legal documents and cybersecurity strategies of other countries. The Law of Ukraine No. 2163-VIII "On the Basic Principles of Cybersecurity in Ukraine" (2017) is the most significant legal act, as it defines not only the legal and organisational framework for ensuring the protection of the vital interests of a person and a citizen but also the interests of society and the state in cyberspace. It defines the main tasks, directions, and guiding principles of state policy in this area, the powers of state bodies, enterprises, institutions, organisations, and citizens in this area, as well as the main areas of coordination of their actions to ensure cybersecurity. This law is a comprehensive piece of special legislation relating to cybersecurity.

According to L. Veselova (2021), to successfully formulate an appropriate policy and build its system of legal and organisational protection of cybersecurity, in particular in the context of hybrid warfare, Ukraine needs to acquire international experience in the field of administrative and legal protection of cybersecurity. This experience should be applied in practice. To ensure the success and effectiveness of legal support for cybersecurity, simultaneous actions are needed to develop national legislation appropriate to address the challenges of hybrid warfare in this area and to cooperate with professional international institutions to ensure cybersecurity. According to research by Yu. Chernysh *et al.* (2023), cooperation at both the national and international levels is needed to protect against various cyber threats. Cyberattacks are becoming a growing threat to Ukrainian and global organisations. As noted in the research results of A. Biliuha (2021), given the powerful military potential, cyber weapons are gradually becoming more destructive and dangerous than traditional weapons and military equipment.

Currently, the issues of problems faced by the information and communication technology professions in Ukraine, their current state, and further prospects for the development of cybersecurity professions have not been sufficiently studied. Considering the aforementioned, the study aims to determine the legal aspects of the formation, development, and implementation of cyber technologies in the field of state defence in the example of Ukraine, Germany, France, and the United Kingdom. To achieve this goal, the following tasks are set: to study the stages of formation and legal aspects of the development of cyber technologies in Ukraine, to study international experience in the field of cyber defence, and to highlight the advantages of foreign cyber defence strategies that can have a positive impact on improving the national strategy.

Materials and methods

To study in more detail the issues of formation and development of cyber technologies, as well as their application in the field of state defence, theoretical research methods were used, namely analysis, synthesis, as well as dialectical and structural-functional methods.

Using the structural-functional method, the authors examine the main concepts of this study, namely, "cyberspace", "cyberattack", "cybersecurity", "cyber-defence", identify the legal aspects of cyber technology development, study the activities of cyber security agencies, and consider the experience of using cyberweapons in the defence sector of such countries as Ukraine, Germany, France, the United Kingdom, and Indonesia. The essence of the concept of cyberweapons is studied based on national and international documents. The guidelines for the application of international law in cyber warfare are analysed. The authors identify

devices, mechanisms, equipment, or software used to carry out cyberattacks, as well as their main purposes and possible consequences of use. The stages of development of cyber technologies in the field of security and defence are studied, which helps to understand new challenges and adapt to them. The authors analyse the technical experience of using cyber weapons on the example of the Stuxnet virus. The factors that led to the emergence of such threats as cyberwar, cybercrime, cyberterrorism, and cyberespionage are identified. Using the dialectical method, the research, and views of other scholars on this issue were studied and a unified view of the development and use of cyber technologies to protect the state and citizens in various spheres of life was formed.

The methods of analysis and synthesis were primarily used in the study. The subject of this study was divided into several parts to study the problem in more detail. In the first part, the authors identified the peculiarities of cybersecurity in Ukraine and analysed the historical and legal aspects of the development and establishment of the cyber defence institution. The authors identified the system of cybersecurity actors and the peculiarities of their legal status. The forms of ensuring information security were highlighted. The authors also analysed the legislative framework of Ukraine in the field of cyber defence, analysed the activities of the State Centre for Cyber Defence, the National Coordination Centre for Cybersecurity, the National Security and Defence Council of Ukraine, and the governmental computer emergency response team Computer Emergency Response Team of Ukraine (CERT-UA), and examined their main functions and tasks. The second part of the study analysed the experience of European countries (Germany, France, the United Kingdom, and Indonesia). The main document designed to ensure cybersecurity in the UK, as well as the activities of the National Cyber Security Centre (NCSC), are analysed. The structure of state bodies in the field of cybersecurity in Germany is studied, and the German Cybersecurity Strategy and the activities of the National Cybersecurity Council are analysed. The main regulatory acts of France in the field of cyber security – the National Digital Security Strategy and the White Paper on Defence and National Security – are studied.

The authors highlight the positive aspects of other countries' experience in applying cyber technologies in the field of state defence and identifies what Ukraine needs to pay attention to for successful policymaking and the creation of an organisational and legal framework. The second method – synthesis – was used to formulate recommendations for improving Ukrainian legislation in the field of cyber defence and to organise all the information received into a single work.

Results

With the development of technology, cyberspace is becoming a new and equally important area where countries compete to protect their national interests. It also includes international terrorist organisations and transnational organised crime.

One of the main goals of Ukraine's national security policy is to create a cybersecurity system and ratify the Law of Ukraine No. 2163-VIII "On the Basic Principles of Ensuring Cyber Security of Ukraine" (2017). The basic law in the field of cybersecurity defines the concepts of critical infrastructure facilities, information infrastructure facilities and mechanisms for protecting such facilities, the idea of creating a national cybersecurity system and its components, and the powers and coordination of cybersecurity actors. Part 1 of Article 8 of the Law of Ukraine No. 2163-VIII states that the national cybersecurity system of Ukraine consists of a set of security entities and related political, scientific, technical, informational, educational, organisational, legal, operational, investigative, intelligence, counterintelligence, defence, engineering and technical nature, as well as measures of cryptographic and technical protection of national information resources and cyber defence of critical information infrastructure.

The creation of the State Service for Special Communications and Information Protection (SSSCIP), which includes the State Centre for Cyber Defence (SCCD), on 1 July 2015 is one of the priorities of the national cybersecurity system. The State Centre for the Protection of Information and Telecommunication Systems of the State Service for Special Communications was the basis for its establishment (Horun, 2023). Effective cyberspace operations are essential for the fulfilment of national security tasks. The effectiveness of actions is determined by the need to create a cyber-defence system as soon as possible, which focuses on the preparation and implementation of defence measures, as well as the necessary capabilities for the development of forces and weapons in cyberspace, which will ensure the creation of the necessary potential in the field of defence of the state as a whole and other component of the security sector.

Thus, as a result of the development of IT technologies, the widespread use of the Internet and the illegal activities of cyber criminals, a whole new class of weapons known as "cyberweapons" has emerged. Cyberweapons have evolved into a first-strike weapon that aims to deliberately interfere with another state's ability to command, operate, and influence targets for destruction or control, including not only the military domain, but also other infrastructures, communications, governance systems, a state's population, economy, and leadership (Rid & McBurney, 2012). Due to their constant functional modification and improvement, no universal definition of "cyberweapons" exists in the global practice. Nevertheless, the essence of this phenomenon is explained in several national and international documents. In the Guidelines for the Application of International Law in Cyber Warfare, an international scientific group stated that cyber weapons are an offensive tool for cyber warfare. Their intended use and design imply the possibility of damage, destruction and serious consequences when used. Cyber tools can be any apparatus, mechanism, equipment, or software used to carry out cyberattacks. There are stages in the genesis of cyber technologies in the security and defence sector that help to understand and adapt to new challenges (Table 1).

Table 1. Stages of development of cyber technologies in the field of state defence

Stages	Main actions	Expected results
Stage 1 (up to 2014). Beginning of cyber capability development	Establishment of core cyber defence units, as well as the creation of fundamental cyber defence strategies and policy programmes	Formation of the first departments and units in the field of cyber defence

Table 1, Continued

Stages	Main actions	Expected results
Stage 2 (2014-2018). Cyber capability improvement and expansion	Formation of specialised research centres; cooperation with foreign partners; increase in the number of cybersecurity specialists	Development of in-house cyber capabilities to counter cyber attacks
Stage 3 (2018-2020). Integrated cyber defence system implementation	Creation of a system for countering new types of cyberattacks and development of improved monitoring and response systems	Creating cyber defence systems capable of detecting and countering cyber-attacks in real-time
Stage 4 (2020-2023). Development of cyber weapons and cyber operational capabilities	Development of attacking cyber capabilities, development of cyber operational capabilities, development of coordination with other types of cyber weapons	Formation of a new cyber weapons capability to protect national interests
Stage 5 (after 2023). Integrating cyber technologies into the overall defence strategy	Integration of cyber defence and cyber-attacks into a single defence strategy, development of a system for the use of cyber weapons in various cyber conflict scenarios	Creation of an adaptive cyber defence strategy that can be used in conjunction with traditional military means

Source: compiled by the authors

It is necessary to objectively assess the conflict in cyberspace, find solutions to countering cyber weapons and transition to the principles of active defence, considering the experience of leading states and international organisations. In this regard, it is necessary to emphasise the importance of the National Coordination Centre for Cybersecurity, as it is a functional unit of the National Security and Defence Council of Ukraine. That body aims to ensure national security and defence coordination in implementing the country's cybersecurity strategy and to improve the efficiency of the public administration system in formulating and implementing the state policy in the field of cybersecurity. Furthermore, the State Centre for Cyber Defence of the State Service for Special Communications and Information Protection of Ukraine has a governmental group for responding to computer emergencies, CERT-UA (Computer Emergency Response Team of Ukraine). The main task of CERT-UA is to methodically protect the activities of state institutions and citizens of Ukraine from unauthorised intrusion into the country's cyberspace, counteract cyber weapons. However, this body cannot conduct investigations or prosecute cybercriminals, as it does not have the powers of an investigative body (Trofymenko *et al.*, 2019).

Studying European countries, the United Kingdom's experience is crucial, as it is currently the world's leader in cybersecurity. The National Cyber Security Strategy is the main document designed to guarantee cybersecurity in the UK. It is particularly important to note that the National Cyber Security Centre (NCSC) was established on 1 October 2016 to implement the Strategy. To keep the nation safe online, the NCSC offers governments, companies, and the general public a rare opportunity to successfully collaborate on cybersecurity. Overall, a careful analysis of the UK National Cyber Security Strategy reveals that there are many intriguing and emerging aspects of the strategy that require further research. Some advantages of the Strategy should be highlighted, namely (Condruţ, 2023):

- major effort in public awareness on protection from possible violations of rights in the area under study;
- official interpretation of certain concepts in the field of cybersecurity (e.g., cyber defence, active cyber defence), definition and consolidation;
- detailed description of directions and stages of implementation of innovations in the field of cybersecurity;
- designation of specific areas of employee training, as it is impossible to guarantee cybersecurity without appropriate staff support.

Germany demonstrates the complex structure of government agencies in the field of cybersecurity. The state devotes considerable effort to supporting cyber defence. Furthermore, Germany actively uses international cooperation, which contributes to the development of local laws and technologies, as well as to the faster and more efficient detection of threats in this area. Another positive aspect is that the number of initiatives aimed at implementing state policy in the field of cybersecurity is constantly increasing. Similar to the UK, Germany adopted the German Cybersecurity Strategy in 2011. According to this strategy, the federal government responds to threats in the following strategic areas by implementing measures based on existing institutions, depending on the level of threat. One of the main tools for preventing cybersecurity is measures to identify and eradicate the constructive causes of crises. To implement these measures, the National Centre for Cyber Defence and the National Council for Cybersecurity were established, with the main goals (Schallbruch & Skierka, 2018):

- protecting the largest critical information infrastructures;
- improving the IT security system of the Federal Republic of Germany;
- strengthening IT security in public administration;
- maximising operational cooperation of all government agencies and strengthening coordination of measures to protect against IT incidents;
- forming a successful campaign to combat cybercrime;
- forming global and European cooperation in the field of cybersecurity;
- using reliable information technologies.

Considering the experience of France, it is worth noting the National Digital Security Strategy of 2015 and the White Paper on Defence and National Security of 2008 as the main regulatory acts that define the strategic guidelines of the state security policy. Therefore, the White Paper includes the following as the most likely threats to the territory of

France and the European Union: organised crime, terrorism, ballistic missile use, natural hazards, epidemiological problems in large cities and hidden immigration, mass attacks on information networks; espionage and strategic influence. The Strategy has five goals, including adaptation to digital transformation and aims to combat new threats associated with the evolution of digital technologies (Darwish & Romaniuk, 2021).

According to Law No. 3 of 2002 on National Defence of the Republic of Indonesia, the objectives of national defence are to protect national security from all threats, both military and non-military, and to preserve and protect the sovereignty and territorial integrity of the unitary state. The country's ability to resist, act and restore cyber defence must be strengthened due to non-military threats, especially those arising in cyberspace. This is done in support of the National Cybersecurity Strategy implemented by the Ministry of Communications and Information Technology (Inggarwati *et al.*, 2020).

Technical experience in the use of cyberweapons is already available: the Stuxnet virus was created in the United States of America. In the future, the status of cyber weapons in the digital space will only grow. It is believed that the Stuxnet cyber virus was used in one of the most famous cyber-attacks of all time. In 2010, this system code was used to compromise the SCADA1 systems that operate more than a thousand uranium enrichment centrifuges manufactured by Siemens, based in Natanz, Iran. The attack rendered the company's centrifuges unusable. In addition, the virus behaved in a way that prevented centrifuge operators from detecting any anomalies during the operation of the device. The malicious code also altered the equipment's operating parameters, making the process uncontrollable and leading to the physical failure of the centrifuges (Collins & McCombie, 2012). This incident received significant attention, although the United States has not yet officially acknowledged its involvement. Many other countries have also experienced some form of attack on infrastructure and websites operated by governments and non-governmental organisations. These include both highly developed cyber nation-states (the United States, the United Kingdom, Israel, South Korea, and China) and less developed cyber nation-states. All these examples demonstrate the growing importance of cyberspace in international relations and the need for legal regulation among the subjects of this legislation. It is important to remember that technologies are developing much faster than the rules for their use. As a result, national laws relating to cyberspace should be consolidated, and global harmonisation of these standards is needed.

Unlike previous cyberattacks, cyber warfare is now considered a major threat to state and national security. In addition, many intelligence services of countries use the Internet for cyber espionage, information gathering, hacking into computer systems, sabotage, and economic espionage. Due to the development of new technologies, the level of cyber warfare is constantly increasing. I. Zhaborynska (2018) argues that China is the world's leader in cyber warfare. Some states started to address cyber warfare, allocating the necessary funds to organise defence systems, and supporting special units whose main task is to improve the country's security on the Internet and protect against attacks. Hostile cyber-attacks have become more frequent and sophisticated, and some of them may come from within rather than without.

Discussion

Nowadays, hackers can attack both individuals and entire states. Scientists have started to use the phrase "cyber weapons", comparing them to weapons of mass destruction due to their effectiveness and possible consequences. Therefore, cybersecurity is one of the main development vectors. It is impossible to refute the conclusions of L. Kovács (2018) that states should have adaptive and dynamic cybersecurity plans to respond to attacks in cyberspace that are constantly evolving and changing. Even though cyberspace has no physical borders, countries often develop in-house cybersecurity strategies based solely on their ideals and perceptions of security. This leads to the existence of different approaches to ensuring security in the information space in different countries. The results of the study showed that initially, the cybersecurity strategies of European countries (e.g. Germany, France) were developed from the perspective of the information society and its security forecasts, while other countries, such as the United States and Singapore, took a different approach to developing cyber defence strategies, focusing on critical information infrastructures and their security issues.

The study by A. Klimburg (2012) outlines the key objectives of a national cybersecurity strategy and highlights the following factors: national security and cybersecurity strategy should be linked; conflicts may arise between military and civilian approaches to a national cybersecurity strategy; the development and implementation of the strategy should take into account various national characteristics; the national cybersecurity strategy should be allocated appropriate resources and objectives should be quantified; the process of developing the human resources required to build cybersecurity is often more complex than expected.

The study results of H.S. Lallie *et al.* (2021) note the many instances of fraud since the outbreak of the COVID-19 epidemic, where individuals or organisations impersonate government agencies (such as WHO) and organisations (such as supermarkets, and airlines), are noteworthy. These scams target both the millions of people who work from home and the general public. Remote employment has exposed people to certain security issues and challenges in the information space that the public or businesses have never experienced before. Cybercriminals have taken advantage of this situation to intensify their attacks using classic deception that exploits people's increased levels of stress, anxiety, and worry. Critical infrastructure, including medical services, has also been targeted.

Cyberspace and related technologies are one of the most important sources of power in the third millennium. Y. Li and Q. Liu (2021) highlight the concept of power dispersal, a phenomenon caused by the characteristic features of cyberspace, including low entry costs, anonymity, vulnerability, and asymmetry. This means that governments have to share power in this area with other actors, such as individuals and private enterprises. The government will not lose its national security as a result of this phenomenon. Numerous methods can be used to assess this effect. Today, the possibility of a decline in the quality of life is a challenge to national security. It is no longer possible to define national security in terms of military issues, and internal and external borders. Cyber threats are complex, irregular, and extremely harmful as they involve infrastructure and networks that are highly vulnerable. Individuals and businesses are also susceptible to their negative impact. Government action alone is not

enough to counter these threats. Effective bilateral cooperation is needed between the ruling elite and the private sector, which has a common interest in dealing with them. These threats cannot be contained by traditional means, such as the use of military and police force.

However, the authorities now face additional challenges in the field of state protection. As J. Cao *et al.* (2021) note, organised crime and terrorist groups have become active participants in cyberspace due to their low cost of entry, anonymity, unpredictable geographic location, dramatic impact, and lack of public transparency. These factors have led to threats such as cyberwarfare, cybercrime, cyberterrorism, and cyberespionage. The aforementioned study results are noteworthy as they distinguish cyber threats from traditional national security threats, which are more covert and primarily affect identified governments and nations in a particular region. As such, national defence in the traditional sense is under attack and becomes less effective in this area. Several scenarios could lead to serious and sometimes widespread physical or economic damage. For example, a virus could attack financial documents in the economic system or disrupt the stock market; it could also send the incorrect command, causing a power plant to shut down; it could even interfere with air traffic control, leading to air crashes.

Following L.B.S. Putra and R. Sutanto (2022), cyber defence operates at multiple levels, from individual to collective to government. Sectors that control vital infrastructure, including energy, transport, the financial system, defence security and other public services. Failure of electronic systems in these sectors can cause financial losses, reduced public confidence in the government, disruption of public order and other problems. This risk reflects the requirements for reliable cyber defence in one country. According to research, cyber defence institutions currently support IT in general, rather than being focused on supporting targeted national defence requirements. While efforts to establish cyber defence institutions are ongoing, they mainly consist of tying cyber defence responsibilities and functions to the current structure. Reliable availability and accessibility of cyberspace are essential for the success of conventional military operations in other domains. The sphere of IT is now institutionalised as a policy within the North Atlantic Treaty Organisation.

The conclusions of M. Górka (2023) on how cyber technologies have changed traditional ways of thinking, opening up new avenues for action, are noteworthy. All of this supports the expansion of the definition of "cyber warfare" beyond the conventional interpretation to include conflicts related to information warfare. The term "cyber warfare" indicates that this phenomenon makes it possible to use cyber solutions alongside military operations, even instead of conventional warfare. This new form of armed conflict has changed the traditional definition of war. Therefore, the meaning of terms such as attack, defeat and battlefield is gradually changing. Attacking an enemy's strategic cyber structures, network, information, and communication can lead to victory.

In the long history of military technology advancing new operational and tactical concepts, cyber warfare is yet another form of conflict. According to J. Arquilla and D. Ronfeldt (1997), many experts initially described cyber warfare as the acquisition and exploitation of enemy intelligence. Modern armed forces are increasingly dependent on secure, instantaneous flows of vast amounts of information, and any disruption in these flows could very soon have catastrophic consequences for combat readiness. An enemy force would be unable to fight a battle or a military campaign as it would be unable to maintain control of its units and track their location or status.

Therefore, in this context, the state policy on cybersecurity should aim to achieve significant results and be aimed at forming a protected national segment of cyberspace; avoiding interference of foreign states in internal affairs and their encroachment on information resources; increasing the state's defence capability in cyberspace; and reducing the vulnerability of cyber defence objects.

Conclusions

The study revealed that the Law of Ukraine "On the Principles of Ensuring Cybersecurity of Ukraine" is the most significant legal act in the area under study, as it defines both the legal and organisational basis for guaranteeing the protection of vital interests of a person and a citizen, as well as public and state interests in cyberspace. It identifies the main tasks, directions, and guiding principles of state policy in this area, the powers of state bodies, enterprises, institutions, organisations, citizens, and citizens, as well as the main areas of coordination of their actions to ensure cybersecurity. This act is a comprehensive piece of special legislation relating to information security. Cybersecurity is one of the main challenges as cyber weapons have become a first-strike weapon, which aims to deliberately interfere with the ability to control and influence the objectives of another state to defeat or control, including not only the military sphere but also other infrastructures, communications, governance systems, the population, and the economy.

Analysing the experience of other countries in the use of cyber technologies in the field of state defence, it is necessary to conclude that Ukraine needs to consider international experience to successfully formulate policies and create its legal and organisational framework for cybersecurity protection, especially in the case of hybrid warfare. By using the experience of other countries, Ukrainian cybersecurity and defence experts will be able to gain new knowledge and competencies that they can use to improve their technologies and strategies. Foreign expertise will allow Ukraine to strengthen its defence and cybersecurity, as other countries may have more experience in dealing with cyber threats and developing advanced defence systems. Tapping into foreign expertise would also reduce dependence on imported software and hardware, which could increase domestic autonomy in the cybersecurity and defence sectors. Ukraine's international relations can be strengthened through cooperation on joint cybersecurity and defence projects and programmes with foreign partners. Ukraine can increase its capacity to develop new cyber technologies and creative solutions in the field of security and defence by adopting foreign experience.

The scientific novelty of the study is determined by the fact that the process of formation and application of cyber technologies in the field of state defence was studied in detail, and recommendations for improving the national policy and organisational and legal framework in the field of cybersecurity were identified. Prospects for further research are to develop a system for improving the legal support for cyber defence in the area of the private life of citizens.

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Conflict of interest

None.

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Правові аспекти розвитку кібертехнологій та використання кіберзброї у сфері оборони держави: світовий та український досвід

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Анотація. Актуальність дослідження зумовлено розвитком цифрової сфери, що тягне за собою збільшення кількості кіберзлочинів та кібератак, які становлять загрозу безпеці людей та організацій і можуть призвести до тяжких наслідків. Дослідження має на меті дослідити, як формуються та розвиваються кібертехнології, а також як вони використовуються у сфері захисту держави в Україні та деяких країнах Європейського Союзу, а саме Німеччині, Франції, Великій Британії та Індонезії. У процесі дослідження використано структурно-функціональний та діалектичний методи, метод синтезу, логічного та порівняльного аналізу, метод узагальнення. Установлено, що кібертехнології набувають усе більшого розвитку як у світі, так і в Україні, а кіберзброю за ефективністю та негативними питання кіберзахисту – один з головних викликів сучасності.наслідками прирівнюють до методів масового ураження. Обґрунтовано позицію, що Зазначено, що Україні необхідно запозичити міжнародний досвід для успішного формування політики та створення власної правової та організаційної бази кібербезпеки. Виснувано, що, використовуючи досвід інших країн, українські фахівці зможуть удосконалювати свої технології та стратегії, зміцнювати захист в інформаційному просторі, розробляти нові передові системи захисту. Підкреслено важливість Національного координаційного центру кібербезпеки. Робота органу зосереджена на забезпеченні координації діяльності суб'єктів національної безпеки та оборони України щодо реалізації стратегії кібербезпеки в державі та на підвищенні ефективності системи державного управління у формуванні та реалізації державної політики у сфері кібербезпеки. Дослідження має практичне значення, оскільки всі теоретичні положення, висновки та рекомендації можуть використати законодавці та інші фахівці для вдосконалення системи правових гарантій кібербезпеки у сфері оборони держави

Ключові слова: віртуальний простір; цифровий розвиток; комп'ютерні атаки; інформаційні війни; національна безпека

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Resolution of investment conflicts between the state and foreign companies in the context of crisis prevention

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Abstract. Currently, there are no conditions in Ukraine to ensure a high-quality business climate that would guarantee the security of investments. In the past, this has already led to conflict situations, which has resulted in a number of cases being brought against the state. The purpose of the study is to investigate the mechanism of resolving investment conflicts between the state and foreign companies. For this task, such methods as formal legal, dogmatic, legal hermeneutics, logical analysis, deduction, induction, and others were used. In the course of the study, an analysis of the international doctrine that regulates the provisions for resolving investment disputes, namely, the Washington Convention and the Seoul Convention, was carried out. It is determined that the number of foreign direct investments in Ukraine from 2012 to 2023 significantly decreased, and the investment attractiveness index reached a critically low value over the years, which indicates a negative attitude of business to current conditions. It is indicated that as a result, 15 proceedings were initiated at the International Centre for Settlement of Investment Disputes. It is revealed that in these cases, violations such as failure to provide equal and fair treatment are most often reported. Based on this, the need to improve the investment climate in Ukraine is determined. It is proposed to reduce the cost of access to the protection system for small and medium-sized enterprises; reduce the time for dispute resolution; and ensure the consistency and accuracy of arbitration decisions. The practical value of the results obtained is that the implementation of the recommendations provided will help to attract foreign investment necessary for the recovery and development of the country's economy, and will also eliminate the problematic factors that lead to the opening of proceedings against the state

Keywords: disputes; international agreements; subjects of legal relations; investments; financing; dispute resolution

Introduction

Receiving foreign investment by the state significantly affects the implementation of foreign and domestic policies. This is conditioned by the fact that the country's economic growth depends on it. In modern conditions, there is an increase in international investment, but the national legislation of many countries, especially developing ones, cannot fully implement their protection. As a result, the number of disputes has increased and the issue of legal protection of foreign investments has arisen. These mechanisms for resolving disputes in this category are regulated in international

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doctrine and bilateral treaties, and specialised legislation of countries. However, there are some problematic aspects with compliance with the established mechanism in Ukraine, the investment attractiveness of the state is at a low level, as a result of which the regulation of all activities in this area requires regulation. Based on this, the issue of conducting an analysis of the procedure for resolving investment conflicts in Ukraine is quite relevant.

All independent states have the right to pass laws for the public good. The government may invoke its powers as justification for a measure that has an expropriation aspect. According to O. Karintseva *et al.* (2020), discussions in such cases tend to focus on the nature and purpose of the authorities' actions. According to O. Nechiporuk (2023), most governments are also regaining control of natural resources to combat climate change and inequality. The researcher's paper does not say that sometimes employees of an enterprise with foreign investments may be at risk of losing their place of employment, since the possibility of expropriation deprives the company of the opportunity to carry out economic activities and pay salaries. According to I. Khomenko *et al.* (2021), political and economic climate of an investment-attracting country can change rapidly. In addition to initial due diligence, changes in political leadership, economic conditions, and government policies should be monitored to capture trends that could threaten investments and workers on the ground, as suggested by V.M. Matsuka (2023).

I.O. Moshlyak (2020) argues that attracting foreign investment plays one of the leading roles in strengthening the economic direction of any of the states. The researcher does not mention that attracting foreign capital to the national economy not only creates modernising infrastructure and provides additional jobs, but also contributes to improving the efficiency of industrial production and increasing tax revenues to the state budget. Therefore, it is foreign investment that helps to overcome financial crises and achieve rapid economic growth. R. Hrytsko and G. Hryshyn (2020) note that China's experience demonstrates how, due to attracting foreign investment, a country with a huge population was able to turn into one of the fastest-growing economies in the world. The growing number of investment disputes has led to the need to create effective mechanisms for resolving them. Following V.V. Panchenko and A.V. Matveeva (2023), there are disadvantages and advantages to each of these systems. The sequence of applying to various dispute resolution systems can be clearly regulated or chosen independently by the plaintiff.

The purpose of the study is to analyse the legal mechanisms for resolving investment disputes, the subjects of which are the state and a foreign company. To do this, it is necessary to solve the following tasks: to characterise the essence of the investment conflict, to consider the current legislative framework, to identify problems and ways to overcome them.

Materials and methods

A number of methods were used to reveal all the fundamental aspects of the study. The formal legal method was used to investigate the laws and regulations governing the resolution of investment disputes. In particular, the provisions of the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States are disclosed. Washington Convention (1965), Convention Establishing the Multilateral Investment Guarantee Agency. Seoul Convention (1985), UNCITRAL Model Law on International Commercial Arbitration (1985), United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), Law of Ukraine No. 93/96-BP "On the Foreign Investment Regime" (1996). This method was used to study the wording of legal provisions, their legal technique, and terminology in order to clarify the content and essence of regulation, and to identify the provisions of international and national law in order to identify gaps, conflicts, and contradictions.

Based on the formal legal method, conclusions were drawn regarding the completeness and consistency of the legal regulation of investment dispute resolution, which allowed comprehensively analysing the current legislation. The dogmatic method was used to study the basic concepts and categories used in this area of legal regulation – such as "investment", "investment disputes", "arbitration". This method established the content, connections, and correlation of the main legal structures and models used to resolve investment disputes, to characterise laws and regulations for their compliance with the basic principles of law in this area, which allowed making theoretical generalisations about the legal nature and content of regulating the resolution of investment disputes. The method of legal hermeneutics was used to conduct a thorough philological study of the texts of laws and regulations governing the procedure for resolving investment disputes, to investigate the systemic links between certain terms, concepts and rules to establish their exact content and meaning, and to apply logical and systematic interpretation with a view to harmonising the rules of international and national law to clarify the real content and purpose of regulatory provisions in the field of investment dispute resolution.

The method of logical analysis was used to reveal the mechanism of investment disputes by identifying the main elements of such a mechanism and their interaction. This allowed characterising the concept of an "investment dispute", its inherent features, and implementation principles. The functional analysis provided an opportunity to highlight the functions of investment in the economic sector of states, their impact and role in the country development. This method also allowed characterising the role of investment conflicts in determining the country's investment climate indicator. Statistical analysis helped to identify statistical data that indicate the number of foreign direct investment in Ukraine in the context of years, and to study the indicator of investment attractiveness of the state from 2013 to 2022. The deduction allowed determining the mechanism for resolving investment conflicts based on its concept, inherent features, and principles of implementation. In turn, the induction was used to characterise the current dispute resolution mechanism based on the regulated provisions in the current legislative doctrine. The synthesis helped to combine the results obtained to develop recommendations.

Results

International investment arbitration is a procedure for resolving disputes between a foreign investor and the host state. It guarantees the investor the protection of their rights in case of violation by the state of its obligations. This type of arbitration has the characteristics of both public and private arbitration, since its subject is the protection of the rights of a private investor, but the state is the defendant in the dispute. Table 1 provides statistical data on the number of foreign direct investment in Ukraine by year.

Table 1. Foreign direct investment in Ukraine from 2013 to 2023, million USD

Year	Foreign direct investment in Ukraine	Foreign direct investment from Ukraine	Balance
2013	4,499	420	+4,079
2014	410	111	+299
2015	-458	-51	-407
2016	3,810	16	+3,794
2017	3,692	8	+3,684
2018	4,455	-5	+4,460
2019	5,860	648	+5,212
2020	-868	82	-950
2021	6,687	-198	+6,885
2022	1,152	529	+623
2023	2,468	19	+2,449

Source: compiled by the authors based on Direct foreign investment (2023)

These data allow for the conclusion that with the beginning of the Russian-Ukrainian war and the full-scale invasion, the indicator of foreign direct investment has significantly decreased. It should be noted that they are one of the most promising forms of investment for developing countries. However, after 2015, based on statistics, the recovery of previous indicators began; in 2021, the indicator was one of the largest, but as a result of a full-scale invasion in 2022, it declined again. It is worth considering in more detail another indicator – the Investment Attractiveness Index (Fig. 1).

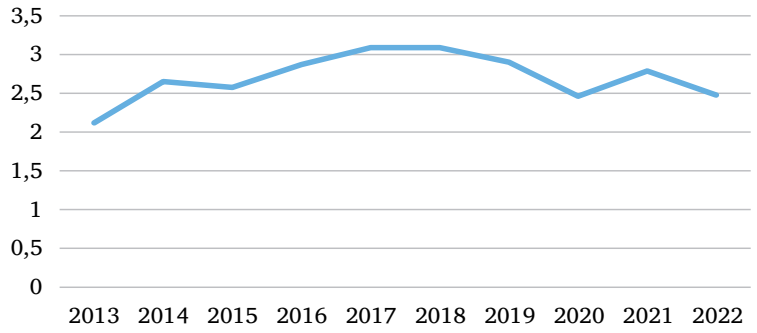

Figure 1. Investment Attractiveness Index in Ukraine from 2013 to 2022
Source: compiled by the authors based on European Business Association (2022)

Based on the presented indicators, in the period 2013-2022, the Investment Attractiveness Index did not reach the positive zone; it has a value from 1 to 5, where from 1 to 3 – negative business attitude, from 3 to 4 – neutral, from 4 to 5 – positive. The highest indicator in the context of years was in the period 2017-2018, and its corresponding decrease gives reason to believe that the attitude of business to investment activities in Ukraine is deteriorating. Based on this, it is worth focusing on analysing one of the factors of the establishment of the investment climate and the index of corresponding attractiveness – the mechanism for resolving conflicts in this activity.

At the international level, the resolution of disputes in this category is regulated by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, "Washington Convention (1965), and Convention Establishing the Multilateral Investment Guarantee Agency". Seoul Convention (1985). The adoption of The Washington Convention (1965) was an important event in the development of international investment law. This convention has established a universal mechanism for resolving conflicts that arise between investors and the host states. This settlement, established by the Washington Convention (1965), does not require the mandatory existence of an investment insurance system or the conclusion of an agreement to protect them. Accession to the convention applies the conflict resolution mechanism established by it in any cases where the object is private foreign investment or the circle of subjects includes a foreign element and a state. The International Centre for Settlement of Investment Disputes (ICSID), founded on the basis of the Washington Convention (1965), is an independent international organisation that provides dispute resolution between foreign investors and states. Most of the permitted conflicts of an investment nature are disputes related to the immutability of the terms of concession plan agreements. Multilateral Investment Guarantee Agency (MIGA), established in 1988, provides financial support to investors in case of violation of their rights by the state. MIGA can also act as a plaintiff in investment disputes. The contract between the investor and MIGA is private law. The investor pays the insurance premium annually, and MIGA undertakes to compensate for losses within the limits of this contribution. If the state violates the investor's rights, MIGA gets the right to subrogation, that is, replaces the investor as a plaintiff in an investment dispute. This allows considering such disputes in international arbitration instances, which reduces the risk of negative impact of the dispute on the relations of states.

The issue of payment of compensation in the event of nationalisation or other seizure of foreign property in a compulsory aspect is only one of the possible grounds for the emergence of an investment conflict. For example, such cases may include early termination of the concession plan agreement or modification of its terms, unjustified refusal to register an enterprise with foreign investments, or refusal to move profits abroad (Bryhinets & Kovalova, 2021). The Washington Convention (1965) provides that arbitration between an investor and the state can be applied in the event of a violation by the state of the investor's rights arising from an investment treaty or international law. MIGA has developed a draft agreement that provides for an effective mechanism for resolving investment disputes. In the context of the agreement, a mechanism for conciliatory negotiations is provided, the purpose of which is to reach an amicable agreement; the relevant decision should be binding. An analysis by the Seoul Convention (1985) confirms that it has created a single mechanism for protecting foreign investment, which is based on special regulatory principles. The main part of investment disputes considered by ICSID is disputes related to concession agreements and the immutability of their terms; therefore, it can be concluded that there is a wide range of grounds for investment disputes (Bryhinets & Kovalova, 2021). Each of the international bodies for resolving such disputes has its own advantages and disadvantages. The number of bodies that have the competence to consider investment disputes, and the scope of procedural features of the decision is increasing. This indicates the absence of a single systematised international legal mechanism for resolving investment disputes.

Investment arbitration is an alternative way to resolve disputes between investors and states. It is divided into two types: institutional and *ad hoc* (Marceddu & Ortolani, 2020). Institutional arbitration takes place within the framework of international organisations such as ICSID, Ukrainian National Committee of the International Chamber of Commerce (ICC Ukraine), London Court of International Arbitration (LCIA). Arbitration *ad hoc* is carried out according to the rules determined by the parties to the dispute. A total of 15 proceedings have been initiated against Ukraine in ICSID. Ukraine is generally successful in defending itself in investment arbitrations. Two cases ended in a settlement agreement, and three cases were resolved in favour of investors. The latter case concerned non-enforcement of a settlement agreement, as reflected in the case of Joseph C. Lemire v. Ukraine (Vivcharyk, 2019). From the practice of ICSID, where Ukraine is the defendant in cases, it follows that investors often claim violations of fair and equal treatment and unfair expropriation. Ukraine has a positive balance in investment arbitrations: 7 cases in favour of the state, 7 – in favour of the investor, 3 – pre-trial settlement, 6 – not resolved. Ukraine has also initiated 11 disputes against Russia over the expropriation of assets in Crimea (Investment Dispute Settlement Navigator, 2022). Since Russia did not ratify the Washington Convention (1965), all disputes were considered under the regime of *ad hoc*. According to the Ministry of Foreign Affairs of Ukraine, during the annexation of the peninsula, the Russian Federation nationalised more than 400 Ukrainian enterprises and 18 fields (Vivcharyk, 2019). The precedent and impetus for increasing the number of investment-related lawsuits in connection with the annexation of the peninsula was Ukraine's winnings in the disputes of Oschadbank v. Russia and Everest and others v. Russia (Investment Dispute Settlement Navigator, 2022).

The specific feature of international investment plan arbitration is that the role of an arbitration agreement is often played by an international agreement on securing foreign investments concluded between the investor state and the receiving state of the investment. As for the enforcement of arbitral awards, Article 54(3) of the Washington Convention (1965) states that it is implemented in accordance with the regulation on the enforcement of judicial decisions of the state where it is subject to implementation. According to the Washington Convention (1965), decisions of international investment arbitration are binding on all contracting states. Currently, Ukraine does not have a special procedure for the recognition and enforcement of investment arbitration decisions, since ICSID decisions are executed in civil proceedings in accordance with the legislation of the Russian Federation, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and New York Convention (1958). In the case of Western NIS Enterprise Fund v. Ukraine (2004), refusal to recognise and enforce a foreign court decision was one of the reasons for the dispute in ICSID; however, practice shows that there are no obstacles in this aspect in Ukraine. Investment arbitration is an effective mechanism for protecting the rights of investors, which should be as accessible and effective as possible, which will lead to an increase in the inflow of investment to the state.

Modern realities determine the need to radically improve the investment climate in Ukraine. This is a key factor in attracting foreign investment, which is necessary for the recovery and development of the country's economy. However, the existing investment protection system based on ICSID has a number of disadvantages. In particular, it is too expensive and available only for large companies. In addition, ICSID disputes can take years to resolve, and arbitration decisions are often inconsistent and inaccurate. Despite the growing popularity of ICSID, its security system is not perfect. It has a number of disadvantages that can negatively affect the investment climate in Ukraine. To improve the investment climate in Ukraine, it is necessary to reform the investment protection system. In particular, it is necessary to: reduce the cost of access to the protection system for small and medium-sized enterprises; reduce the time for dispute resolution; ensure the consistency and accuracy of arbitration decisions. Reforming the investment protection system is an important step to create a favourable investment environment in Ukraine. This will help attract foreign investment necessary for the recovery and development of the country's economy.

Ukraine is a party to numerous investment protection agreements. This means that foreign investors who invest in Ukraine have the right to protect their rights in case of violation of these agreements, but Ukraine is also the leader in the number of investment lawsuits filed against it. As of 2023, eight lawsuits have been filed against Ukraine under ICSID, and in addition, there are several other cases initiated against Ukraine that are being considered outside of ICSID (Khomenko *et al.*, 2023). Most of the lawsuits against Ukraine relate to investments in the energy, mining, and real estate sectors. In some cases, the lawsuits are related to the violation of investors' rights as a result of energy and land reforms. A large number of lawsuits against Ukraine negatively affect the investment climate of the state. This

can lead to an outflow of investment and make it difficult to attract new investment. To improve the investment climate in Ukraine, it is necessary to take measures to reduce the number of lawsuits against the state. In particular, it is necessary to improve investment legislation and practice, ensure the protection of investors' rights, including through the introduction of effective dispute resolution mechanisms, and create a transparent and predictable investment climate. The implementation of these measures will increase investor confidence in Ukraine and will help attract investments that are necessary for the recovery and development of the country's economy.

Discussion

Investment activity involves interaction between the investor and the host country. The issue of investment protection arises in case of violation of the rights of either party. One of the most important issues of protecting foreign investment is guarantees against illegal encroachment on the investor's assets. As noted by A.A.A. Hammad and G. Dexiang (2022), when new ways of making investments appear, it becomes necessary to determine the appropriate guarantees. Internationally, guarantees to protect foreign investment are consolidated in documents such as the Washington Convention (1965) and the Seoul Convention (1985). In Ukraine, the issue of foreign investment protection is regulated by the Law of Ukraine No. 93/96-BP "On the Foreign Investment Regime" (1996). This Law provides that foreign investments on the territory of Ukraine enjoy protection equal to that provided to Ukrainian investments.

According to J. Arato (2019), when making venture investments, there is a question of fixing special guarantees in the contractual and legislative direction. This is a valid point, as venture capital investments may differ from traditional investments in terms of the composition of participants, the nature of interaction between them and other parameters. Special guarantees for the protection of venture investments include guarantees against forced withdrawal of investments, from non-fulfilment of obligations by the recipient of investments and from unfair treatment of the investor, as noted by G. Kaufmann-Kohler and M. Potestà (2020). The consolidation of special guarantees for the protection of venture investments in the legislation and contract will help protect the rights of investors and stimulate the development of venture entrepreneurship.

Investment relations are regulated at two levels: international and domestic. International legal regulation is carried out through the conclusion of international agreements, such as bilateral investment treaties, multilateral investment protection agreements, and international treaties from other areas that contain investment provisions (Liu, 2022). It aims to create a favourable investment climate for foreign investors, ensure the protection of the rights of foreign investors, and promote the development of international trade and cooperation. The international legal nature of investments is regulated at three levels – universal, regional, and bilateral. The first is carried out based on international agreements that are open to accession by all states of the world – an example of such regulation is the Washington Convention (1965); the regional level is implemented based on international agreements that are concluded between states of the same region – an example of such regulation is the European agreement on the procedure for resolving investment disputes between member states of the European Economic Community; the bilateral level is the level of regulation that is carried out based on international agreements that are concluded between two states – an example of such regulation is the bilateral investment agreements between Ukraine and other states, as noted by R. Brutger and A. Strezhnev (2022). It should be added that domestic regulation is carried out based on the national legislation of the host state, while the state has the right to regulate the admission of investments. A. Simonyan (2022) notes that open access to foreign investment is a solution to the problem of regulating their governance mechanism. It is reasonable to agree that the state should allow foreign investors to invest in any sector of the economy, except for a limited number of sectors that may be closed to foreign investment or require special assessment of the conditions of admission or licensing.

The legislation of the host state defines the procedure for foreign investors' access to investment activities. In most countries, there are two main approaches to regulating this issue: prohibition or restriction of access, in which the state sets out a list of industries or activities that are closed to foreign investors or require a special permit (license) or registration; this approach applies, for example, in industries such as arms production, oil and gas production, nuclear energy production; free access – the state does not restrict foreign investors ' access to any investment activity; this approach applies in industries such as trade, manufacturing, services, as noted by Y. Tang (2022). It should be added that states that are interested in attracting foreign investment usually provide foreign investors with certain guarantees and protection. These guarantees are aimed at ensuring the rights and legitimate interests of foreign investors and creating a favourable investment climate.

Methods of legal regulation of investment relations are methods of legal influence that are used to regulate these relations, according to M. Michalska-Guzik (2022). Based on the researcher's opinion, the methods of legal regulation of investment relations include the legislative method (providing for the establishment of legal norms regulating investment relations), the administrative and legal method (the use of administrative and legal means of influence, such as permits, licenses, registration) and judicial regulation (resolving disputes related to investment relations in court), the use of various methods of legal regulation of investment relations provides a comprehensive impact on these relations (Benedettelli, 2022).

Foreign investment is a key factor in the economic growth and development of any state. However, in the process of making investments, investors may face a violation of their rights by the recipient state, as stated by Y. Patil (2022). It is worth agreeing with this and adding that in such cases investment disputes arise, which can negatively affect the investment climate and contribute to the outflow of investment. To effectively resolve investment disputes, the World Bank adopted the Washington Convention (1965). G. van Harten and A.Y. Vastardis (2023) note that this convention created ICSID, which is one of the most reputable arbitration institutions in the world. ICSID has the competence to resolve disputes that arise between foreign investors and the host state. In order for disputes to be considered by ICSID, a written agreement between the investor and the state is required. Such an agreement may be concluded in the form of a bilateral investment agreement, an investment agreement,

or a separate agreement to transfer the dispute to ICSID. ICSID decisions are binding on the parties to the dispute. They have the force of an international decision and can only be appealed within the limits set by the Washington Convention. In Ukraine, the Washington Convention was ratified in 2000. This allowed foreign investors who invest on the territory of Ukraine to enjoy the protection guarantees provided for in this convention.

ICSID is an autonomous international organisation that has an international legal personality. This means that ICSID has the right to determine the procedure for implementing actions of a procedural nature; to ensure the performance of its functions in the territory of contracting states, ICSID has immunities and privileges (Yu, 2022). This means that ICSID is not subject to the jurisdiction of the national courts and authorities of the contracting states. The decisions of the ICSID arbitration court are binding on the parties to the dispute. Each of the contracting states is obliged to ensure the fulfilment of monetary obligations imposed by arbitration in its territory. A state with a federal structure can enforce a decision within or through federal judicial authorities. In such a case, judicial bodies will consider the decision of the arbitration court as the final decision of the judicial body of the state that is part of the state that has a federal structure.

Consequently, there is an international legal mechanism for resolving investment disputes that arise between a state and a foreign element. However, it is not very efficient and affordable. This leads to the emergence of problematic aspects for developing countries to obtain a high-quality investment climate. Based on this, there is a need to develop a single international standard and an appropriate authorised body.

Conclusions

The study was conducted in order to implement an analysis to determine the legal mechanism of investment disputes between a state and a foreign company. Statistics show a sharp decline in foreign direct investment in Ukraine after the start of a full-scale Russian invasion; after 2015, there was a certain recovery, in 2021 – the figure was one of the highest, but in 2022 it fell sharply again. During the period 2013-2022, the investment attractiveness index of Ukraine never reached a positive value, and after 2018 it began to decline rapidly. This indicates deterioration in the attitude of businesses to investing in Ukraine.

It is determined that the creation of MIGA can be considered a successful international legal mechanism for resolving investment disputes. A characteristic feature is that it, as an interstate organisation, enters into private-law contracts with investors. In the event of a dispute, MIGA pays compensation to the investor and then makes claims against the relevant state. Thus, the conflict takes on an international legal character and occurs not between two states, but between one state and MIGA. This reduces the negative impact on the relations of interested states. Although 15 cases have been initiated against Ukraine in ICSID, the country is considered one of the most successful defendants, since out of 23 disputes, only 7 cases were decided in favour of the investor. Investors often complain about unequal treatment and unfair expropriation. In turn, Ukraine initiated 11 disputes against Russia over the expropriation of assets in Crimea; Ukraine's victory in two cases set a precedent and prompted the filing of new lawsuits in connection with the annexation of Crimea.

To improve the investment climate in Ukraine, it is necessary to reform the investment protection system by reducing the cost of access for small and medium-sized businesses, reducing the time frame for reviewing cases and ensuring the consistency and accuracy of arbitral awards. In addition, there is a need to improve legislation, protect the rights of investors, and introduce effective dispute resolution mechanisms. This will increase business confidence in Ukraine and help raise funds for economic recovery. Further study will be aimed at analysing the experience of foreign countries in terms of investment policy.

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Conflict of interest

None.

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Вирішення інвестиційних конфліктів між державою та іноземними компаніями в контексті запобігання кризових ситуацій

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Анотація. Наразі в Україні не існує умов щодо забезпечення якісного бізнес-клімату, що гарантувало б безпеку інвестицій. У минулому це вже призвело до конфліктних ситуацій, через що проти держави порушено низку справ. Мета роботи – вивчити механізм вирішення інвестиційних конфліктів між державою та іноземними компаніями. Для цього було використано такі методи, як формально-юридичний, догматичний, юридичної герменевтики, логічний аналіз, дедукція, індукція та інші. У процесі дослідження проведено аналіз міжнародної доктрини, яка регламентує положення щодо вирішення спорів інвестиційного характеру, а саме – Вашингтонської конвенції та Сеульської конвенції. Визначено, що кількість прямих іноземних інвестицій в Україні з 2012 по 2023 роки значно знизилася, а індекс інвестиційної привабливості упродовж років досяг критично низького значення, що свідчить про негативне ставлення бізнесу до поточних умов. Зазначено, що внаслідок цього в Міжнародному центрі з врегулювання інвестиційних спорів порушено 15 проваджень. Виявлено, що в цих справах найчастіше заявляють про такі порушення, як ненадання рівного і справедливого ставлення. Виходячи з цього визначено необхідність покращити інвестиційний клімат в Україні. Запропоновано знизити вартість доступу до системи захисту для малих і середніх підприємств; скоротити строки розгляду спорів; забезпечити послідовність і точність рішень арбітражу. Практична цінність отриманих результатів полягає у тому, що дотримання наданих рекомендацій сприятиме залученню іноземних інвестицій, необхідних для відновлення та розвитку економіки країни, а також дасть змогу усунути проблемні чинники, через які порушуються провадження проти держави

Ключові слова: спори; міжнародні договори; суб'єкти правовідносин; вкладення; фінансування; урегулювання суперечок

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Criminalistic support of combating iatrogenic criminal offenses: Information system prospects

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Abstract. The research relevance is stipulated by the negative dynamics of the increase in the number of iatrogenic offences in Ukraine and the need to update the criminalistic support tools to effectively counteract these types of acts. Given this, the study aims to explore the prospects for developing an information system for recording cases of defects in the provision of medical care in Ukraine to promptly detect and investigate criminal offences in the field of medical practice. Various research methods were used, including analysis, synthesis, comparison, structural and functional, statistical, formal, and legal, and deduction. The study identifies the factors that necessitate the development of an information system for registering and studying cases of inadequate medical care to patients. In addition, the author examines the experience of Denmark, Germany, Great Britain, France, and other European countries in ensuring the operation of mechanisms for recording and reporting on adverse effects caused by defects in the provision of medical care. The advantages of information systems in the context of combating iatrogenic criminal offences are also revealed and proposals for the implementation of such mechanisms in Ukraine are developed. The study pays special attention to establishing the essence of iatrogenic criminal offences and identifying their specific features which create difficulties

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for the investigation of criminal offences in the field of medical activity since they are latent. The results obtained in the course of the study should be used to improve the competence of criminal justice officials whose activities are aimed at conducting pre-trial investigations of iatrogenic criminal offences through the use of innovative criminalistic tools

Keywords: harm to patient's health; criminalistic means of combating; defect in medical care; forensic examination; criminalistic strategy; specialized knowledge; criminalistic innovations; digital technologies

Introduction

Information tools are an important part of the structure of criminalistic support. The research relevance is determined by their efficiency in detecting and investigating iatrogenic criminal offences which are observed in all spheres of society along with the spread of informatisation. Accordingly, the introduction of modern technologies into the structure of criminalistic support is a prerequisite for successful counteraction and investigation of criminal offences in the field of medical activities. These complex processes necessitate the use of modernised computer hardware, software, and communication networks (Levine *et al.*, 2020). Information systems are one of the most common among the entire set of information tools. They contain an organisationally ordered structure of data sets relating to certain objects and information technologies, aimed at implementing registration and accounting processes, as well as providing the necessary information to the user. The research is concerned with the need to prove the benefits of using information systems as a means of criminalistic support in the process of counteracting and investigating iatrogenic criminal offences.

Researchers in the scientific doctrine actively consider ways to implement electronic information systems for recording cases of harm to a patient's health as a result of treatment or death in the context of combating iatrogenic criminal offences. Accordingly, there are different positions which allow highlighting the advantages of using these tools not only in the context of detection but also in the context of investigation of these criminal offences. In particular, A. Movchan (2023) concluded that information systems can be the basis for supporting the decision-making of the investigator who conducts criminal proceedings, as well as for intensifying his intellectual activity, which includes the processes of planning, putting forward versions and selecting effective means of investigative (detective) and covert investigative (detective) actions. At the same time, the researcher did not disclose the specifics of the investigation of iatrogenic criminal offences and did not define the role of information systems in it. V. Kaluhin (2022) noted that there is a wide range of types of the above instrument. According to the author, it is advisable to classify information systems vertically, namely, interstate, central, regional, and territorial. In this case, the researcher also did not consider the signs of criminal offences in the field of medical activities when classifying information systems and vectors of their use. In turn, L. Kovalenko (2022) conducted such a classification by functional purpose and, accordingly, identified other types of information systems. The author mentioned operational and search, operational and reference, and reference and auxiliary sectoral ones. At the same time, the question of the expediency of their use for combating iatrogenic criminal offences remained unresolved. V. Topchiy (2020) concluded that automated law enforcement information systems, both publicly available and those with access restrictions, should be used to investigate criminal offences in the field of medical activities. At the same time, the author did not investigate the issue of difficulties in the process of registering information on cases of defects in the provision of medical care in such systems. O. Kovalova (2022) believes that the significant development of information systems provides their users with the opportunity to use data from them to improve the efficiency of criminal investigations. However, the researcher did not disclose the specific role of these systems in the process of developing a methodology for investigating iatrogenic criminal offences.

Based on the aforementioned, the study aims to substantiate the feasibility of developing and using an information system as an effective tool for criminalistic support in the process of combating criminal offences in the field of medical care. Accordingly, several tasks have been formulated, namely to investigate the reasons for the need to introduce a mechanism for recording cases of defects in the provision of medical care; to analyse foreign experience in ensuring the operation of information reporting systems for recording data on adverse effects of medical services; to develop proposals for the introduction of an information system for recording and analysing cases of defects in the provision of medical care in Ukraine, in the context of combating iatrogenic criminal offences; to reveal the advantages of using the above-mentioned information system in the course of combating criminal offences in the field of medical activity.

Materials and methods

Based on the analysis method, the composition of iatrogenic criminal offences was revealed, and their specific features were identified. This method was also used to express the essence of various socio-legal phenomena related to the process of combating criminal offences in the field of medical practice. The analysis was used to identify the reasons that necessitate updating the current means of criminalistic support. This method was used in the process of establishing the level of latency of iatrogenic criminal offences and approaches to its reduction were considered.

The synthesis method was used to determine the relationship between the advantages of information systems as an accounting mechanism and the process of combating iatrogenic criminal offences. The synthesis was also used to highlight the role of these systems in the activities of investigators, in particular, during the investigation of the above-mentioned type of criminal offences. This method was used as the basis for the process of studying the structure of information systems designed to record cases of defects in the provision of medical care. Synthesis was used to reveal the motivation of healthcare professionals to conceal information about cases of harm to patient health.

A comparative approach was used to determine the current level of effectiveness of combating iatrogenic criminal offences in Ukraine. Based on this, the approaches and technologies used in different countries of the European Union

to ensure the functioning of reporting systems for adverse healthcare outcomes were compared.

The formal legal method was used to study the provisions of various legal acts and other documents. Accordingly, the study examined the structure and content of the Criminal Code of Ukraine (2001); the Concept of the Strategy for Prevention of Healthcare Delivery Defects in the Ukrainian Healthcare System of 2021 (Serdyuk *et al.*, 2021), Order of the Cabinet of Ministers of Ukraine No. 530-r "On the Approval of the National Action Plan for Non-Communicable Diseases to Achieve the Global Goals of Sustainable Development" (2018); Patient safety incident reporting and learning systems: Technical report and guidance (2020); Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (2016); International Classification of Functioning, Disability and Health (ICF) (2001).

The structural-functional method was used to identify the capabilities of the information system for analysing cases of defects in the provision of medical care as an effective tool for combating iatrogenic criminal offences in Ukraine. This method was also used to identify the causes of the spread of iatrogenic criminal offences in Ukrainian society. The statistical method was used to study the statistical data on the number of cases of harm to a patient's health during medical care in Ukraine and worldwide. It was used to determine the level of public danger of these acts and to consider the means of forensic support for their investigation.

The deduction method was used to identify the specific properties and nature of iatrogenic criminal offences based on a general understanding of the scope of medical practice and the negative consequences that may be caused by the actions of medical professionals. This method was necessary to establish specific conditions and circumstances that play an important role in the process of detecting and investigating this type of criminal offence.

Results

Iatrogenic criminal offences are directly related to the provision of medical care. To establish their specificity, it is advisable to consider the main features inherent in this category of criminal offences. Accordingly, they include the implementation of medical activities by a healthcare professional, violations of standards and rules for the provision of medical services, defects as a result of criminal acts, as well as harm to the health or death of a patient. These signs determine the number and nature of circumstances that are subject to proof in the course of investigating this type of criminal offence. These include the fact of a violation of the technology of medical care, complications as a result of a violation of the standard of medical care, type, stage of treatment, physiological state of the patient (behavioural characteristics), professional and personal qualities of medical personnel (Robson *et al.*, 2020). Based on the above, it is possible to establish that the specific features inherent in criminal offences in the field of medical activities determine the originality of the subject of their proof, and therefore affect such processes as pre-trial investigation and the opening of criminal proceedings.

Besides the disclosed peculiar forensically significant properties of iatrogenic criminal offences, a special role in their investigation is played by the difficulties associated with establishing a causal link between the subject's actions and adverse consequences for the patient (harm to his/her health or death). There are several reasons for these difficulties, as medical care consists of primary and specialised types. Each of them has different stages at which there may be a violation of the rules for the provision of medical services, which will result in adverse consequences for the patient. It is worth noting that this violation of the standard may not immediately lead to complications in the health of the person undergoing treatment. That is why it is possible to note the latency of the nature of adverse effects of medical care, as they may occur only after some time (Mandilara *et al.*, 2023).

Adverse effects are characterised by dynamism, which means that a violation of the standard of care may occur in one medical institution and appear in another place sometime later. At the same time, they may be detected in a third medical institution. This demonstrates the high complexity of counteracting iatrogenic criminal offences and the need to introduce effective forensic support tools based on modern approaches of the general theory of criminalistics, generalisation, and analysis of advanced forensic practice, in particular foreign, and achievements of scientific and technological progress. One of these approaches is the introduction of information systems, which are currently playing a crucial role in various fields of activity. Accordingly, the process of combating crime also depends on this factor, and therefore the effectiveness of combating criminal offences is determined by the possibility of access to the information contained in the above systems by authorised entities. In the context of the pre-trial investigation, the use of information support involves the timely involvement of modern technologies in law enforcement activities, in particular, the optimisation of criminal proceedings. The purpose of such support is to collect and process data related to a criminal offence. As a result, the investigator can conveniently examine it and use it to investigate a criminal offence.

As the criminalistic component, it is the ability to provide forensic properties to information on objects and facts obtained in the course of investigative (search) actions and procedural measures, as well as regardless of its origin and primary purpose. In this case, an important role is played by establishing its mercenary value for the study of certain circumstances of a criminal offence and, in general, establishing the truth in the case. Given this, it can be established that information systems occupy a special place in the system of sources of forensic information, and therefore it is advisable to include an information system for recording and analysing cases of inadequate medical care as a means of forensic support for counteracting iatrogenic criminal offences (Syafruddin *et al.*, 2020).

First of all, it is worth considering the dynamics of the emergence of cases of inadequate medical care, which occur not only in Ukraine but also abroad. The study of patient safety allows us to reveal international and national factors that influence its spread. In particular, in all countries of the world, the cause of adverse effects resulting from unsafe medical care is among the most common causes of death and disability among people. In addition, about 134 million adverse healthcare events occur in inpatient facilities in low- and middle-income countries each year, resulting in 2.6 million deaths (Cheluvappa & Selvendran, 2020). As for high-income countries, the statistics are no less negative, as

adverse health outcomes in the form of health damage occur in one in ten patients (Parker & Davies, 2020). The most common are cases of inadequate medical care in the process of diagnosing a patient and prescribing medications.

As for Ukraine's experience, the following statistics are worth mentioning. Every year, about 10 million people receive inpatient medical care services, of which 100,000 have a fatal outcome as a result of receiving such care (Fig. 1). At the same time, more than a third of this number of citizens are young or middle-aged.

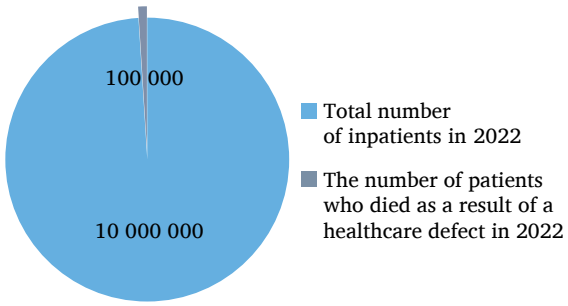

Figure 1. The ratio of the total number of patients to people with lethal outcome as a result of receiving inadequate medical care in 2022
Source: compiled based on the National Council for the Recovery of Ukraine from the War (2022)

Ukraine has not yet developed an integral indicator of treatment quality (56%) and structural efficiency of healthcare (36-44%, the figure varies by region). Inpatient and postoperative mortality rates are developing dynamically, which indicates a violation of norms and medical standards in Ukrainian society. Based on the above, it should be noted that the wide scope and progression of manifestations of inadequate medical care are reflected in the rapid development and spread of iatrogenic criminal offences.

Another acute problem is the high level of latency of manifestations of inadequate medical care (defects in the provision of medical care). In this case, it is worth noting its subjective and objective components. The former is manifested in the concealment of cases of improper provision of medical care (defects in the provision of medical care) by medical professionals. It is worth noting that such cases are concealed both by the subjects whose actions caused harm to the patient and by other medical personnel who became aware of them (Skrynnikova, 2023). At the same time, the motivation, and reasons for concealing the consequences of inadequate patient care by persons belonging to the first group are understandable, as they are driven by the desire to avoid legal liability. As for the healthcare professionals who became aware of the above cases, they are indirectly related to the event, and therefore their motivation may be expressed in concern for the reduction of business and professional reputation of other healthcare professionals (ethical principles of having strong corporate ties in the team), as well as the medical institution (its rating) where the patient was harmed. It should be understood that such concealment may consist not only of passive but also of active actions, such as opposition to legal (criminal) prosecution of the guilty doctors. In this case, these acts are closely related to various types of criminal offences, namely abuse of power or official position (Article 364 of the Criminal Code of Ukraine, 2001); forgery (Article 366); acceptance of an offer, promise or receipt of undue advantage by an official (Article 368); offer, promise or provision of an undue advantage to an official (Article 369).

The above describes the subjective nature of the latency of cases of inadequate medical care. However, they also have an objective component, which is the need to introduce a system of recording and investigating cases of inadequate medical care to prevent medical errors at various stages of medical and diagnostic activities. This provision is enshrined in the system of national and international documents, in particular, in the Concept of the Strategy for Prevention of Medical Care Defects in the Ukrainian Healthcare System of 2021, clause 4 "Registration of Patient Safety Incidents and Learning from Them"(National Council for the Recovery of Ukraine from the War, 2022); sub-clause 8 of clause 11 Order of the Cabinet of Ministers of Ukraine No. 530-p "On the Approval of the National Action Plan for Non-communicable Diseases to Achieve the Global Goals of Sustainable Development" (2018); Patient safety incident reporting and learning systems: Technical report and guidance (2020); Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 Concerning Measures for a High Common Level of Security of Network and Information Systems Across the Union (2016); International Classification of Functioning, Disability and Health (2001).

To study the advantages of systems for recording defects in the provision of healthcare, it is appropriate to analyse the experience of the European Union countries in ensuring the quality and safety of healthcare. First of all, it is worth mentioning Denmark, which has had a full-fledged system of reporting adverse healthcare outcomes since 2004 (Vapsva, 2023). It is based on various principles, in particular, all doctors are obliged to immediately report mistakes, and serious events, as well as adverse effects of medical interventions that occurred during their work. In addition, medical reports are confidential, and no penalties are imposed. The analysis of the reports submitted by medical professionals is carried out in two stages, in particular at the local and then national levels by specially authorised experts. The latter has several functions, namely: to summarise the results of all reports; to identify cases of single and repeated medical errors; and to establish their sources. Based on the results of their work, they draw up conclusions describing the best approaches and methods for the proper prevention and elimination of the consequences of defects in the provision of medical care. Based on the analysis of the Danish experience, the following benefits of the development of the reporting system under study can be identified: positive changes in the structure and methods of work of healthcare professionals; development of vigilance skills among healthcare professionals regarding the safety of patients receiving medical services.

Next, it is advisable to consider the experience of Germany, where the National Association of Accredited Health Insurance Physicians has been operating since April 2005 (Carver *et al.*, 2023). In this way, a system of reporting on adverse health outcomes was introduced, which had a positive impact on the development of the healthcare sector in this country. Accordingly, approaches to understanding the adverse effects of medical care were changed, and their high social danger was proved. The introduction of this system had a positive impact on communication between stakeholders, as

patients were able to directly appeal to the arbitration body within the medical chamber. In the course of this process, the person receiving medical services had the opportunity to meet not only with lawyers but also with doctors for advice.

The National Patient Safety Agency operates in the United Kingdom (Serdyuk *et al.*, 2020; Shevchuk *et al.*, 2022). The essence of this institution is to ensure the operation of a system for reporting adverse healthcare outcomes to patients. It involves not only collecting information about these cases but also their quantification and comparative analysis. The UK's experience differs from that of previous countries in that it has a commission on preventive care. The latter is responsible for overseeing compliance with the standards of medical care in the country's hospitals. Accordingly, representatives of this commission have special powers and therefore can conduct inspections in any medical institution. Based on the UK experience described above, there are additional benefits of a national system of reporting adverse healthcare outcomes. These include justifying public trust in the country's healthcare system; reducing the latency of the problem of medical errors by doctors; engaging various actors in open discussion and finding ways to address issues related to the provision of inadequate or poor-quality medical care. In this context, it is important to emphasise the need to bring medical professionals to legal liability, which is possible through prompt reporting of medical errors to higher authorities.

The experience of France deserves special attention, as it has several reporting systems for adverse effects of medical interventions, which are classified according to their mandatory nature (Topchiy, 2020). Accordingly, those that are compulsory cover cases of defective medical devices, and severe complications, such as hospital-acquired infections. The healthcare worker is obliged to indicate them in a report that is sent to the national level authority, and subsequently, conclusions are developed on the selection of effective methods of prevention and control of these complications. In this way, general recommendations are also made, which subsequently become binding. At the same time, the generation and submission of reports on other cases is optional, but some of them play an important role in the certification of healthcare professionals. Developed systems for reporting cases of inadequate medical care also exist in Belgium, Finland, Austria, Switzerland, and Norway (Hirsch, 2009; Woo & Avery, 2021).

An analysis of the experience of the above countries shows that the development and implementation of such a system in Ukraine should have a positive impact on the effectiveness of combating iatrogenic criminal offences. Accordingly, ensuring the operation of the information system in this area will ensure prompt notification of law enforcement agencies of the existence of a case of improper medical care to a patient, which led to adverse consequences, namely death, disability, or other serious complications. In this way, it will be possible to establish the fact of a criminal iatrogenic offence. In addition, the implementation of the above system will facilitate the simplification of the procedure for initiating criminal proceedings on the relevant facts of iatrogenic criminal offences. This is because the registered data on improper low-quality medical care that caused negative consequences will be able to be used as a source of information based on which information will be entered into the Unified Register of Pre-trial Investigations. It is also important to note the fight against the latency of these types of criminal offences, namely, limiting the range of opportunities for medical professionals to conceal cases of improper, poor-quality medical care. This is reflected in the obligation of doctors to report information about the manifestations of serious and especially serious consequences in patients after receiving medical services. Based on this, it will also be possible to bring to legal liability those who concealed or falsified data in such cases. It is also necessary to mention the possibility of continuous research into the specifics of registered cases of inadequate, poor-quality medical care at both local and national levels. As a result, it will be possible to develop effective tools and methods for preventive measures, in particular, to prevent iatrogenic criminal offences in Ukraine.

Discussion

In the legal scientific doctrine, the issue of forensic support for combating iatrogenic criminal offences is given special attention. This is evidenced by several studies that prove the priority of forming an information system in the field of law enforcement and crime prevention. F. Busetti *et al.* (2021) pointed out that patient safety is an important aspect of healthcare in every developed country. Accordingly, the occurrence of medical errors that cause negative consequences for the health of citizens who have received medical services is an acute problem around the world. The researchers noted that, despite the existence of a large number of practices and tools to overcome this problem, there is an increase in the scale of harm from poor quality healthcare. This was also highlighted in this study, in particular, it was found that iatrogenic criminal offences are widespread not only at the national but also international level. The researchers cited the most common examples of inadequate medical care that caused harm to the patient's health or death. Accordingly, the authors pointed to non-compliance with safety rules during surgical care, which provokes complications in 25% of patients. At the same time, 7 million patients in surgical departments suffer severe complications every year, and 1 million have a lethal outcome (during or after surgery). The study also examined statistics showing a negative trend in the number of people whose health was harmed during treatment. What is common between the results obtained in both studies is the fact that iatrogenic offences are dynamically spreading in the world, causing negative consequences for individuals and society as a whole when receiving medical services.

Cases of non-compliance with the rules of asepsis and antisepsis, and personal hygiene in medical institutions are no less common. This conclusion was reached by A. Vozikis *et al.* (2021), who focused on disinfection and sterilisation violations, which are among the causes of the emergence and spread of hospital-acquired infections. It should be noted that this study also described this problem, namely, its impact on the quality of healthcare services in hospitals. The researchers cited statistics that show that on average, 7 out of 100 patients in high-income countries are infected with a hospital-acquired infection (in high-income countries). At the same time, in low- or middle-income countries, this trend is more negative, as 10 patients out of 100 suffer health damage. This study also considered the level of income and development of the state as a basis for assessing the statistical data on the number of patients who received poor-quality healthcare. In addition, the researchers emphasised that in the case of poor-quality diagnosis, patients

in most cases develop complications. Therefore, what both studies have in common is the identification of cases of iatrogenic criminal offences, as a result of which healthcare professionals endanger not only patients but also employees of medical institutions.

Those who have caused harm to a patient's health as a result of substandard medical care are not always legally liable. According to Y.M. Al-Worafi (2020) and V. Shevchuk *et al.* (2023), to some extent, this is due to the latency of these types of offences, which consists in concealing the defect in the provision of medical care. It is worth noting that this study also addressed this issue, namely, providing examples of both passive and active actions aimed at concealing the above cases. In turn, the researchers paid special attention to the latter, which, in his opinion, consists of active opposition by healthcare professionals to the legal prosecution of healthcare professionals whose actions caused harm to the patient's health. This is common among the studies, as they describe the level of latency of this type of criminal offence and reveal examples of its expression. Concerning the investigations of iatrogenic criminal offences, this stage is preceded by a departmental audit (internal audit), as well as the circumstances and specific consequences of the breach of healthcare standards.

F.A. Alqenae *et al.* (2020) and O. Kaplina *et al.* (2023) note that the organisation of these activities is carried out by national healthcare supervisory authorities. The researchers pointed out that departmental inspections are generally carried out by impartial actors with the necessary level of knowledge and authority. The common thread between the results of both studies is the identification of the motivation of healthcare professionals to conceal information about criminal offences due to the developed corporate ties between employees in healthcare facilities. On this basis, the activities of treatment and control commissions are limited to establishing a causal link between the treatment process and adverse consequences for the patient. In this case, the question of the level of quality of treatment, and the relationship between poor quality of medical care and complications remains unexplored. According to the researchers, in the conclusions drawn by law enforcement agencies, the negative consequences of the provision of medical services are defined as pathologies and qualified as accidents. Therefore, the common approach in the studies is an approach that proves the need to modify the reports and conclusions drawn up based on the results of the study of causes related to the defect in the provision of medical care.

R. Peadon *et al.* (2020) also refer to the latency of cases of inadequate medical care as a system of factors that negatively affect the investigation of iatrogenic crimes. The authors found that this process is characterised by both subjective and objective features. Accordingly, this study revealed the essence of the latter. In turn, the researchers proved that it is the objective nature of latency that determines the formation of its subjective properties. The researchers explain this by the fact that cases that indicate the provision of poor-quality medical care to a patient are very rarely recorded, in particular without specifying all the necessary data. In support of their position, The authors provided quantitative indicators of medical and diagnostic activities in medical institutions of the same profile. On their basis, the authors found that postoperative mortality can vary by more than 3 times, and postoperative mortality by 2.5 times, depending on the region. The conclusion that there is an urgent problem related to the registration of defects in the provision of medical services is common to all studies. Accordingly, this study found that cases of healthcare-associated infections are not reported. According to the researchers, this situation of ineffective registration of defects in the provision of healthcare services is due to the lack of a developed information accounting system for such cases.

M.M. Mello *et al.* (2020) and V.V. Haltsova *et al.* (2021) studied the most common ways of concealing medical activities that caused harm to the patient's health. The researchers found that the fact of concealment of a criminal offence occurs in cases of severe consequences for a person who received medical services. This was also noted in the results of this study, namely, late notification as one of the ways to conceal cases of medical care defects. The researchers also noted the taking of measures, such as treatment, to eliminate negative complications experienced by the patient. Such actions are aimed at creating conditions under which it is impossible to establish and prove that healthcare professionals have violated the patient's diagnostic or treatment procedure. The researchers also cited other examples, such as changing the place of treatment, falsifying diagnostic data, and tools and methods used to provide medical services. Thus, the common conclusion between the studies is that concealment of medical care defects can be carried out in various ways, which significantly complicates both the process of detection and investigation of the underlying criminal offences.

Based on the aforementioned, it is necessary to establish that the process of investigating iatrogenic criminal offences is complex and multidimensional. Accordingly, information relating to cases of medical care defects plays an important role. That is why researchers agree that effective accounting (based on an information system) and research of data on such cases will help to overcome the problem of latency of iatrogenic criminal offences and bring perpetrators to legal responsibility.

Conclusions

The study substantiated the need to develop and use an information system for recording and analysing cases of improper provision of medical care to patients. Such an approach is necessary for effective counteraction to iatrogenic criminal offences using prompt identification of their sources. Based on statistical data, the study found that one of the factors that exacerbate this problem is the rapid spread of cases of poor-quality medical care to patients. In addition, the high level of latency of cases of improper provision of medical services to citizens also necessitates the introduction of an accounting information system. It is established that this factor has both subjective and objective features. The first is the motivation of medical personnel to conceal cases of defects in the provision of medical care. In this way, they actively or passively counteract the detection and investigation of iatrogenic criminal offences. As for the objective nature, it consists of poor registration of data on cases of improper medical care that caused harm to the patient's health. As a result, it reduces the effectiveness of the processes of identifying perpetrators and bringing them to justice.

The study devoted special attention to foreign experience (countries of the European Union, the United Kingdom, Switzerland, and Norway) in developing and ensuring the

quality of information reporting systems. It has been established that their approaches to identifying cases of adverse patient outcomes are effective and can be used in Ukraine. Based on this, the study identifies a list of advantages and disadvantages inherent in the information system for recording cases of defects in the provision of medical care as a tool for forensic support in the context of combating iatrogenic criminal offences. It was emphasised that the creation of the above system would allow for prompt notification of law enforcement agencies of cases of harm to patient's health during the provision of medical services. In addition, such a tool will simplify the procedure for initiating criminal proceedings on the facts of iatrogenic criminal offences, as well as deprive interested parties of the opportunity to counteract the detection of cases of defective medical care. Based on the registered data in the information system, it will be possible to develop high-quality preventive recommendations that will help prevent iatrogenic criminal offences. In future research, it is advisable to pay attention to the structure of the criminalistic characteristics of illegal medical activities.

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Conflict of interest

None.

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Криміналістичне забезпечення протидії ятрогенним кримінальним правопорушенням: перспективи використання інформаційної системи

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Анотація. Актуальність цього дослідження зумовлено негативною динамікою збільшення кількості ятрогенних правопорушень в Україні та необхідністю оновити інструменти криміналістичного забезпечення для ефективної протидії цим видам діянь. З огляду на це мета дослідження полягала у вивченні перспектив розробки інформаційної системи для обліку випадків дефектів у наданні медичної допомоги в Україні, щоб оперативно виявляти та розслідувати кримінальні правопорушення у сфері лікарської діяльності. Для цього використано різні методи наукового дослідження, зокрема аналізу, синтезу, порівняння, структурно-функціональний, статистичний, формально-юридичний, дедукції. У результаті виявлено фактори, які зумовлюють необхідність розробити інформаційну систему для реєстрації та вивчення випадків неналежного надання медичної допомоги пацієнтам. Окрім цього, досліджено досвід Данії, Німеччини, Великої Британії, Франції та інших країн Європи щодо забезпечення діяльності механізмів обліку та звітності про несприятливі наслідки, спричинені дефектом у наданні медичної допомоги. Також розкрито переваги інформаційних систем у контексті протидії ятрогенним кримінальним правопорушенням та розроблено пропозиції щодо впровадження таких механізмів в Україні. Окрему увагу в дослідженні приділено встановленню сутності ятрогенних кримінальних правопорушень та виявленню їхніх специфічних ознак, що створюють труднощі для розслідування кримінальних правопорушень у сфері лікарської діяльності, оскільки мають латентний характер. Здобуті в процесі дослідження результати доцільно використати для вдосконалення компетенції працівників органів кримінальної юстиції, діяльність яких спрямована на проведення досудового розслідування ятрогенних кримінальних правопорушень за допомогою застосування інноваційних засобів криміналістичного забезпечення

Ключові слова: завдання шкоди здоров'ю пацієнта; криміналістичні засоби протидії; дефект медичної допомоги; судова експертиза; криміналістична стратегія; спеціальні знання; криміналістичні інновації; цифрові технології

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Compliance by employers with the Labor Code of Ukraine: On the issue of dismissal for improper performance of work

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Abstract. The relevance of the study of the legal regulation of dismissal of employees for improper performance of labour duties is due to the fundamental changes and reforms in labour legislation which require a more detailed study of the social and legal aspects of labour relations. The purpose of this study is to get acquainted with the procedure for dismissing employees, especially in the form of disciplinary proceedings for improper performance of duties. The study used a theoretical methodological approach, the method of legal hermeneutics, a formal legal, methodological approach, the method of deduction, the method of induction. In the course of the study, the characteristic aspects of labour relations in general, the specific features of the employment contract, and the procedures for dismissal for violation of relevant labour obligations in the framework of disciplinary proceedings were analysed. Modern judicial practice was considered, which provides an opportunity to analyse theoretical provisions in their reflection in the real practice of law enforcement in Ukraine to describe this particular procedure for dismissing an employee more thoroughly. The results of the study also identified certain problems in this area that may interfere with its effective functioning. These problems are related to the contradictory interpretation of legal norms regulating the procedure for dismissing an employee for improper performance of official duties. Therefore, to resolve this conflict of laws issue,

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the practice of the Supreme Court was considered, and the current legislation was analysed, which helps to provide explanations on all the features of the procedure for dismissing an employee legally. The study provides practical guidance for Ukrainian employers on how to properly dismiss employees for non-performance, ensuring compliance with the law, clear criteria for decision-making and the necessary documentation

Keywords: employment contract; employment relations; dismissal procedure; systematicity; misdemeanour

Introduction

Work is recognised as a necessary condition for life and a natural ability of a person. Through work in their own lives, a person has the opportunity to create material values that ensure a proper existence for them and their family. The Constitution of Ukraine establishes in Article 43 the right of citizens to work, which includes the opportunity for everyone to earn a living by work that a person freely chooses or freely agrees to; in turn, the state creates the necessary conditions for citizens to exercise the right to work and also provides guarantees of equal opportunities in choosing the type of work and in choosing a profession (Constitution of Ukraine, 1996).

The use and possession of the ability to work is an inalienable and inalienable natural right of every person. The exercise of this right takes place in various ways, which are characterised by their special legal form and give the person a characteristic as employed. Thus, in the Law of Ukraine No. 5067-VI "On Employment" (2013), namely paragraph 7 of Part 1 of Article 1 regulates that employment is determined by non-prohibited activities of persons related to the satisfaction of their personal and public needs to obtain income (wages) in monetary or other form, and the activities of members of the same family who conduct economic activities or work for business entities based on their property, including free of charge. Considering the main ways for citizens to exercise the right to work, in this case, it is worth highlighting such forms as self-employment, entering into labour relations, engaging in business activities, performing work under civil contracts. However, the most common form of exercising the right to work remains wage labour, which means exercising this right by entering into an employment relationship (Belloc, 2019).

Each employment contract concluded for an indefinite period, as in most cases, can be terminated at any time at the initiative of the employer, employee, third parties, or due to certain life circumstances. The current legislation of Ukraine establishes an exhaustive list of possible grounds for termination of an employment contract, which can be recognised as legitimate only under certain conditions. These conditions should include the existence of a legal fact of termination of the employment relationship, the existence of grounds for termination of the employment relationship provided for in the legislation, and compliance with the established procedure for conducting the dismissal procedure for a certain reason (Caldwell, 2022).

The examination of the dismissal procedure for improper performance of official duties in other countries is very relevant because of the importance of developing labour relations and ensuring the correctness of the dismissal procedure for the implementation of the principle of inviolability of citizens' rights. Notably, the world experience serves as a paradigm for Ukrainian legislation, and the development of labour legislation of Ukraine is one of the priority areas of modern policy in connection with the ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014).

An important place in the field of labour relations is occupied by judicial protection of employees' rights, including during the dismissal procedure. In this regard, considerable attention is paid to judicial practice, especially to the legal positions expressed by the Supreme Court in resolving specific labour disputes (Denysiuk *et al.*, 2021). Much attention should be paid to the examination of decisions in court disputes related to the dismissal of employees for non-performance of official duties. This is explained by the fact that employers quite often make mistakes when applying, including when interpreting the norms of the Labour Code. In accordance with this, it is necessary to examine the procedural aspects of dismissal for non-fulfilment of obligations imposed on the employee, and develop recommendations to improve the effectiveness of applying the current legislation.

According to L.J. Maliuha *et al.* (2023), Ukraine's existing labor legislation is obsolete and imbalanced, with difficulties, deficiencies, conflicts, and gaps that are unsuitable for managing the labor market in a market economy. The necessity for reform is ascribed to the Ukrainian state's democratization and the establishment of democratic ideals, which necessitate a new way to comprehending the value of persons in society and the preservation of their rights and freedoms, particularly those connected to labor. Simultaneously, S.K. Gupta and N. Bhatia (2022) examined a range of employee turnover models and concluded that the theories of attitude, motivation, and choice are dominant in the majority of turnover models. While virtually all old core turnover models are attitude-centric, new turnover models are vastly different, more complicated and comprehensive, and employ attitudes in novel ways.

The dismissal of an employee for inadequate job performance exhibits significant divergence among different countries owing to disparities in labour legislation, regulations, and cultural conventions. Employment in the United States is generally governed by the at-will doctrine, which grants employers the authority to dismiss employees for a range of reasons (Bhargava & Young, 2022). In contrast, as noted the United Kingdom enforces a requirement for employers to follow a just and legal process, often entailing the implementation of performance improvement plans. In Canada, it is mandatory to provide notice or compensation in lieu of notice, along with opportunities for the employee to make improvements (Chireh *et al.*, 2023). Germany and France have robust employee safeguards, characterised by stringent protocols and the possibility of labour authority endorsement (Abad *et al.*, 2018). Japan prioritises valid justifications and counselling, while Australia enforces a process that is both fair and transparent (Bartram *et al.*, 2019). Dismissal procedures can be greatly influenced by employment contracts and local regulations, emphasising the importance for

employers and employees to obtain legal or HR advice that is customised to their particular jurisdiction.

The purpose of the study is to examine the basic principles of dismissal of employees for improper performance of their work duties. The main objectives of the study are disclosure of the functioning of labour relations in general and the main elements of this mechanism; examination of the employment contract as the basis for the emergence and termination of labour relations; analysis of the dismissal procedure in the framework of disciplinary proceedings; analysis of regulatory provisions enshrined in the legislation, and conducting an examination of judicial practice regarding dismissals for violation of labour discipline. These aspects will help to understand and explain the relevant provisions on the procedure for dismissing an employee for non-performance of duties in a legal way.

Materials and methods

Highlighting, first of all, the theoretical methodological approach, helped to identify the concept and content of labour relations, to highlight their characteristic features and principles of implementation. The logical analysis approach was used to reveal the content of an employment contract and highlight its role as the foundation for the creation of an employment relationship. The approach of formal legal analysis aided in the examination of regulatory legal acts governing the creation, termination, and substance of labor legal relations in Ukraine. The system analysis technique aided in considering the mechanism of labor relations as a system and characterizing its structural features. The method of legal hermeneutics is applied to provide a more detailed description of the termination of an employment relationship, especially for improper performance of duties in a legal way, which made it possible to identify the procedure for termination of an employment contract and determine the grounds for termination based on an analysis of the legal norms regulating this procedure.

The functional methodological approach provided an opportunity to examine the content of labour relations in more detail, highlighting their specific tasks and goals, and describing the features of these legal relations. The use of the deduction method in the study allowed analysing such a structural element of this system as the dismissal of an employee for improper performance of their own duties under an employment contract within the framework of the characteristics of labour relations. The induction method, in turn, helped to highlight the content of labour legal relations based on investigating the procedure for dismissing employees for improper performance of duties. The synthesis method is applied to identify problems that interfere with the effective functioning of the field of labour relations, in particular, in the segment of employee dismissal. It was necessary to use the method of structural analysis since the identified ways to overcome existing problems were reflected not only in the field of dismissal of employees, but also in the segment of labour relations in general to highlight recommendations that will improve the quality of functioning of labour relations in Ukraine.

As a result, the research was carried out in stages. The initial stage of scientific inquiry was to look broadly at the field of labor law relations. It provided for the disclosure of the theoretical component, in particular, the allocation of the concept and content of labour relations, the allocation of characteristic elements and principles of functioning of this field. The second stage was based on the study of the dismissal procedure, in particular, for improper performance of labour duties assigned to an employee. For a more detailed and meaningful analysis, the current national legislation and the practice of implementing relevant legal norms was examined. The third stage involved investigating the judicial practice of the Supreme Court and interpreting the relevant legal norms regulating the procedure for dismissing an employee for improper performance of work duties assigned to them. This stage was aimed to formulate appropriate explanations and recommendations for the parties to the employment contract.

Results and discussion

The dynamics and legal framework of labour relations

A person is regarded the highest social value in nations where the rule of law prevails, particularly in Ukraine and most contemporary governments. As a result, safeguarding and preserving their rights and personal interests are comparable values, the weight of which is set by the individual. Special attention in this aspect is paid to human labour rights, the legitimate interests and protection associated with them; in this case, their health, life, well-being, prosperity are also considered. This is achieved by a person as part of the exercise of their right to work and the right not to be forced to work. According to the above, it follows that the protection and implementation of human labour rights is equated with social value (Loubser & Garbers, 2021). This right, which represents an individual's innate need for labor, is established by their material makeup. It serves as a sort of foundation for all other heavenly rights and liberties in the workplace. It is respected as the primary and defining right within the framework of mortal rights accorded to individuals within society. The content of all labor law moralities as a field of law and their internal depth in accordance with the objective requirements of developing social and labor relations are determined by the right to work and the conditions under which it can be implemented (Kiselyova *et al.*, 2023).

In general, labour relations are defined as legal relations regulated by labour legislation, that is, they are a special legal structure, the objectification of which, when implemented in practice, leads to their falling under labour law and the emergence of obligations of the parties within the framework of these relations. Considering other approaches to the definition of the concept of "labour relations", it is necessary to highlight the definition according to which it is a two-way volitional relationship, the emergence of which is associated with the conclusion of an employment contract between an employer and an employee, the content of which is the establishment, development, change and termination of employees' work to perform the functions provided to them (Hatt, 2021). Another approach identifies them as a specific type of legal relationship that arises between an employee and an employer regarding the provision of a certain type of work, and is also characterised by a voluntary nature and is regulated by labour law norms (Ünal, 2021).

Emphasizing the distinguishing characteristics of labor relations, it is important to remember that they occur between subjects of law having a unique legal status that permits them to be regarded as an employer and an employee. Accordingly, it is important to highlight the provisions of Law of Ukraine No. 2694-XII "On Labor Protection" (1992), which states that an employer is the person who owns an

enterprise, institution, organization, or authorised body, regardless of the ownership structure, nature of business, management style, or use of hired labor. An employee is a person who works at an enterprise, organization, or institution and carries out duties or functions under an employment contract (contract).

In the future, among the characteristic features, these legal relations arise, change, or terminate in accordance with legal norms that affect the behaviour of subjects and are implemented through them. In this case, an employment contract occupies a special place since its conclusion is a legal fact, which means the emergence of an employment relationship between the employer and the employee. The next characteristic feature is defined in the fact that labour relations always have a volitional character, since they cannot arise or be implemented without the will of at least one subject. It is also highlighted that labour relations are provided by the norms of labour legislation of Ukraine and protected by the state (Romero, 2020). It should also be noted that labour relations are bilateral and provide for legal liability for violation by one party to the relationship of the rights and obligations of the other party to these relations.

The grounds for the emergence of an employment relationship require a more detailed study. Thus, according to the Labour Code of Ukraine (1971), namely, Part 2 of Article 2, employees can exercise the right to work by entering into an employment contract at an enterprise, institution, organisation, or with an individual. Therefore, an employment relationship arises as a result of the conclusion of a contract between an employer and an employee regarding the application of labour and the provision of payment for it. That is, an employment contract acts as the basis for the emergence of an employment relationship and the legal fact of its occurrence.

Part 1 of Article 21 of the Labour Code of Ukraine (1971) defines an employment contract as an agreement between an employer (an individual employer) and an employee wherein the employer (an individual employer) agrees to pay the employee wages and provide the working conditions required for the employee to perform the work specified in the agreement, as well as any additional work authorized by labor laws, collective agreements, and the parties' agreement. The terms of the employment contract may specify circumstances under which an individual must perform work requiring professional and/or partial professional qualifications, as well as circumstances under which such qualifications are not necessary.

Considering the positions of researchers on determining the grounds for the emergence of labour relations, these include not only an employment contract. This question deserves a more detailed analysis. Among other grounds for the emergence of labour relations, there are also the appointment of a civil servant to a position, election to an elective position, a decision on the conclusion of an employment contract, election by competition, referral to work of young professionals, approval in positions, referral to work at the expense of quotas, admission to membership, provided that this is a prerequisite for employment, a court decision (Jones, 2021). However, these grounds for the emergence of an employment relationship are mostly complex legal facts consisting of several consecutive elements. Moreover, the final element of any of them is the conclusion of an employment contract. It is also important to note that because of modifications to national laws, the great majority of the cases that were submitted are no longer relevant. Therefore, the referral to work at the expense of a quota or the referral of young specialists were made possible by laws that are no longer in effect, specifically Resolutions No. 992 and No. 578 of the Cabinet of Ministers of Ukraine, which deal with the procedure for hiring graduates of higher education institutions prepared by state order and approval of provisions on the application of the Law of Ukraine "On Employment" (1998). Interestingly, the foundation for the formation of an employment relationship was an employment contract, the signing of which came before the offer of employment.

According to the current legislation, the employer is obliged to conclude a contract with a person who is invited to work in the order of transfer from another organisation, institution, or enterprise with the approval of the heads of enterprises, institutions or organisations in accordance with Part 4 of Article 24 Labour Code of Ukraine (1971); employees after the expiration of their powers in an elected position in accordance with Article 118 Labour Code of Ukraine; an employee in case of re-employment in accordance with Article 42-1 Labour Code of Ukraine. If an employee challenges dismissal from work in court, the employment contract is not re-concluded, but the validity of the previous contract is restored. When a person files a claim to appeal against the refusal of employment in accordance with Part 2 of Article 232 of the Labour Code of Ukraine (1971), the basis for the emergence of an employment relationship is, in this case, not a court decision, but an employment contract, which the employer is obliged to conclude with the employee by a court decision.

The procedure for concluding an employment contract in the current Labour Code is limited by the fact that it sets out only the requirements regarding the form of the concluded employment contract, the employee's obligation to submit documents provided for by law, and the prohibition to require certain documents and information when entering into an employment contract. Part 4 of Article 24 of the Labour Code of Ukraine (1971) explicitly states the requirement on registering the fact that an employment contract was concluded by an order or order of the employer. The employer's order must contain information about the employee's work function by providing instructions on their appointment to the position. Thus, according to the above, the only basis for the emergence of an employment relationship is only an employment contract, regardless of the form of its conclusion or type. In addition, a necessary condition for concluding an employment contract is an indication of the employee's labour function in accordance with the Classifier of professions (National Classifier of…, 2010).

In conclusion, this analysis of labour relations in Ukraine emphasises the fundamental significance of upholding human labour rights as a social value. Crucial to these rights are the entitlement to employment and to be free from forced labour, both of which are essential in safeguarding individuals' health, well-being, and prosperity. Current legislation highlights those employers have a contractual obligation to engage with employees under different circumstances, such as transfers, re-employment, and court orders.

Procedure for dismissing an employee for non-performance of official duties

The institution of termination of an employment contract is one of the most significant in the realm of labour law. This

is demonstrated by the numerous disagreements that emerge over whether or not a dismissal is unlawful. Legal norms, the content of which provides for the grounds and procedure for dismissing employees, are inherently mandatory (Liu *et al.*, 2021). In other words, it implies that the parties involved in these legal contacts are unable to establish additional regulations for termination in individual or municipal regulatory legal acts. This is done in order to provide the best possible protection for the right to work, which is guaranteed by the Ukrainian Constitution (1996).

Considering the grounds for dismissal of an employee, they are conventionally divided into two groups. The first group should include the grounds for termination of the employment contract, which are not in any dependence on the illegal or guilty actions of the employee. The second group of grounds consists of illegal actions of the employee (Vegter, 2020). There is a different view on the classification of grounds for termination of an employment contract at the initiative of the employer, which provides for their division into three groups. The basis for distinguishing these grounds is made up of criteria that make it impossible for an employee to leave the team. These criteria include legal events that do not depend on the employee's will, production needs, and guilty illegal actions of the subject of labour legal relations (van der Mersch & Velink, 2021).

The discussion about excluding the grounds for dismissal for systematic violation of labour discipline from the list of disciplinary penalties against a person unfolded quite a long time ago and continues to this day. Regarding this subject of discussion, the position was expressed that there is a different procedure for conducting disciplinary proceedings while maintaining the place of work and in case of dismissal and different legal consequences associated with the application of certain types of penalties. However, it is necessary to keep dismissal for non-performance of labour duties among disciplinary penalties. This is due not only to the educational value but also to the possibility of applying legal guarantees of a procedural nature, which are applied in the event of the imposition of other disciplinary penalties.

Within the meaning of Paragraph 22 Resolution of the Supreme Court of Ukraine No. 9 "On the Practice of Consideration of Labour Disputes by Courts" (1992) when an employer applies dismissal as a disciplinary penalty, they are obliged to comply with the general procedure for imposing a disciplinary penalty, which is defined in the provisions of the Labour Code of Ukraine, namely in Articles 147-1, 148, and 149. In particular, this applies to the term of bringing to disciplinary responsibility, which is determined within one month from the moment of detection of a misdemeanour, not counting the time spent on vacation or the period of temporary disability, but not later than 6 months from the moment of committing the offence. In addition, when making a decision to dismiss an employee, the employer must consider the severity of the offence committed and the damage caused by the employee, the circumstances under which it was committed, and the employee's previous work. It is also worth noting that this type of exemption differs from other disciplinary penalties, and its implementation requires a set of certain conditions. These include the fact that non-performance or improper performance of labour duties by an employee must be characterised by guilt, committed by negligence or intentionally; non-performance of such duties must be systematic; this violation must concern only those duties that are part of the employee's functions or follow from the internal labour regulations; only public and disciplinary penalties imposed by public organisations and labour collectives in accordance with their charters are considered; bringing a person to dismissal must take place no later than one month after the detected violation.

Notably, currently public penalties for violation of labour discipline are no longer considered in the case of establishing the systematic failure of an employee to perform the duties assigned to them by an employment contract without valid reasons. Amendments to Paragraph 3 of Part 1 of Article 40 of the Labour Code were made by law of Ukraine No. 2215-IX "On the de-Sovietisation of the Legislation of Ukraine" (2022). However, these conditions relate to disciplinary dismissals in general, and considering the procedure for dismissal under Paragraph 3 of Part 1 of Article 40 of the Labour Code of Ukraine (1971), the leading role here is played by the systematic failure to perform labour duties, the presence of a penalty for a previous violation, and the essence of official duties, the violation of which is recognised as the basis for dismissal. The Supreme Court of Ukraine in its decision in case No. 520/3689/16-C notes that to dismiss an employee under Paragraph 3 of Part 1 of Article 40 of the Labour Code of Ukraine (1971), it is necessary that the employee repeatedly (for the second time or more) performs guilty non-performance or improper performance of labour duties after a public or disciplinary penalty for committing these actions has previously been applied to them (Resolution of the Grand Chamber..., 2019). Based on this, dismissal for systematic violation of labour duties is possible only in relation to those persons who have already been brought to justice, but these measures did not have a substantial impact, and this act was committed again.

Which of the previously imposed disciplinary penalties should be considered when deciding on dismissal from work? From the standpoint of the established judicial practice in these cases, only those types of disciplinary penalties that are established by the current legislation and have not lost their legal force due to the statute of limitations, that is, the period of 1 year has not expired or they are not removed ahead of schedule under Article 151 Labour Code of Ukraine (1971) are considered This understanding of the provisions of the Labour Code of Ukraine, defined in paragraph 23 of Resolution of the Supreme Court of Ukraine No. 9 "On the Practice of Consideration of Labour Disputes by Courts" (1992). The employer must provide specific facts of non-fulfilment by the employee of the duties assigned to them to comply with the relevant procedure, that is, indicate the type of misdemeanours, the period of their commission, and the actions of the employee after applying previous penalties to them. Thus, for example, failure to perform basic duties can serve as grounds for dismissal only if the employee does not fulfil exactly the duties assigned to the employee by the internal labour regulations or the employment contract. That is, failure to fulfil general legal obligations in the event of an employee's performance of labour duties cannot serve as grounds for dismissal. The employee must be familiarised with the relevant rules and responsibilities in a timely manner. The employer may not blame the employee and bring them to appropriate disciplinary responsibility in case of failure to perform duties that are not stipulated in the employment contract and about which the employee was not properly informed (Resolution of the Supreme Court..., 2019). In

addition, the spread of remote work creates certain difficulties in ensuring labour discipline and responsibility for its violation.

It should be noted that in order to improve labor productivity and labor discipline in remote work, it is essential to update and enact legislation governing the fundamental rules governing employees' adherence to labor discipline and to provide them with suitable working environments. Furthermore, a legislative framework must be established to guarantee adherence to internal security protocols and guidelines (Yaroshenko *et al.*, 2021). If the employer does not familiarise employees with the provisions of local regulatory legal acts containing a detailed list of job responsibilities and working hours, the court will take the employee's side when considering the case since the latter should not be responsible for fulfilling the rules and obligations that they were not familiarised with in advance. In accordance with this, the employer should carefully approach the issue of familiarising employees with the regulatory legal acts regulating their rules of conduct and obligations because one missed signature can lead to the resumption of the violator at the place of employment. Notably, the employee's familiarisation should also apply to all types of penalties. Thus, judicial practice shows that when making a decision on dismissal, a "friendly remark" can also be considered (Hatt, 2021). However, as already noted, public penalties have lost their legal force in matters of dismissal of employees for systematic failure to fulfil their labour duties.

With the growing number of employers-individuals and private entrepreneurs in the labour market, these penalties are defined as an exotic measure but are still found in the activities of large enterprises. It is worth focusing on the fact that the employer does not have the right to apply two or more penalties for the same violation and also does not have the right to dismiss an employee a few days after being reprimanded for the same misdemeanour. Article 149 of the Labour Code of Ukraine (1971), paragraph 2, states that a worker may only be punished once for each labor discipline infraction. The selection of such a punishment is an additional crucial factor. The seriousness of the offense, its repercussions, and the circumstances surrounding it must all be taken into account by the employer when determining the appropriate penalty. It should be remembered that the offense must have been done with guilt, on purpose, or by negligence. In order to establish culpability, the employer is required under Article 149 of the Labour Code of Ukraine (1971) to get a written explanation from the employee. However, failure by the employer to comply with this obligation, failure to receive such an explanation is not an indisputable basis for cancelling disciplinary proceedings, provided that the fact of violation of labour obligations by the employee is proved due to the evidence provided to the court.

The employer should be aware that the dismissal of a person for systematic improper performance of duties is possible only in relation to those persons who were brought to disciplinary responsibility within a year from the date of the previous bringing to disciplinary responsibility, and the penalties applied were not lifted ahead of schedule or not repaid at all. It should also be understood that the violation that is defined as the basis for dismissal, according to the chronology, should occur only after the application of appropriate penalties to the employee. This is what confirms the fact of systematic illegal behaviour of the employee. Part 1 of Article 43 of the Labour Code of Ukraine (1971) establishes that when the elected body of the primary trade union organization of the enterprise, institution, or organization consents, then the matter of dismissing individuals at the employer's initiative must also be taken into consideration. The Law of Ukraine No. 1045-XIV, "On Trade Unions, Their Rights and Guarantees of Activity", (1999), governs the process and grounds of consideration.

Paragraph 15 of the Resolution of the Supreme Court of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" (1992) states that when an employee is dismissed without an employer applying to a trade union body, the court must suspend the proceedings in this case, request the consent of this body, and only after a response, continue consideration of the case. On the one hand, it will not contradict the current legislation if, in this case, a court or employer applies to the trade union body when preparing the case for court proceedings. However, on the other hand, this contradicts paragraph 1 of Article 43 of the Labour Code of Ukraine (1971), which states that termination of an employment contract for systematic non-performance of labour duties is possible only with the prior consent of the trade union organisation. A certain legal conflict arises from this situation. Therefore, to resolve it, it is necessary to emphasise the need for the employer to comply with the obligation to apply in advance to the trade union body for consent to terminate the employment contract. It is equally important to note that such an obligation should lie only with the employer, and for the courts, this will serve as the basis for consideration. Thus, having analysed the judicial practice, the decisions of the Supreme Court provide legal positions that are supported by arguments and help, in turn, the employer to conduct the procedure for dismissing employees for non-performance of duties in a legal way.

Terminating an employee for poor performance is a sensitive and complex process that requires careful consideration and adherence to legal and ethical guidelines. According to S. Bonaccio *et al.* (2020), before taking such action, it is important to follow a series of steps to ensure that the decision is justified and defensible. These steps may include providing informal feedback and coaching, initiating a performance improvement plan (PIP), documenting the employee's performance issues, and seeking legal counsel to ensure that the termination is supported by valid reasons and in compliance with relevant regulations. Adopting measures for a just and lawful process of dismissing employees for inadequate performance could considerably improve Ukraine's labour legislation. Crucial to this process is the careful documentation of all interactions and evaluations related to performance, creating an inclusive record that underpins decision-making. Additionally, providing small and medium-sized enterprises with access to legal counsel can assist employers in navigating the intricacies of labour law, ensuring adherence to laws and promoting equity.

The different interests between employers and employees in Indonesia can lead to industrial disputes, with termination of employment being a dominant issue, particularly related to company efficiency. According to K.A. Sudiarawan *et al.* (2021), termination of employment in Indonesia is legally required to be based on good cause. Employees must be compensated according to their salary and length of service, and termination for corporate efficiency is only permitted in the event of a permanent firm closure. The parties may choose to use the bipartite, tripartite, or Industrial

Relations Court patterns of industrial dispute settlement. By adopting clear legal grounds for termination, ensuring fair compensation for terminated employees, and establishing a multi-tier dispute resolution mechanism, Ukraine could significantly enhance the balance between employer and employee interests. This Indonesian model, incorporating bipartite, tripartite, and judicial resolutions, could serve as a blueprint for Ukraine, offering a more transparent, equitable, and structured framework.

During the martial law period, as well as during the coronavirus pandemic, it became important to emphasise and more thoroughly consider legislation on the regulation of remote work. Therefore, S.M. Gusarov and K.Yu. Melnyk (2021) will report on the necessity for Ukraine to create and enact a contemporary, all-encompassing labor law, particularly a modernized Labour Code (1971). It is seen to be ineffective to keep adding to and changing the Labour Code (1971), since this does not assure high-quality regulation of labor and associated interactions and does not keep up with contemporary advances in labor law or international and European norms. The paper proposes that in order to remedy these deficiencies, the Labour Code (1971) should include a distinct structural section devoted to the unique aspects of governing the labor relations of certain employee groups, especially those who work remotely. The definition of remote work, the process for entering into, modifying, and canceling contracts for remote work, the working and rest hours for remote workers, and the rights and labor protections afforded to these workers should all be included in this new section. For Ukraine's legislation on employee termination, these findings imply a shift towards a more structured, clearly defined approach that accommodates modern work arrangements like remote and telework. This would involve updating the Labour Code (1971) to reflect current labour market realities and international standards, ensuring that terminations, especially in the context of remote work, are handled within a well-defined legal framework.

Legal norms governing termination are mandatory, aiming to protect the constitutional right to work. Dismissal grounds are categorized into those independent of employee misconduct and those based on illegal actions. The Supreme Court of Ukraine mandates adherence to the general procedure for imposing disciplinary penalties, including dismissal, as stipulated in the Labour Code of Ukraine. Employers must consider various factors and legal requirements when deciding on dismissals, including previous disciplinary actions within a specific timeframe.

Conclusions

Thus, having conducted a study in the field of proper dismissal of an employee for poor performance of duties, the conditions for its implementation by the employer in accordance with the norms of the Labour Code of Ukraine and the relevant decisions of the Supreme Court providing a more detailed explanation of this procedure were clarified. It was determined that the dismissal of employees for improper performance of duties is possible only if this act is re-committed by persons who were previously subjected to a disciplinary penalty for non-performance of duties expressly provided for in the employment contract and the employee is familiar with them.

Identifying the specific features of the dismissal procedure for improper performance by an employee of the obligations assigned to them, notably, such a violation must be characterised by guilt, committed by negligence or without valid reasons intentionally, and systematic. It should also apply only to those duties that are part of the employee's functions or follow the internal labour regulations, and the person's involvement in dismissal should take place no later than one month after the detected violation. The employer does not have the right to apply two or more penalties for the same violation. The procedure for dismissal for non-performance of duties by an employee is possible in chronology only after the application of penalties to the employee, which will be the fact confirming the systematic non-performance of obligations by the employee. The issue of dismissal of an employee for non-performance or improper performance of labour duties should be carefully considered in the context of the fact that the employee should be familiar with the regulatory legal acts regulating their rules of conduct and obligations. An important aspect is that the employer receives written explanations from the employee about the offence committed. However, considering this issue in the course of court proceedings, the absence of such an explanation will not be considered a necessary condition if the employer can prove the employee's guilt by providing evidence.

This research offers scientific novelty by conducting a comprehensive examination of the current legal framework for employee dismissal in Ukraine, with a focus on disciplinary proceedings. It emphasizes procedural nuances, interpretation challenges, and incorporates comparative analysis with international practices. This work contributes to a better understanding of Ukrainian labour law and its potential evolution. Future research prospects include labour law reform, implementation analysis, technological impact, and socio-legal studies on dismissal consequences.

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Conflict of interest

None.

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Дотримання роботодавцями Кодексу законів про працю України: проблема звільнення за неналежне виконання роботи

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Анотація. Актуальність дослідження правового регулювання звільнення працівників за неналежне виконання трудових обов'язків зумовлена докорінними змінами та реформами в трудовому законодавстві, які вимагають більш детального вивчення соціально-правових аспектів трудових відносин. Метою цього дослідження є ознайомлення з процедурою звільнення працівників, особливо у формі дисциплінарного провадження за неналежне виконання трудових обов'язків. У дослідженні використано теоретико-методологічний підхід, метод правової герменевтики, формально-юридичний, методологічний підхід, метод дедукції, метод індукції. У ході дослідження було проаналізовано характерні аспекти трудових правовідносин загалом, особливості трудового договору, а також процедури звільнення за порушення відповідних трудових обов'язків у рамках дисциплінарного провадження. Розглянуто сучасну судову практику, що дає можливість проаналізувати теоретичні положення в їх відображенні в реальній практиці правозастосування в Україні для більш ґрунтовної характеристики саме цієї процедури звільнення працівника. Результати дослідження також дозволили виявити певні проблеми у цій сфері, які можуть перешкоджати її ефективному функціонуванню. Ці проблеми пов'язані з суперечливим тлумаченням правових норм, що регулюють порядок звільнення працівника за неналежне виконання службових обов'язків. Тому для вирішення цієї колізійної проблеми було розглянуто практику Верховного Суду, а також проаналізовано чинне законодавство, що допомагає надати роз'яснення щодо всіх особливостей процедури звільнення працівника на законних підставах. Дослідження надає практичні вказівки для українських роботодавців щодо правильного звільнення працівників за невідповідність обов'язків, забезпечуючи відповідність законодавству, чіткі критерії для прийняття рішення та необхідну документацію

Ключові слова: трудовий договір; трудові відносини; процедура звільнення; систематичність; проступок

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Prospects for the legalization of cryptocurrency in Ukraine, based on the experience of other countries

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Abstract. Presently, legal circles, both among theorists and practitioners, are particularly concerned about the legalisation of cryptocurrencies and transactions with them according to the current legislation. For this reason, the purpose of this work was to study approaches and methods to legalisation of income derived from cryptocurrency speculation based on the provisions of the tax legislation of Ukraine. A theoretical analysis of the general concepts under study was conducted, which in turn formed the object of this study. The common and distinctive features of the researched concepts were identified, thus establishing the relationship and dependence between them. As for the practical aspects, the study revealed them in the analysis of particular regulations, namely, the specific features of their implementation. Positions and opinions of various scholars on it were compared, which allowed for a qualitative coverage of ways to legalise the income that citizens receive from cryptocurrency speculation. On the basis of the analyzed scientific publications, the most successful and suitable for implementation in Ukraine, the experience of other countries, in particular the USA and Canada, has been determined. It has been proven that the legalization of citizens' incomes received from cryptocurrency transactions is a necessary process for the economic development of the state.The practical value of the study lies in the fact that it can be used both by scholars, in the context of the primary source for further study of this issue, and by lawyers whose activities are related to cryptocurrencies. The scientific value of this study was covered in the description of effective approaches to transactions with income generated by cryptocurrencies, which have not yet been studied to the required level

Keywords: digital economy; blockchain technologies; electronic money; digital currencies; financial assets

Introduction

Analysing the socio-economic conditions of today, they are developing extremely dynamically, which is largely caused by the globalisation and informatisation. Admittedly, this is also reflected in the Ukrainian technology market, which provokes several changes, specifically in the context of civil rights and obligations of citizens. To a greater extent, this is due to the active formation and dissemination of new objects of civil law, characterised by their special form, namely digital. In this context, attention should be focused on digital assets, as their impact on Ukraine's economy and civil relations between citizens is only increasing with each passing day. Accordingly, there is an urgent need to legalise cryptocurrencies, namely the income that citizens receive from speculation in such financial assets. Furthermore, considering the problematic of this issue, it can be argued that such a digital currency market, in the conditions in which the modern world is developing, requires its separation and recognition as one of the elements of the economic system of a developed state. Now, Ukraine is only at the initial stage of cryptocurrency legalisation, as evidenced by several issues that are still unresolved. They are caused by the inadequate level of legislative regulation of this area, which is reflected in the lack of special tax mechanisms and algorithms for income generated from cryptocurrencies. Therewith, Ukraine is at the forefront of the world's cryptocurrency holders in terms of the number of countries with the highest number of cryptocurrency holders (Podtserkovnyi *et al.*, 2020).

The legal phenomenon of digital currency has been studied by various scholars over the past few years. O. Oliinyk and Ia. Krupko (2021) focus on the theoretical aspects of the issue under study and define cryptocurrency as a digital asset that belongs to a specific category of currency that can perform the tasks of exchange instruments and is a unit of account. In turn, S. Yermak and M. Satanievska (2020) consider ways of legal regulation of cryptocurrency income through the lens of foreign practices of countries that are particularly successful in this area. They analyse the approaches used by the United States, Canada, Japan, and China, and classify them according to various criteria. Cryptocurrencies were also studied by M. Filon and Ye. Borsuk (2021),

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specifically, analysed their legal nature and the rules that regulate it. The authors investigated the procedure for the development and consolidation of virtual assets, and most importantly, tried to establish their economic essence. V. Ivaniuk and S. Banakh (2020) established the essence of electronic money, namely the specific features of conducting transactions with it, and considered the differences from those financial transactions based on the use of conventional types of currencies. N. Turchyn and A. Turchyn (2021) compared cryptocurrency with cash financial resources. Moreover, the authors tried to classify diverse types of cryptocurrencies depending on their digital and financial properties.

However, when analysing the conclusions reached by the above scholars, it should be noted that they do not provide a clear understanding of the cryptocurrency category in the tax context. There are no qualitative results to explain the process of taxation of cryptocurrency income and various cryptocurrency transactions. For this reason, the purpose of this study was to identify priority ways to legalise the income received by citizens from cryptocurrency speculation according to the current tax legislation of Ukraine. For this, several important tasks were performed in the study, namely: the essence of the concept of cryptocurrency was established; the properties of the income received from it were considered; modern approaches to the legalisation of virtual assets in Ukraine were identified; the tax regulations governing digital assets were investigated; the study identified the existing ways of legitimate regulation by the state of the income received by citizens from cryptocurrency transactions.

Materials and methods

A functional methodological approach was used to organise the study, namely the development of its plan, purpose, and goals. A dialectical approach was used to develop the internal structure, specifically the content of this paper. Its essence in the context of this study was to determine the direction of research from the general to the particular. The dialectical approach helped to analyse the subject under study from both a theoretical and practical standpoint. For this reason, the main concepts and structural elements were first explored, and then the views on them were specified following certain regulations.

Based on the method of analysis, the study investigated the tax legislation of Ukraine and analysed its content in the context of regulating the legalisation of income received from cryptocurrencies. Specifically, the Tax Code of Ukraine (2010), Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceedings, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" (2020), Law of Ukraine "On Prevention of Corruption" (2014), Individual tax consultation of the State Tax Service of Ukraine "On Taxation of Income from the Sale of Cryptocurrency" (2020), and Draft Law of Ukraine "On Virtual Assets" (2020). The synthesis method formed the basis for the discussion of the findings obtained in the study. It helped to find the common and distinctive features of the opinions of other scholars on the issue under study. The comparison method was used to find effective ways to legalise income from cryptocurrencies. Based on this method, different approaches to this issue, as well as the positions of researchers, were compared and analysed. In this way, the study found the most successful and promising approaches that follow the current tax legislation.

Since the subject is related to the legal sphere, the study explored special legal terms and regulatory documents, which was implemented using the formal legal method. To examine all the necessary aspects and achieve the goals, the study was divided into three separate stages. The first stage defined elements such as the plan, purpose, and goals. A general theoretical analysis of the object of study and its key features and characteristics was also started. The second stage analysed the provisions of Ukrainian tax legislation that set out the specific features of legalising cryptocurrency income. Furthermore, the findings were discussed and compared with the opinions of other authors. The third stage reviewed the research materials and drew concise conclusions on their basis.

Results

Due to the widespread and dynamic spread of digital technologies and mechanisms, dramatic changes in the functioning of society are taking place, which are reflected in their underlying principles. In this context, this refers directly to virtual assets, which are increasingly being integrated into the everyday life of citizens. Furthermore, such payment instruments are beginning to successfully replace established payment methods, including cash payments. When analysing the issue of ways to legalise the proceeds of cryptocurrency speculation, it is imperative to consider both practical and theoretical principles. This makes it possible to explore the structural elements of the cryptocurrency category, which in turn is the subject of this study. Therefore, the essence of the concept under study can be defined as separate, mathematically based and developed peer-to-peer digital currencies that contain a special source code, but do not contain a central administrator. However, one of the most defining properties of cryptocurrencies is the lack of mechanised control or monitoring (Matviienko & Kotenko, 2020).

Focusing on the characteristics of virtual currency, as well as the income received from it, it is worth noting that they are completely atypical and have several features unlike other means of payment. This is because cryptocurrencies do not need to be recognised by the state to be used. Therewith, despite the specific features of virtual currencies, most countries are already ready to use them. This statement is based on the experience of using electronic assets that underpin the regulation and development of the state economy. Furthermore, the readiness of states to attract cryptocurrencies is also reflected in the ways in which basic payments between countries and banks are made electronically (Wu *et al.*, 2021).

Proceeding from this, at this stage of human existence, cryptocurrencies are already a full-fledged and effective form of payment that can be exchanged for conventional currency, and as a result, various goods, and services, including those necessary for the daily life of citizens, can be purchased. The priority and prospects of cryptocurrency transactions are also reflected in the fact that largest companies have already developed and issued their own cryptocurrency, which is directly used to pay for assorted services or goods sold by this corporation. This suggests that virtual assets are the basis for the future economic development of such facilities, as well as their scaling. However, cryptocurrency is an effective tool not only in terms of its use by legal entities and their expansion, but also by ordinary citizens, i.e., individuals. This fact is confirmed by the developed range of opportunities that such entities are granted when conducting transactions

with digital assets. For example, unlike stocks, a person can buy cryptocurrency on their own, without involving third parties, including brokers. As for the withdrawal of earned income, this process is also no less easy and unconditional, which naturally increases the efficiency of the use of this form of assets by citizens. Therewith, special attention should be paid to the legalisation of such income, namely its taxation. This issue is indeed extremely controversial and complex today, as it causes many contradictions between the opinions of both practitioners and theorists on its solution. This is explained by the fact that Ukraine still does not have a comprehensive set of regulations that would fully regulate cryptocurrency transactions and the algorithm for taxation of income derived from them.

Attempts to regulate such transactions were made as early as 2014. At the time, legislators tried to develop regulations that not only prescribed the existence of cryptocurrencies, but also covered transactions with the income generated from them. However, such attempts were unsuccessful due to several factors. First of all, the lack of support from the public, since at that time cryptocurrencies were not particularly relevant and promising among ordinary citizens. Secondly, the proposed mechanisms did not provide an opportunity to qualitatively describe and consolidate the rules and a single algorithm for legalising cryptocurrencies. As a result, despite the passage of a considerable amount of time since the first attempts of legislators to consolidate the legal status of cryptocurrencies in Ukraine at the legislative level, it is still uncertain. Analysing this situation on the one hand, one can focus on the fact that the absence of high-quality tax legislation relating to virtual assets has not become an obstacle to their dynamic development and consolidation in society. This raises the question of the actual need to legalise cryptocurrencies. The answer to this question can be given by looking at it from another angle, which is the number of users of virtual assets and their capital. Now, Ukraine is at the forefront of the international arena in terms of the number and volume of cryptocurrencies held by its citizens. This factor proves the urgent need for prompt and high-quality solutions to problems related to income generated by cryptocurrencies.

Proceeding to the current regulatory framework, which partially regulates virtual assets and transactions with them, it is mostly outdated and needs to be amended. Thus, as for the current laws, attention should be focused on the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Criminal Proceedings, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction" (2020) and the Law of Ukraine "On Prevention of Corruption" (2014). The value of the former of the above regulations, in the context of cryptocurrency legalisation, is revealed in the consolidation of the term "virtual assets" (Law of Ukraine No. 361-IX..., 2020). This is because this document not only describes its essential content, but also lists the properties that are also inherent in cryptocurrencies. Thus, citizens can partially define the scope of the term "cryptocurrency" and understand its general features. As for the next law, unlike the previous one, its content touches on monitoring of cryptocurrencies, which is expressed in the obligation to declare cryptocurrencies to citizens in a special anti-corruption declaration (Law of Ukraine No. 1700-VII..., 2014). Notably, this law is currently the only effective legislative document that explicitly makes provision for the use of the cryptocurrency category but does not cover its content.

Particular attention should be paid to the provisions of the Tax Code of Ukraine (2010), as it should underlie the possibility of citizens to legalise their income from cryptocurrency transactions. In this regulation, it is expressed through such a process as taxation. It lies in the taxpayer's obligation to complete and submit tax returns relating to each individual tax to which the person is subject. Furthermore, taxation must be carried out for each statutory reporting period according to which taxable objects are formed. Such a tax return must be filed by 1 May of the year following the reporting year. As for the general rule provided by the tax legislation, a taxpayer receiving income from a person who is not a tax agent and foreign income must include the particular amount of the received assets in their total annual taxable income. This process should be combined with the prompt filing of a tax return based on the data of the reporting tax year and payment of tax in a certain amount on a part of the income received.

It is also worth paying attention to another individual tax consultation, which explains in more depth and detail the positions of the current tax legislation on the legalisation of taxpayers' income derived from the sale of cryptocurrencies. In this context, the study analysed Individual tax consultation of the State Tax Service of Ukraine "On Taxation of Income from the Sale of Cryptocurrency" (2020), which is an explanation of the specific features of the procedure for taxation of income received by a taxpayer from the sale of cryptocurrency and its mandatory fixation in a certain amount and equivalent in the person's declaration of property and income. Therefore, its provisions establish that the above-mentioned income of an individual, who is a resident, as a result of the sale of cryptocurrency to another individual resident, should be considered and reflected in the total monthly or annual taxable income, in the form of other income with certain taxation features. However, special attention in this consultation is paid to the fact that if the income earned is paid to the taxpayer by a non-resident individual, it is characterised as foreign. As a result, such income is subject to the corresponding personal income tax and military tax under the general rules.

To legalise income to persons who received it as a result of payment by other persons who are not tax agents, as well as foreign income, it is mandatory to reflect and consider the amount of the listed income. It must be added to the total annual taxable income and reported in the tax return for the tax year under review. This process is possible only if a person pays tax on their income, as well as the military duty on such income. Proceeding from the comparative analysis, the regulator does not distinguish between the process of legalisation of income received as a result of "mining" from the sale of cryptocurrencies to other individuals and the income received from exchange rate differences, which underlies the activities of participants in various cryptocurrency exchanges.

The draft laws that prescribe the regulation of income earned by citizens from cryptocurrency transactions are of high priority. For instance, Draft Law "On Virtual Assets" (2020) was adopted, which aims to define and form a legal basis for the quality work of persons in digital currency markets. Furthermore, it is also promising in that it will be able to use the recommendations of the Financial Action Task Force on Money Laundering (FATF) to ensure high-quality financial control over the cryptocurrency and other assets market. In the context of legalising the proceeds

of cryptocurrency transactions, it will be possible to establish a clear system of professional service providers of digital assets, as well as their registration and use. Moreover, it is necessary to emphasise the need to amend the Tax Code of Ukraine and other regulations to enable more efficient and prompt taxation of income of virtual asset market participants. For example, by reducing the value added tax or lowering the tax rate on income received from a person's activities in the digital currency market.

It is also worth considering the legal status of cryptocurrencies in other countries of the world in order to better understand this topic. In particular, the United Kingdom is a leader in cryptocurrency integration and one of the most favourable and comfortable jurisdictions for running a cryptocurrency business. In addition, the state provides support to startups related to digital currency. However, the government's final position on the legal regulation of digital money-related activities has not yet been finalised. At the same time, the government intends to regulate cryptocurrency relations, firstly, to prevent the criminal use of digital currencies for money laundering, terrorist financing and other illegal activities and, secondly, to support innovations in this area. In general, cryptocurrencies are actively used in various fields in this country, but they are not recognised as a legal payment method (Chernykh, 2023).

In US law, cryptocurrencies are not recognised as legal tender and are regulated at the state level, depending on federal law. Even in the absence of a consistent legal approach at the state level, the US continues to work on developing federal legislation on cryptocurrencies. The Financial Crimes Enforcement Network (FinCEN) does not recognise cryptocurrencies as legal tender, but considers crypto exchanges to be a means of money transmission, as cryptocurrency tokens are considered "other value that changes currency". The Internal Revenue Service (IRS) also does not recognise cryptocurrencies as legal tender, but considers them to be "a digital representation of value that functions as a medium of exchange, unit of account, and/or store of value". These approaches are defined according to their respective functions (Poynton, 2022).

Cryptocurrency exchanges are legal in the US and fall under the Bank Secrecy Act (BSA). This means that cryptocurrency exchange service providers must register with FinCEN, comply with AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) programmes, maintain relevant records, and submit reports to the government. The US Securities and Exchange Commission (SEC) considers cryptocurrencies to be securities and applies the relevant laws to them. The Commodity Futures Trading Commission (CFTC), on the other hand, treats bitcoin as a commodity, allowing trading in cryptocurrency derivatives.

In response to the June 2019 recommendations of the Financial Action Task Force (FATF), FinCEN noted that it expects crypto exchanges to comply with the "Travel Rule" and collect and share information about the initiators and beneficiaries of cryptocurrency transactions. This puts virtual currency exchanges in the same regulatory category as traditional money transfers and requires compliance with all regulations, including the Bank Secrecy Act, which has established its own "Travel Rule". In October 2020, FinCEN issued a notice of proposed rulemaking (NPRM) on amendments to the Travel Rule, indicating its intention to introduce new compliance requirements for cryptocurrency exchanges.

The Department of Justice continues to coordinate with the SEC and CFTC for future cryptocurrency legislation to ensure effective user protection and regulatory oversight. In 2021, the US government actively studied stablecoins, aiming to reduce the risk of token price appreciation. In the same year, the President's Task Force on Financial Markets issued recommendations that expressed the need for new legislation. Congress also discussed the status of cryptocurrency services in 2021, including new rules included in the Infrastructure Bill (Poynton, 2022).

Cryptocurrencies are legal in Germany, but they are not considered legal tender or currency. Instead, they are classified as financial instruments or assets subject to securities and investment regulations and laws. Germany has taken a proactive approach to cryptocurrency regulation, passing a law in 2020 that requires licensing for all cryptocurrency exchanges operating in the country. Regulation is entrusted to the Federal Financial Supervisory Authority (BaFin), which also sets rules for custodians of cryptocurrencies and supervises the activities of market entities (Wellbrok, 2021).

Taxation of cryptocurrencies in Germany is complex and depends on the holding period of the assets. Profits from mining are subject to income tax, and the use of cryptocurrencies to purchase goods or services may be subject to VAT. In addition, there are limits on tax exemptions for small amounts and income from bets or loans. In the context of combating money laundering, Germany has strict rules that oblige service providers and exchanges to use measures such as KYC procedures and transaction monitoring. These entities must also meet the requirements of the Fifth EU Anti-Money Laundering Directive (5AMLD) and report suspicious transactions.

Regarding cryptocurrency trading in Germany, BaFin regulates exchanges such as eToro, Bitpanda, Kraken, Binance, Justtrade and Coinbase. These platforms offer various trading options and are subject to licensing, KYC and AML compliance. All cryptocurrency transactions must be reported in the annual tax returns of German tax residents, and failure to do so may result in fines. In addition, exchanges and service providers are required to report any suspicious activity to the FIU (Wellbrok, 2021).

In early May 2022, a major development occurred in the regulation of cryptocurrencies in France, when Binance, a major player in the field of cryptocurrencies, received registration as a digital asset service provider (DASP). This registration gives Binance the right to operate its cryptocurrency exchange within France. Thus, France became the first major European country to issue regulatory approval to a cryptocurrency exchange. Binance is now listed as a registered digital asset provider by the French Stock Market (AMF), allowing it to provide trading and storage services for Bitcoin, Ether and other cryptocurrencies (Kuzhelko, 2022).

In 2014, Polish authorities rejected the recognition of bitcoin as a currency, but stated that contracts based on its underlying index are full-fledged financial instruments subject to general rules. Cryptocurrencies, although they have not received official status, are not considered fiat money, but are legal to trade in the country. Mining, as well as the purchase and sale of cryptocurrencies, are recognized as permitted activities (Mincewicz, 2021). Since November 2021, the circulation of virtual assets has become an object of regulation in Poland. Companies carrying out this activity must be registered in a separate registry of cryptocurrency

enterprises and obtain an appropriate license. Registration of entrepreneurs is carried out in accordance with the requirements established by Polish legislation. Thus, thanks to the popularity of virtual currencies and the availability of Bitcoin ATMs, Poland has become a country where cryptocurrency business, such as mining, selling and buying cryptocurrency assets, is regulated and controlled by national authorities (Mincewicz, 2021).

In general, it can be concluded that different countries of the world have different points of view on the legal status of cryptocurrencies, and these countries have different approaches to the introduction of virtual funds in society.

Discussion

First of all, it is necessary to discuss the attitudes and understanding of scientists about the benefits of virtual assets, as this way it is possible to cover their goals and purpose. Y. Liu and A. Tsyvinski (2021) emphasise that cryptocurrency allows a person not only to use it as a means of payment, but also to mine it independently, admittedly, subject to the necessary capital conditions. In this case, it is worth agreeing with this position, but it can also be added that to implement the above process, a person needs to create an electronic wallet and have a device connected to the Internet to buy and sell digital currency.

It is appropriate to agree with F. Fang *et al.* (2022) that digital assets have an isolated, autonomous nature. The study argues that there is currently no specialised institution in Ukraine that would supervise and monitor the assets and transactions of citizens related to cryptocurrencies. This type of currency is not interdependent on third parties, which also expands the possibilities of their holders, e.g., to conduct digital financial transactions without intermediaries and supplementary conditions. A comparable opinion was expressed by C. Alexander and M. Dakos (2020) in the context of the security of data and materials of cryptocurrency owners. It is worth agreeing that virtual assets are indeed among the safest assets on the planet. In the study, the researchers emphasise that the exclusion of the possibility of copying or destroying the coins of the digital currency owner is ensured by the nature of the cryptocurrency, namely its construction based on blockchain technologies and its successful decentralisation. Thus, the loss of all digital assets can only be achieved if all users are simultaneously disconnected, which is impossible, and thus makes it impossible to completely destroy the cryptocurrency.

By identifying common and distinctive features among these statements, while comparing them with the findings of this study, it is possible to summarise them and characterise them through the lens of two features, namely anonymity and internationality. Therewith, these factors are both advantages and disadvantages of digital currency. The anonymity of the cryptocurrency is analysed by R. Guerraoui *et al.* (2019), exploring this property in the context of algorithms for using cryptography technologies and decentralised registries. This opinion is reasonable, as these mechanisms make it much more difficult and, to some extent, impossible to monitor or verify data on cryptocurrency owners and the amount of their income. Proceeding from this, the authors agree that this property of virtual assets in this context is an advantage for its owners, since their transactions and other operations are not available to others. However, a contradictory opinion is expressed by L. Ante *et al.* (2021), who argue that a person's transactions with cryptocurrency cannot be described as completely anonymous. The authors provide an example of one of the most common methods of user verification among cryptocurrency exchanges, namely "know your customer", which requires the identification of personal data, and as a result, monitoring is still partially carried out.

As for such a criterion as transnationality, again, there is a debate and controversy about it. From one perspective, this property allows the owners of virtual assets to freely use them, as well as to carry out other transactions, subject to a single condition, namely access to the Internet. However, D. Vidal-Tomas (2021) proves the opposite, namely that due to the transnationality of digital currency, the borders between states and their legal norms disappear, and as a result, international currency-related illegal activities can be carried out and secured. As for the positions on the taxation and legalisation of cryptocurrencies, namely the income received by citizens from cryptocurrency transactions, opinions and views also differ in this case. This is mainly cause by the fact that scientists rely on the successful practices of foreign countries, whose approaches differ significantly. For instance, H.-P. Cheng and K.-C. Yen (2020) advocate ways to legalise the proceeds of cryptocurrencies used in Japan. The authors believe that cryptocurrencies should first be legalised legislatively, specifically by issuing special laws and other regulations, and thus recognised as a full-fledged means of payment. This opinion is admittedly reasonable, since due to granting legal status to cryptocurrencies in the country, the income received from transactions with them also becomes legal. However, to implement this approach in Ukraine, large-scale changes to the current legislation, including tax legislation, would have to be made, which would take a long time.

J. Kwapien *et al.* (2021) substantiate that such cryptocurrency activities pose an extreme danger to state financial stability. Therewith, the authors emphasise that cryptocurrencies, namely the income received from their operations, are currently the subject of criminal activity. For this reason, F. Colon *et al.* (2021) believe that cryptocurrencies do not need to be legalised, and therefore, the income from cryptocurrency transactions should not be legalised either. However, it is impossible to agree with this statement, as it is not acceptable for the development of society in terms of digitalisation and active production of virtual assets. In fact, the potential threat and danger described by the authors can be eliminated by developing a special supervisory body. This idea is supported and developed in the study by A. Chernenko (2020), as it is based on the US experience. The author believes that to effectively and safely legalise citizens' income derived from cryptocurrency transactions, a clear system of their taxation should be developed, specifically, through the declaration of such income. This will make it possible to legalise cryptocurrency circulation, while consolidating the provisions necessary for legal regulation of cryptocurrency income of persons, including taxpayers.

Proceeding from the above statements and opinions, the issues related to cryptocurrency and its regulation in Ukraine are still unresolved. This is conditioned by the lack of both a quality regulatory framework and public interest in addressing the issue. Nevertheless, the available results of the researchers are quite promising, which shows the possibility of further successful legal development of this area in Ukraine. The author of this study believes that the choice of approach and method of legalisation of a person's income

derived from cryptocurrency transactions should be based on factors and conditions relevant to society. Only in this way will it be possible to make the right choice that will meet both the private interests of citizens and those related to the economic and legal development of the state.

Conclusions

The study of ways to legalise the income of citizens received as a result of cryptocurrency transactions is a necessary link in the modern legal doctrine. This is because this aspect is still not regulated by law, which negatively affects the economic development of the state. In this context, the legislator needs to define the legal status of cryptocurrencies in general, as well as income from them. Therewith, this paper examined the current regulatory documents that directly or indirectly govern the field of virtual assets. However, the study found that the existing approaches and opinions prescribed in tax legislation are unable to cover all social relations, including property relations, arising between citizens. The examined provisions of the Tax Code of Ukraine are only partially capable of regulating the taxation of income from cryptocurrency transactions. Notably, the positions of other authors considered during the discussion are quite promising for Ukrainian legislation. This is because they are based on international experience, which makes it possible to immediately analyse both their positive and negative features directly for Ukrainian society.

The approaches of the United States and Canada can be considered the most rational, as they allow cryptocurrency users to have some independence, while limiting it to the activities of special authorised bodies. In Ukraine, it would be advisable to form such a body within the structure of tax authorities and institutions, as this would accelerate the process of taxation of income generated from cryptocurrencies. The legalisation of citizens' income received from cryptocurrency transactions is a necessary process for the country's economic development, as well as the approval of the legal status of virtual assets. This is why further research is needed to establish the most suitable and secure way for citizens to retain their independence in the use of cryptocurrencies, while allowing the state to monitor such activities and intervene if they violate the law.

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Conflict of interest

None.

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Способи легалізації доходів, отриманих від спекуляцій криптовалютами, з урахуванням особливостей податкового законодавства

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Анотація. У правових колах, як серед теоретиків, так і практиків, особливо гостро постало питання щодо легалізації криптовалют, а також операцій з ними відповідно до норм чинного законодавства. Саме через це мета роботи полягає у вивченні підходів та способів до процесу легалізації доходів, отриманих від спекуляцій криптовалютами, на основі норм податкового законодавства України. Для її успішного досягнення та здобуття ефективних результатів застосовано функціональний і діалектичний методологічні підходи, а також методи наукового дослідження, зокрема аналізу і синтезу, порівняння, формально-юридичний. Здійснено теоретичний аналіз понять, які формують об'єкт цієї наукової роботи. Визначено їхні спільні та відмінні риси, за рахунок чого встановлено зв'язок і залежність між ними. Що стосується практичних аспектів, то вони розкриваються у дослідженні під час аналізу конкретних правових актів, зокрема особливостей їх реалізації. Зіставлено позиції і думки різних учених щодо досліджуваної теми, за рахунок чого було якісно розкрито можливі способи легалізації доходів, які громадяни отримують від спекуляцій криптовалютами. На основі проаналізованих наукових публікацій визначено найуспішніший та найбільш прийнятний для запровадження в Україні досвід інших держав, зокрема США та Канади. Доведено, що легалізація доходів громадян, отриманих від транзакцій з криптовалютою, – це необхідний процес для економічного розвитку держави. Практична цінність дослідження полягає в тому, що його можуть використати як науковці як першоджерело для подальшого вивчення порушеного питання, так і юристи, діяльність яких пов'язана з криптовалютами. Наукова цінність цієї роботи розкривається в описі ефективних підходів щодо операцій з доходами, отриманих від криптовалют, які досі не досліджені на необхідному рівні

Ключові слова: цифрова економіка; блокчейн-технології; електронні гроші; цифрові валюти; фінансові активи

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Legal regulation of banks with foreign capital in EU legislation

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Abstract. Ukraine is in negotiations for deep and comprehensive integration with the EU, which involves adapting standards and rules. The regulation of banks with foreign capital plays a crucial role in this process, being a significant aspect for Ukraine as the country aims to deepen its economic ties with the EU. The research aims to identify the distinctive features and patterns that govern the legal regulation of the activities of foreign banks in EU countries. Historical-legal, special-legal, functional, formal-logical, dialectical-materialistic methods, and a systematic approach were employed in the study. The investigation revealed several directives at the EU level focused on regulating foreign investments and ensuring the security of investment processes within the EU's internal market. The analysis indicated that these directives aim to ensure unity and effectiveness in controlling foreign investments in strategic sectors. They grant member countries the right to take measures to identify and control foreign investments that may pose a threat to security or public order. Additionally, they define obligations regarding information disclosure for foreign investors seeking control over European companies in strategic areas. Furthermore, they regulate financial instruments and services in the EU internal market, including services for foreign investors, and guarantee standards and transparency in operations on EU financial markets. The research concludes that these directives aim to create a unified and secure financial system in the EU, ensuring the protection of strategic sectors from unforeseen external interventions. This study can serve as a valuable tool for government officials, regulators, academics, and financial industry professionals in making informed decisions regarding further reforms and improvements in legislation for banks with foreign capital in the EU

Keywords: international system; money circulation; financial institution; information exchange; property

Introduction

Ukraine actively engages with the EU, conducting negotiations for deep and comprehensive integration, which entails compliance with EU standards and rules. A significant emphasis is placed on regulating banks with foreign capital, as this is a decisive aspect in strengthening economic ties between Ukraine and the EU. The study of issues related to the legal definition and control of banks with foreign capital in the EU is conditioned by the following factors: the complexity of regulatory policies and macroeconomic instability. The complexity of regulatory policies stems from the fact that regulating banks with foreign capital in the EU is intricate and diverse due to different approaches of member

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countries. The research on the issues of problematic areas requires an understanding of various rules and requirements, which can be a challenging task. Macroeconomic instability is influenced by the economic instability in some EU countries, making the study of the impact of banks with foreign capital crucial for assessing risks and developing adequate regulatory strategies. Studying these issues requires a comprehensive approach covering economic, financial, legal, and political aspects of the interaction of banks with foreign capital in the context of the European space.

Globalization and Eurointegration are key processes shaping the development of the modern world (Sahibzada *et al.*, 2022). For Ukraine, it is crucial to carefully study and adapt its legislation, especially in the foreign banking sector, to EU standards for several key reasons. Firstly, this is associated with Ukraine's integration into the European economic space, as adaptation to European norms promotes deep integration and convergence of legal frameworks (Kateryniuk, 2022). Additionally, it contributes to the creation of a competitive financial sector that attracts foreign investments and supports economic development. This comprehensive approach not only strengthens Ukraine's economic ties with the EU but also contributes to the establishment of a stable and transparent financial system, crucial for the country's sustainable development. The study of issues related to the legal regulation of banking operations has been undertaken by scholars from various scientific fields. In their research, A.M. Tsvyetkov (2023) examines issues arising in the legal regulation of the registration of banks with foreign capital by the National Bank of Ukraine. The author analyses aspects from the perspective of Ukrainian legislation but does not delve into the specific European regulation of banks with foreign capital in the EU.

Researchers L. Kostyrko *et al.* (2022) conclude in their study that the EU plays a key role in the global economy, especially in international trade of goods and services, as well as in foreign investments. The European Commission consistently develops new initiatives aimed at stimulating economic growth (e.g., the European Fund for Strategic Investments) and assessing macroeconomic risks in EU member countries. The study examines statistical information on such investments but does not provide normative-legal acts of the EU regarding foreign investments. A group of researchers, O.M. Gutsalyuk and N.V. Gavrilova (2023), focuses their research on aspects related to investment strategies chosen by commercial banks, with special attention to studying these strategies in the context of Eurointegration processes. The authors examine economic factors of foreign banks' activities and provide statistical information but do not provide examples of normative-legal regulation of investment activities of banks in the EU.

The research by I.V. Zhuk (2023) addresses some norms and standards of the EU in the field of criminal legal regulation of banking activities. The author notes that EU legislation has accumulated a significant number of regulations defining rules and conditions for a wide range of banking services. This work also considers normative-legal acts regulating banking activities in the EU. O. Drachov (2023) analyses theoretical approaches to the restoration and formation of legal regulation of the EU banking market. The study explores systematic normative-legal acts aimed at determining the need for creating a single financial market in the Community. The periodicity of regulation is identified, and stages of development of the banking system, considered as a key component of the EU's single financial market, are discussed. However, the researcher does not provide statistical information on the financial market, especially banks with foreign capital.

The research aims to identify the features and patterns that define the legal context of managing foreign banks in EU countries.

Materials and methods

In the course of the research, regulatory and legal documents were used, such as: Second Council Directive 89/646/EEC "On the Harmonization of Laws, Regulations and Administrative Acts Relating to the Establishment and Operation of Credit Institutions and Amending Directive 77/780/EEC" (1989), Council Directive 69/335/EEC "On Indirect Taxes On Capital Mobilization" (1969), Council Directive 86/635/EEC "On Annual Reports and Consolidated Reports of Banks and Other Financial Institutions" (1986), Council Directive 89/117/EEC "Regarding the Obligation to Publish Annual Accounting Documents by Structural Divisions of Credit and Financial Institutions Established in Member States Whose Head Office is Located in the Territory of Another Member State" (1989), Directive 2001/24/EU of the European Parliament and the Council "On the Reorganization and Liquidation of Credit Institutions" (2001), Directive 2006/48/EU of the European Parliament and of the Council "On the Establishment and Operation of Credit Institutions" (2006). In addition, statistical data related to the attraction of foreign investments in the EU banking system were used.

The dialectical-materialistic research method involved the study of interrelationships and the influence of economic structures and processes on the regulation of banking activity with foreign capital. Thanks to the appropriate method, it was possible to consider how changes in legislation affected the functioning of banks and, in turn, how their activities affected economic and legal processes. During the study, a systematic method was used for the legal examination of banking relations in both static and dynamic dimensions, as well as the study of this issue as a complex and interconnected systemic phenomenon. The system method made it possible to consider the problems of the research in the context of the general system of legal regulation. Applying the method of logical analysis, the model of interaction between participants of banking systems was investigated. The formal-logical method not only determined the sequence of conducting the research, but also made it possible to draw several conclusions and develop proposals for further improvements in the legal regulation of banking relations, using the experience of European and EU countries.

The comparative legal method included the analysis of legal provisions and norms, comparing them with similar provisions in other jurisdictions or international organizations. This method made it possible to highlight the similarities, differences, and peculiarities of the regulation of foreign banks in different countries, which contributed to a more profound understanding of legal approaches and their effectiveness. The appropriate method made it possible to get a comprehensive idea of the variety of approaches to the regulation of banking activity with foreign capital, and to choose the most optimal solutions for improving the system of one's own jurisdiction. The historical-legal research method included studying the development of legal regulation of

this area over time and considering historical and legal contexts. With the help of this method of researching the stages of development of the banking industry in the EU, as well as changes in the legislation regarding foreign capital in the field of banking services. In addition, the texts of the main legal acts of the EU concerning banks with foreign capital were considered. Research using the historical-legal method provided an opportunity to better understand the formation and evolution of the legal environment in the context of the presence of foreign capital in banks in the EU.

The functional research method was based on the study of the functional structure and the role of legal norms in the regulation of banking activity. With the help of the appropriate method, the functions performed by banks with foreign capital in the EU economy were considered, and the key aspects determining the role of such banks in the financial system were also established. The directives concerning banks with foreign capital, which in particular define the rights and obligations of such banks to regulators and customers, were considered. The functional method made it possible to study the content of the legislation, as well as how it affects the real functions and operations of banks with foreign capital in the context of the EU internal market.

The special-legal method included focusing on legal aspects and norms that determine the status, rights, and obligations of these banks. It also included a thorough review of EU legal documents that determine the status of banks with foreign capital and their main definitions, systematization of legal articles that regulate the activities of such banks within the EU. The special legal method provided an opportunity to fully consider the legal side of regulation of banking institutions with foreign participation in the EU.

Results

The success of banks determines the economic achievements of EU member states. With a focus on improving the performance of such systems through competitive pressure, the orientation toward the international level plays a significant role in the banking sector. Thus, EU countries have opened their banking sector to global competition, but at the same time, they do not refrain from influencing the process of internationalization, actively participating to ensure the development and protection of their national economic interests. The global financial crisis did not significantly alter the fundamental aspects of regulating EU financial institutions. Despite the continued active approach to the internationalization of the banking sector, there is an increased influence of national regulators and governments of member countries. The latter are forced to actively intervene to provide assistance to banks in their countries in the face of a challenging economic situation.

In examining the issue of legal regulation of banks with foreign capital, it is necessary, firstly, to explore the regulatory framework that defines these issues. In the EU, the document imposing the obligation on a member state to take specific measures to achieve its defined goals is the Directive. Directives are often applied to harmonize legislation in member countries, giving them the choice of methods and means that will, over time, ensure the implementation of unified legal standards. The first document is the Council Directive 69/335/EEC "On Indirect Taxes on Capital Mobilization" (1969), which regulates issues related to the taxation of companies' share capital. Thus, companies, firms, associations, or legal entities engaged in profitable activities and using shares in capital or assets in stock exchange operations are subject to taxation. Such companies, whose members can manage their shares, are considered companies with share capital and are subject to corresponding taxation. Capital taxation is carried out in the EU member state where the actual management centre of the company is located. If such a management centre is outside the EU, the tax is levied on the registered office or branch of the company located in an EU country.

In 1977, the European Economic Community adopted a banking directive that established general principles for regulating the activities of credit institutions in member countries (First Banking Directive…, 1977). In 1983, the next step was taken – requirements for regulating credit institutions on a consolidated basis were established, as well as mandatory information exchange between regulators. In 1986, accounting rules for credit institutions were harmonized. Council Directive 86/635/EEC "On Annual Reports and Consolidated Reports of Banks and Other Financial Institutions" (1986) was adopted with the aim of improvement, with a focus on improving the quality and consistency of financial reporting and consolidated reports of banks and financial institutions submitted annually, especially considering that an increasing number of them are expanding their activities beyond national borders. This directive sets requirements for balance sheet items and financial statements on income and expenses, as well as for consolidated reports and their mandatory publication in each EU member state where the financial institution has structural subdivisions.

Council Directive 89/117/EEC "Regarding the Obligation to Publish Annual Accounting Documents by Structural Divisions of Credit and Financial Institutions Established in Member States Whose Head Office is Located in the Territory of Another Member State" (1989) concerns the obligation to publish annual financial documents of structural divisions of banks and financial institutions that were created in EU member states but have their head office in another member state. This directive provides for the coordination of measures for the disclosure of various documents, such as annual and consolidated reports, general annual and consolidated annual reports, auditor's findings responsible for auditing annual and consolidated reports, for structural divisions located in an EU member state with offices outside it.

EU member countries establish the requirement for the publication of bank documentation by its structural divisions. However, the directive specifies that if a bank has its head office in a non-EU country, the requirements of this directive apply only if the legal form of such a bank is like those defined in this directive. In addition, it is specified that the preparation of documents must comply with the requirements of Council Directive 86/635/EEC "On Annual Reports and Consolidated Reports of Banks and Other Financial Institutions" (1986), and there is a mandatory requirement for the preparation and audit of documentation in accordance with the legislation of the EU member state where the bank's head office is located, if the bank's head office is located in a country that is not an EU member, and its structural subdivision is located in an EU member state.

In 1989, the EU adopted the Second Council Directive on banking coordination (Second Council Directive…, 1989). This recommendation is based on three main principles: mutual recognition, minimally necessary harmonization of

regulation and control in the country of origin. The principle of mutual recognition, known as the single passport principle, stipulates that banks from each EU country can freely conduct operations and open branches in other EU countries. According to the principle of minimally necessary harmonization, if agreements on minimum standards are reached, a product or service that complies with the standards of one country can be marketed throughout the European Union (Fons-Rosen *et al.*, 2021). In this case, intervention in the banking legislation of each participant is limited to general requirements for compliance with accounting standards, regulation, and investor protection rights.

Council Directive 93/76/EEC aims to limit carbon dioxide emissions "by improving energy efficiency (SAVE)" (1993) sets the minimum capital requirements for credit institutions and investment firms. Investment firms managing clients' funds or securities and offering various services must have initial capital of 125,000 euros. These services include receiving and executing orders from investors regarding financial commitments and managing investment portfolios within the financial commitments specified in investors' orders. The conditions for the activities of such companies stipulate that they cannot engage in financial transactions on their account or incur financial obligations based on their commitments. Despite this, authorities may grant an investment firm executing orders on financial commitments the right to own such commitments on its account in exceptional cases: if this is related to the firm's inability to precisely fulfil the investor's order, if the total market value of such commitments does not exceed 15% of the firm's initial capital, and if these commitments have an accidental and temporary nature and are strictly limited in time required for their execution.

If a company does not have permission to own clients' money or securities, act independently, or incur financial obligations based on firm commitments, EU Member States may reduce the amount to up to 50,000 euros. All other investment firms must have an initial capital of 730,000 euros. Additionally, it includes requirements for risk monitoring and control arising during their operations, regulates key aspects of supervision on a consolidated basis, establishes reporting requirements, and other important provisions. According to Directive 2001/24/EU of the European Parliament and the Council "On the Reorganization and Liquidation of Credit Institutions" (2001), a credit institution and its branches are considered a single economic entity for supervision by competent authorities of the state issuing the licence to operate, and this licence is valid throughout the EU territory. The directive also stipulates that unity between the institution and branches is mandatory in the case of reorganization or liquidation. Administrative or judicial authorities of the country of origin have the right to independently decide on the implementation of reorganization measures regarding the bank, considering its branches in other EU countries. These measures related to structural changes must comply with the laws and regulations of the country that issued the licence for banking activities.

Competent authorities of the country where the bank is registered (country of origin) must notify the relevant authorities of the country where the bank's branch is located (EU Member State) of the adoption of reorganization or liquidation measures. The directive also defines the procedure in certain situations, such as if the bank's headquarters and its branches are located both within and outside the EU. If the bank's headquarters are located outside the EU, and its branches operate in EU countries, and there is a need to implement reorganization measures for a branch, the competent authorities of the country where the branch is located within the EU must immediately inform other countries where the bank's branches are also located within the EU about the application of administrative or judicial reorganization measures. These actions must be coordinated and jointly decided between the relevant countries.

Directive 2006/48/EU of the European Parliament and of the Council "On the Establishment and Operation of Credit Institutions" (2006) relates to mandatory audit of annual and consolidated reports and amends the previous Fourth Directive No. 78/660/EEC of the Council of the European Communities, based on Article 54(3) "G" of the Treaty, on the annual reporting of certain types of business companies (2006). It also repeals the effectiveness of the Eighth Directive 84/253/EEC of the Council of the European Communities, which is based on Article 54 (3) (g) of the Agreement on the approval of individuals responsible for conducting regulatory audits (audits) of accounting documents (1984). The main purpose of this recommendation is to establish requirements for the use of a unified set of international audit standards, improve the quality and harmonization of mandatory audits in EU Member States, and strengthen cooperation between EU countries and other countries to increase trust in mandatory audits. The directive specifies requirements for the admission of auditors and audit firms, provides for the designation of competent authorities responsible for this admission and its revocation. It also allows for the possibility of admitting auditors from EU Member States and other countries outside the EU, and establishes requirements for continuous education, mandatory registration, professional ethics, independence, objectivity, confidentiality, and ensuring the professional secrecy of auditors.

In the financial systems of large EU countries, such as Spain, Italy, Germany, and France, limited presence of foreign capital has been observed (Bayar *et al.*, 2021). In Germany, this fact can be explained primarily by institutional characteristics. In the case of Italy, Spain, and France, these countries are traditionally considered "main European protectionists" (Table 1).

Table 1. The number of foreign banks in the EU in 2022

Country	Share of foreign banks and their branches in total bank assets, %	Share of foreign banks and their branches from non-EU countries in total banking assets, %
Belgium	29	3.6
Denmark	22	0
Germany	7.7	2.1
Greece	29	4
Spain	14.3	1.3

Table 1, Continued

Country	Share of foreign banks and their branches in total bank assets, %	Share of foreign banks and their branches from non-EU countries in total banking assets, %
France	7.2	1.4
Ireland	41	17
Italy	6.2	0.6
Luxembourg	91	6.1
Netherlands	16.2	1.4
Austria	28	0.22
Portugal	34.3	0.31
Finland	10.1	0
Sweden	9.2	0.5

Source: Proceedings of the thirty-first annual meeting of the board of governors (2022)

Global banks prefer to use the branch form of their presence abroad, as it provides closer control and is associated with lower management costs, provided that the country risk does not exceed a certain level. A study conducted by the European Central Bank on the banking systems of the new EU member states indicates a trend towards the transformation of subsidiaries into branches, especially in smaller countries, due to the opportunities created by the general harmonization of banking legislation within the EU (Vasile *et al.*, 2022). The data also show a significant increase – at the level of 40-50% – in the number of representative offices of banks from other EU countries in most EU countries, except Greece and France (Table 2).

Table 2. Branches of foreign banks in EU countries in 2022

Country	Assets of branches of foreign banks, billion euros	Ratio of branch assets to total assets of banks in other countries, %	The number of branches of foreign banks
Belgium	46.8	24	96
Denmark	28.8	31.2	30
Germany	105.36	27.6	116
Greece	23.04	49.2	40
Spain	106.2	63.6	120
France	133.56	60	160
Ireland	84	33.6	61
Italy	118.68	94.8	184
Luxembourg	11.388	18	101
Netherlands	33.12	19.2	56
Austria	4.08	3.06	45
Portugal	20.28	21.6	46
Finland	15.6	91	38
Sweden	40.08	85	55

Source: Proceedings of the thirty-first annual meeting of the board of governors (2022)

In practically every EU country, the participation of foreign branches in national banking systems remains small. In new EU members, this participation is limited to 7%. The presence of branches of foreign banks in "old" EU countries can be traced from the data in the table. When comparing the provided data with the information in Table 1, it can be noticed that branches of foreign banks have a significant impact only in Ireland. Regarding the representations of banks from non-EU countries, their overall contribution is limited. In Denmark, Ireland, Portugal, Austria, Finland, and Sweden, they are entirely absent (Shala and Toçi, 2021). In contrast, foreign banks entering the EU market may form subsidiary structures with "single passport" rights, but the creation of branches is subject to regulation according to the legislation of each country separately; these branches do not have "single passport" rights.

Overall, in EU countries, the shares of assets belonging to branches and subsidiary structures are roughly equal – 55% in favour of branches and 26% in favour of subsidiary structures. However, their small share in Austria (3.06%), the Netherlands (19.2%), Portugal (21.6%), and Belgium (24%) requires explanation (Proceedings of the thirty-first annual…, 2022). In their banking systems, as noted, influential banks from neighbouring large countries play a decisive role. From the perspective of these banks, the use of branches is the most efficient, as it is associated with lower costs and is easier to manage. High credit ratings of almost all leading European banks, as well as cooperation between regulators within the EU, exclude restrictions on the creation of branches imposed by prudential regulation (a system of rules defining specific limitations for banks to reduce risk and norms establishing relationships between credit institutions and the central bank regarding compliance with these limitations). However, the share of branches remains small.

According to the provisions of Article 4 of the current Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and

amending Regulation (EU) No. 648/2012 Text with EEA relevance (2013), the term "credit institution" defines an economic entity engaged in activities such as accepting deposits or other repayable funds from the public and granting loans for its account; performing any activities specified in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council, provided that one of the following conditions applies: the total value of consolidated assets of the economic entity equals or exceeds EUR 30 billion; the total value of assets of the economic entity is less than EUR 30 billion, but the economic entity belongs to a group where the total value of consolidated assets of all economic entities within the group, each with a total value of assets not exceeding EUR 30 billion, equals or exceeds EUR 30 billion; or the total value of assets of the economic entity is less than EUR 30 billion, but the economic entity belongs to a group where the total value of consolidated assets of all economic entities within the group engaged in any activity specified in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU equals or exceeds EUR 30 billion. In the case of including an economic entity in a third-country group, the total value of assets of each branch of the relevant third-country group authorized in the Union is considered in the aggregate value of assets of all economic entities within the group.

One of the key methods for increasing the volumes of international banking activities has been the creation or facilitation of financial institutions within the EU compared to other legal structures. This type of foreign banking service remained resilient after the Global Financial Crisis due to limited restructuring, influenced by the diversity of the internal capital market (Stoica *et al.*, 2020; Abuselidze, 2021). Analysing the nature of bank activities considering the location of the ultimate owner, it becomes apparent that foreign banks employ different strategies in collaborating with local financial intermediaries and also exhibit differences in lending and loan strategies. Examining the impact of regulation on the choice of foreign entry, differences in capital requirements for branches of foreign banks can be analysed, depending on their countries of origin, leading to non-harmonized implementation of prudential supervisory instruments among EU countries.

In the EU, there are specific rules and requirements for the creation and operation of foreign banks and their branches in EU member states, particularly those that are not part of the European Union. Fundamental principles are regulated by various directives and regulatory acts, as well as common standards aimed at creating a single banking zone and ensuring the stability of the financial sector. Banks must obtain a licence from the national financial authorities of the EU member country where they wish to conduct banking activities. Conditions include financial stability, compliance with capital and liquidity requirements, and professional competence in management. Banks must have a sufficient level of capital to ensure financial stability and protect depositors, according to regulations on minimum capital size. Banks must regularly submit financial reports and adhere to EU reporting standards. Additionally, the EU has a Single Supervisory Mechanism (SSM). Foreign banks with a headquarters in an EU member country may be subject to the Single Supervisory Mechanism, providing centralized supervision at the EU level. EU legislation also includes a deposit guarantee system that ensures depositors' protection in the event of a bank's bankruptcy. These rules and requirements aim to create a single banking zone in the EU and ensure the stability and reliability of the banking sector in the face of the globalization of financial markets.

EU standards apply to all countries in the European Economic Area (EEA) regarding banking supervision in their countries of origin. If a bank from the EEA intends to open a branch in another EU member country, there is no need to fulfil additional capital requirements. Many EU countries have established requirements for foreign banks that are not part of the EEA. However, only four countries (Denmark, Finland, Greece, and the Netherlands) apply these principles uniformly to the sufficiency of capital for all foreign branches. Other countries, namely Germany and Italy, make exceptions for certain foreign countries, defining additional regulatory capital (Degryse *et al.*, 2012; Bakkar, & Pamen Nyola, 2021). This overview considers the impact of regulation on the application of capital requirements for foreign branches in the banking market of a specific country, considering the market share of foreign banks.

Discussion

Banks with foreign capital play a key role in the financial system of the EU, sparking interest in terms of economic development, competitiveness, and the stability of the banking sector. Research on this aspect provides insights into trends, impact, and the role of foreign banks in the financial landscape of Europe. The study results highlight key aspects of their activities, such as profitability levels, risks, and development strategies. Special attention has been given to the interaction of these banks with the regulatory environment of the EU, particularly the legal aspects of foreign investments. Recently, scholars from various scientific and legal fields have focused on issues related to the legal regulation of banking operations, addressing current challenges, and becoming the subject of research. The findings of the interaction of foreign banks in the EU have been compared with previous studies and literature in the field.

Researchers such as M. Shkurat *et al.* (2023) note in their study of the economic development of EU countries that Ireland has successfully implemented a strategy to attract foreign investments, creating a favourable business environment. This has contributed to the economic uplift of Ireland, effectively attracting direct foreign investments, and achieving low unemployment rates. The study also identifies Ireland's high level of foreign investment, including a significant number of banks with foreign capital. Ireland's low corporate tax rate attracts many international companies, allowing them to reduce tax burdens and attract capital for development. EU membership provides businesses in Ireland with easy access to the large European market, as the EU has a unified regulatory framework, facilitating the operations and connections of banks.

Researcher N.V. Trusova (2022) concludes that the removal of the national investment system from the growth trajectory accelerates its development and has increased its attractiveness for foreign direct investment, which has prompted interest in using local resources to produce and send investment assets to foreign markets. This resulted in an international agreement on the safe flow of EU deposits to developing countries to be able to use available and cheap resources and financial instrument markets. Foreign capital investment is associated with a large increase

in capital turnover. In addition, the nature of international capital flows is determined by the conditions of foreign investment and protection against risks, and its effectiveness is guaranteed by the geo-economic dimension of its impact on the economic, regional, and social development of the country receiving foreign investment. The author also notes that global capital investment in the Ukrainian economy allows investors to reduce transport expenses (by locating their business near newly established sites), bypass duties on products and services produced by the domestic market of Ukraine, attract affordable labour, which is usually cheaper, reduce risk diversification and generate income, including profits and dividends. At the same time, Ukraine is a recipient of European investment, and has benefited from increased gross domestic product (GDP), higher employment, lower imports, and domestic economic stimulus. The author has conducted a study of foreign investment in general, considering the experience of the EU and the US. Nevertheless, it is worth agreeing with the author, as global capital investment in the Ukrainian economy creates opportunities for efficient use of resources, cost reduction and profit for investors. It also contributes to the development of local economies and cooperation between countries, which leads to mutually beneficial results for all parties.

E. Cerutti *et al.* (2017) emphasize the importance of foreign banks conducting operations in developing countries and other markets with a high participation of foreign banks. Eastern European countries, including Slovakia, Lithuania, Hungary, Croatia, the Czech Republic, and Bulgaria, fall into this category. Luxembourg historically had the highest number of foreign banks in Europe. However, the analysis of the role of foreign ownership in EU countries and beyond shows that markets with more foreign banks outside the EU include Germany, Denmark, France, Ireland, Latvia, Malta, the Netherlands, and Portugal compared to foreign banks within the EU. Therefore, the country-specific aspect influencing investor protection does not seem decisively important for attracting international banking investors from outside the EU. Luxembourg stands out with a significant percentage of foreign banks and their branches. The authors' conclusions, recognizing developing markets and those where foreign banks play a crucial role as key for global banking activities, can be supported.

The group of researchers L. Gibilaro and G. Mattarocci (2021) obtained results during their research indicating that foreign banks can benefit from regulatory arbitrage in choosing European countries for their operations. This is due to differences in capital regulations for banks that are not part of the European Economic Area. Countries with less stringent restrictions for foreign participants may foster increased competition in credit and deposit markets. However, this may lead to local participants having to engage in a competitive environment with foreign banks not subject to the same legislative constraints, creating a disproportionate advantage for banks outside the European Economic Area and increasing the influence of foreign banks on internal European financial markets. The study focused on analysing the legal regulation of banks with foreign capital, touching on the frameworks of EU countries for the European Economic Area. It is worth noting that the presence of a greater or lesser number of regulated organizations and conditions where national supervisory rules are less effective can increase the risk for all participants in the banking market, including creditors and borrowers, especially in extreme crisis.

Researchers Z. Korzeb *et al.* (2023) point out that while foreign investors consider entering new banking markets or changing their cash flows in existing markets, they typically face a choice between two opposing strategies. Advocates of the first strategy emphasize risk reduction, focus on diversified distribution, and choose a stable environment in the host market. Advocates of the second strategy, showing less inclination to accept risk, prefer banking sectors that offer prospects for increased profitability and are more likely to take on higher sovereign debt risk to encourage the assumed risk. This study aims to analyse the legislative framework of the EU regulating foreign investments and interconnections. However, it is important to agree with the researchers that strict limitations on banking activities and countries where supervisory authorities have greater independence reduce the impact of foreign banks on the banking system and the economy as a whole.

Analysing the activities of banks from other countries in the EU has become crucial for understanding the financial system and the interaction of banks in the context of European integration. The conclusions drawn can serve as a starting point for further research and contribute to improving control over the financial sector in the EU.

Conclusions

Foreign banks actively invest funds in various EU countries, creating new financial structures with conditions that differ from local financial institutions. However, the presence of foreign banks reveals diversity in different countries, both for EU and non-EU banks. One reason that may explain the choice of a bank to invest abroad is the differences in prudential regulation for banks located in countries outside the European Economic Area. Significant regulatory differences relate to capital requirements for foreign branches. Several EU countries do not impose additional capital requirements on banks operating on their territory. An overview of the EU market indicates that reduced capital requirements contribute to the interest of foreign banks in providing loans and attracting deposits in these countries, supporting competitiveness.

EU legislation carefully regulates the activities of foreign banks and their branches in various European countries. It establishes rules for the establishment and operations of foreign banks and their branches in EU member countries, as well as specific requirements for branches of banking institutions headquartered in non-EU countries. The Netherlands, Denmark, Germany, and Luxembourg have the largest net international investment positions compared to GDP. The EU plays a key role in the global economy in terms of international trade in goods and services, as well as foreign investments. The European Commission consistently works on new initiatives aimed at promoting economic development.

Research on the topic of legal regulation of banks with foreign capital in EU legislation opens up a wide range of perspectives for further scientific investigation. Specifically, conducting a comparative analysis can help identify similarities and differences, as well as effective regulatory methods, by comparing regulatory practices for banks with foreign capital in different EU countries. Additionally, comprehensive research can explore the impact on the financial market, studying how banks with foreign capital influence the EU financial market, including their role in lending, innovation, and overall financial stability. Analysing how global

economic and political trends may affect the regulation of banks with foreign capital in the EU is crucial. Studying these aspects will contribute to a more profound understanding and effective regulation of the banking industry in the context of globalization and economic integration.

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Conflict of interest

None.

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Правове регулювання банків з іноземним капіталом в законодавстві ЄС

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Анотація. Україна веде переговори про глибоку та всебічну інтеграцію з ЄС, що передбачає адаптацію стандартів та правил, зокрема питання регулювання банків з іноземним капіталом відіграє ключову роль у цьому процесі, що є важливими аспектом для України, оскільки країна прагне поглибити свої економічні зв'язки з ЄС. Мета дослідження полягає у визначенні характерних рис та закономірностей, що забезпечують правове регулювання діяльності іноземних банків у країнах ЄС. В процесі дослідження були використані історико-правовий метод, спеціально-юридичний метод, функціональний, формально-логічний та діалектико-матеріалістичний метод, а також системний підхід. В результаті дослідження було встановлено, що на рівні ЄС існують кілька директив, спрямованих на регулювання іноземних інвестицій та забезпечення безпеки інвестиційних процесів в контексті внутрішнього ринку ЄС. Аналіз показав, що директиви ставлять за мету забезпечити об'єднаність та ефективність контролю над іноземними інвестиціями в стратегічні сектори. Вони надають країнам-членам право вживати заходів для визначення та контролю над іноземними інвестиціями, які можуть становити загрозу безпеці чи громадському порядку. Також, визначають обов'язки щодо розкриття інформації для іноземних інвесторів, які намагаються отримати контроль над європейськими компаніями в стратегічних галузях. Крім цього, регулюють фінансові інструменти та послуги на внутрішньому ринку ЄС, включаючи обслуговування іноземних інвесторів та гарантують стандарти та прозорість в операціях на фінансових ринках ЄС. Висновки дослідження вказують на те, що директиви мають на меті створення єдиної та безпечної фінансової системи в ЄС, а також забезпечення захисту стратегічних секторів від непередбачуваних зовнішнього втручання. Дане дослідження може слугувати важливим інструментом для урядовців, регуляторів, академіків та фахівців у фінансовій галузі для прийняття обґрунтованих рішень щодо подальших реформ та вдосконалення законодавства для банків з іноземним капіталом в ЄС

Ключові слова: міжнародна система; грошовий обіг; фінансова установа; обмін інформацією; майно

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Principles and aims of international private law

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Abstract. The research's relevance lies in its focus on the need to govern private legal relationships complicated by an international aspect, which is further complicated by the ever-evolving facets of life. Efficiently implementing and strengthening the principles of private international law is essential for improving legal relationships between international entities dealing with foreign elements. The research aims to examine how international law principles impact the regulation of these complex private legal relationships. Various research methods, including dialectical, historical, logical, and others, were employed in this study. The article's results encompass the establishment of precise definitions for important terms such as "private international law", "foreign element", and "principles of private international law". Furthermore, it establishes private international law as a separate and distinct legal discipline and examines scholarly research that highlights the essentiality of implementing these principles. The study examines the characteristics and goals of private international law principles, reveals their functioning system, analyses the principles of international law employed to govern legal relationships across borders. Furthermore, it offers a thorough examination of fundamental concepts such as the self-governing nature of one's choices and the principle of the most relevant association. Furthermore, the research identifies challenges related to the effective application of private international law principles in Ukraine. This article's findings and insights are not only academically valuable but also hold practical significance for the legal community and policymakers. This research makes a substantial contribution to the progress of private international law and the

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regulation of international legal relationships involving foreign elements. It provides a comprehensive understanding of the complexities involved and offers a practical roadmap for its application and further development

Keywords: "foreign element"; will autonomy; the principle of closest connection; legal relations; effective application

Introduction

The fundamental essence of any legal system across the globe comprises a collection of regulations and principles that define the entitlements and obligations of individuals who are subject to that legal system. In recent decades, various aspects of human life have witnessed significant development. The principles of private international law offer a highly effective approach to regulating complex private legal relationships involving international elements. Contractual obligations are becoming increasingly significant as time goes by, mainly because of the rise of new fields of operation and their legal framework, as well as the international collaboration among various nations. Consequently, determining the applicable law for managing relationships with foreign elements is particularly pertinent. Consequently, when regulating relations in areas like labour, commerce, or family matters with international elements, conflicts often arise in the application of substantive rules from different countries' national and private law. To resolve such conflicts and contradictions, private international law principles have been developed.

The principles within any legal domain provide guiding ideas, core concepts, and fundamental provisions that shape the content and direction of regulating social relations through law. These principles are significant because they contribute to the systematic and coherent regulation of social relations and offer guidance for law enforcement and legislative activities. P. Butchard's (2020) research determined that the principles of private international law form the basis for establishing and governing the operational framework of private international law. This framework unites the system of private international law for regulating international private legal relationships within the context of international cooperation, based on mutual benefit and equality.

The contemporary field of private international law is characterised by an inclination to address practical matters, with relatively less emphasis on theoretical principles, particularly within post-Soviet countries. The evolution of legal relationships within the scope of private international law and the shift towards alternative approaches in the enforcement of private international law also underscore the need for a deeper exploration of its principles (Gramatskyi, 2019).

Many scholars who delve into the field of private international law often explore its principles within the context of their interrelation with other elements and components of private international law. For example, A.S. Dovgert (2020) attempted to reduce the principles of private international law to those of civil law. However, it is challenging to agree with this perspective because international law encompasses not just civil legal relationships but also economic, family, procedural, and labour relations with a foreign element. The prospects for the development and functionality of private international law and its constituent elements in Ukraine began with Ukraine's independence, offering an opportunity to build a democratic and European country, which included the development of private international law as one of its essential tasks. Ukraine currently lacks comprehensive research on the concept, content, and application of the principles of private international law, leading to conflicts and ambiguities in the legislation governing international legal relations.

In light of the continuous development of society and various fields of operation, it is essential to establish and effectively implement the principles of private international law. It is essential to guarantee the effective coordination in the legal framework of private legal relationships that are complicated by an international component. This research employed a range of specific and general methods to conduct a thorough study of the topic. The main approaches used to investigate the subject matter involved dialectical, logical, and formal legal methods of scientific inquiry. The hermeneutical approach was utilised to examine the key principles of private international law, including the autonomy of will and the principle of the closest connection. This method also helped in elucidating the essence and necessity of applying the principles of private international law to regulate private legal relations with foreign elements. The dialectical method was utilised to analyse the provisions found in Ukrainian and foreign scholarly literature that discuss research on the principles of private international law to different degrees. The systemic and structural approach was adopted to study the central issue of effectively implementing and applying the principles of private international law in Ukraine. Furthermore, by V.A. Ryzhenko (2021) the logical and semantic method was utilized to deepen the conceptual framework, while the formal legal and logical method facilitated a comprehensive and detailed consideration of legal principles used to govern relations complicated by a foreign element. The study by A.H. Neidhardt (2018) offers a fresh and transformative perspective on European private international law, challenging established paradigms and providing a rich historical and conceptual framework for understanding the family anomaly. It is a significant contribution to the field, and its nuanced analysis will undoubtedly stimulate further scholarly debate and exploration in this area.

The research endeavours to achieve several key objectives. Firstly, it aims to offer a lucid comprehension of the concept and goals of the principles of private international law. Moreover, it seeks to conduct a comprehensive analysis of the legal principles utilised by private international law entities to regulate their relationships. The primary aims of this study can be succinctly summarised as follows:

- examine international private law as a distinct legal discipline;
- establish a well-defined framework for the principles of international private law;
- explain the characteristics and objectives of these principles of international private law;
- conduct a comprehensive study of the existing principles of international law employed to regulate complex relationships marked by foreign elements;
- examine the principles of international private law as outlined in Ukrainian legislation or inferred from the provisions of the laws.

General provisions of private international law as a legal field and its principles

The term "private international law" refers to a body of international treaties, customs, and domestic legislation that governs complex legal relationships involving a "foreign element" in civil, economic, labour, family, and other areas (Novosad, 2022). The term "private international law" was initially introduced for general usage by the American researcher and lawyer J. Story (2010). Consequently, it began to find active application within the framework of existing conflict-of-laws principles. It is formulated to govern private legal relations, guided by the principles of legal equality, property autonomy, and voluntary choice. Its primary subjects encompass both legal entities and individuals. To establish the principles of private international law, it is crucial to take into account the unique characteristics of this legal system, the relationships it governs, and the involvement of a "foreign element". The "foreign element" concept comprises three key components: legal events occurring in a foreign country; entities with foreign ties; objects situated in foreign territories. Furthermore, private international law is distinguished by its emphasis on civil law-related connections and its primary focus on legal entities and individuals.

Legal principles are the foundational concepts that shape and govern the structure and operation of a specific area of law. Consequently, they function as standards for assessing legality and exert a substantial influence on the implementation of the law. Within the realm of private international law, these principles possess a distinct attribute – they can be formally incorporated into public legal statutes. The task of the principles of any branch is to promote the unity and internal integrity of legal regulation of social relations and is the basis for both law enforcement and law-making activities. The principles of private international law are characterised by the following features and attributes, namely: regulatory, ideological, normative and other. One of the characteristics and main features of the principles of private international law is their unsystematic nature and normative uncertainty, so they (principles) are either directly enshrined in legislation or derived and determined from the content of legislation. I.S. Podlisnyak and Ye.D. Streltsova (2019) noted that in the context of globalisation taking place in the modern world and during cooperation between private legal entities of different countries of the world, the principles and institutions of private international law are gaining special importance and relevance. E.M. Gramatskyi (2019) noted that every year scientists and lawyers pay more and more attention to the study of the principles of private international law. Such attention to the study of the principles of it and the specifics of their application can be explained by the active democratisation processes currently taking place in the world.

M.L. Logvinenko (2021) highlighted that universally recognised principles hold significant positions within the legal systems of states that identify themselves as democratic and lawful. Currently, there is no widely agreed upon definition for the term "principles of private international law" in the field of private international law academia. Consequently, multiple scholars interpret these principles as being akin to the principles of public international law, as articulated in Article 2 of the United Nations Charter. The principles of public international law encompass the prohibition of employing force or making forceful threats, the equal sovereignty of states, and the preservation of states' territorial integrity (United Nations Charter, 1945). E.M. Gramatskyi (2019), along with other proponents of this viewpoint, rationalises this stance by emphasising the correlation between public and private international laws.

Critics of the aforementioned approach to defining the principles of private international law included A.S. Dovgert and V.H. Kysil (2012). It has been observed that when individuals are involved in private legal matters that have an international aspect, they typically belong to different legal systems. Private international law operates on a framework that is built upon general legal principles and private law principles. The effective utilization of private international law principles fosters equality among the various legal systems across the world and contributes to enhancing international cooperation. It plays a significant role in regulating contractual relationships, as well as governing private legal aspects of life that involve foreign elements and international economic activities. Compared to the general principles of other legal disciplines, the principles of private international law possess distinct and substantial applicative specificity. On one hand, they establish connections between national legal systems, while on the other, they create legal links between national and international law. The main goal of applying and implementing international law principles is to effectively regulate complex international private law relationships that involve a "foreign element" between entities governed by private international law.

Characteristics of international private law

Several fundamental principles are of great significance in the field of private international law: the adherence to legal principles, the recognition and protection of human rights, refraining from interfering in the internal affairs of other nations, resolving international conflicts through peaceful means, faithfully fulfilling international agreements, upholding the principle of individual autonomy, recognising the importance of strong connections, promoting cooperation and non-discrimination, and ensuring equality. The system of principles in private international law is complex and can be classified according to different criteria. It is important to acknowledge that the principles are interconnected and mutually enhance each other. Any breach of a principle has a ripple effect on the entire system of principles and hampers the execution of other principles.

The aforementioned principles can be categorised as follows: the principles that govern the regulation of private law relations and the principles that govern specific private law relations, commonly known as conflict-of-laws principles. The first category encompasses several principles: the principle of unconditionally applying foreign law according to conflict of laws rules, the principle of regulating conflicts of laws, the principle of national jurisdiction over international private relations, the principle of autonomy of will, and the principle of prioritising an international treaty over a national law rule (Makarov, 2011). The second category comprises conflict-of-laws bindings utilised in private international law, such as the flag principle in regulating international carriage relations, the principle of location in property relations, and the principle of location of the contractor in contractual relations.

The principles can be divided into three levels:

- principles of private law (voluntariness, legal equality, legal protection of private interests, dispositive, coordination);

- public international law principles that exert a notable influence on the governance of international private legal relationships (including principles like the prohibition of using force or threats, the observance of human rights, non-interference in the internal affairs of foreign states, principles of non-discrimination, equality, and other relevant principles);
- the principles of private international law that distinguish it from other legal systems include the principle of the closest connection, the principle of autonomy of will, and the principle of public order.

The principle of autonomy of will is a significant tenet in private international law. Therefore, it is a fundamental principle of private international law that allows individuals from different countries to select the applicable law for their legal relationships (Hasneziri, 2023). The principle of autonomy of the will is also protected by the Law of Ukraine "On International Private Law" (2005), which states that parties involved in legal relationships have the freedom to select the governing law for their legal relationships. In accordance with Ukrainian legislation and customary practise, the selection of applicable law can be either explicitly stated or inferred from the parties' actions, the circumstances, or the terms of the transaction. It is important to mention that this principle is widely acknowledged in numerous countries, such as the USA, Canada, Singapore, and Western Europe, as the most efficient method for resolving conflicts in the regulation of private law relationships (Podlisnyak and Streltsova, 2019).

I.M. Makarov (2011) noted that B. Dumoulin was the first to develop and study this principle, long before the development of private international law and the official enshrining of the principle of autonomy of will. Thus, the scholar believed that the autonomy of will should be applied in the regulation of contractual obligations, namely, the law intended by the parties to such a contract should be applied to contracts. The principle of autonomy of will is a fundamental aspect that permeates the entire private international law system and can have regulatory consequences. For instance, in scenarios like international commercial agreements, the involved parties can select the governing law of any state to regulate their relationship. However, in cases related to property rights protection, the governing law is typically confined to the law of the applicant or the state where the property is situated. Despite the extensive use of party autonomy in private international law, there remains no unified consensus among scholars regarding its legal nature. Consequently, there are three main theories regarding the legal nature of the parties' autonomy of will, namely:

- a consequence of freedom of contract, which in turn is enshrined and supported by the legislation of various countries of the world (Shevchenko, 2019);
- an institution created to resolve conflicts of laws;
- a peculiar and ambiguous way to resolve conflicts and problems that arise when regulating relations complicated by a "international aspect".

Despite the various theories about the parties' intentions being separate, scholars generally agree that the independence of the parties' will is a fundamental principle (Mills, 2019). A.G. Pokachalova (2016) noted that the autonomy of the parties will is the most widely used, generally recognised and relevant principle of private international law, which plays a special role in the regulation of contractual relations and obligations, as it allows the parties to the contract to choose a particular legal order for regulating relations. Thus, in practice, the autonomy of the parties will be manifested through the mechanism of harmonising the concerns or stakes of the parties involved in the contract regarding the regulatory procedure or jurisdiction of regulation.

The principle of autonomy of the will is a crucial concept in international private law. It enables the recognition and enforcement of the law that is most closely connected to the parties' intentions and relationships. However, it should be noted that the autonomy of the will is not an absolute rule and does not mean that the parties to legal relations have absolute and unlimited rights, as the state may introduce mandatory rules and adopt legislation that allows the parties to apply the law in certain cases. The principle of autonomy of the will can be understood as a mechanism by which the state grants individuals the ability to assert their dominant interests in order to rectify any flaws in the conflict of laws principle. Given that the concept of self-governing will is acknowledged in the legal frameworks of numerous nations, it remains imperative to regard it as a manifestation of the fundamental nature of the law. It's important to highlight the extent of the autonomy of the will principle. What matters most is not necessarily the involvement of a "foreign element" or the connection between diverse legal systems, but rather the nature of these connections being within the domain of private law and founded on principles of legal equality and voluntary consent (Shevchenko, 2019). This perspective underscores the universality of self-governing will as a core component of legal systems, emphasizing that its application transcends geographical boundaries and is upheld by the fundamental principles of fairness and individual choice within the realm of private law.

Analysing of international private law

Studying and analysing the principle of free will, several issues arise which are addressed in different ways in several countries. The initial issue revolves around the time constraints related to the application of the parties' autonomy of will principle. Presently, most countries adopt the notion of unrestricted time limits for this principle. The Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (1986) exemplifies this principle by allowing parties the autonomy to select the applicable law for their contracts at any point, with some restrictions on previously chosen laws. However, this approach is not universally embraced. For instance, Germany and Switzerland endorse an unlimited timeframe for the autonomy of will, whereas Hungary mandates the choice of governing law at the transaction's time. Notably, Ukraine aligns with the concept of unlimited time limits for the parties' autonomy of will principle.

The second crucial consideration often requiring attention pertains to the criteria for applying the parties' autonomy of will principle. In private international law, the primary and pivotal condition for the application of this principle involves the complexity and existence of a "foreign element" in the legal ties between the parties. Some state codifications, such as the Civil Code of Quebec (1991), grant the option to choose the governing law irrespective of the presence of a "foreign element" in a legal act explicitly stated in the act itself. Conversely, the Civil Codes of People's Republic of China (2020) and Lithuania (2000) stipulate that the presence of a "foreign element" is essential for regulating legal relations between parties and subjects of private international law, as chosen by the parties. The Law of Ukraine "On

International Private Law" (2005) asserts that the choice of law is inapplicable in the absence of a "foreign element" in the legal relationship.

Another aspect addressed in the application of the autonomy of will principle involves determining the form or method of expressing and implementing it. For instance, the aforementioned Hague Convention (1986) specifies that a contract between parties is directly subject to the law chosen by them. The agreement on such a choice must be explicitly stated or clearly inferred from the contract's terms, the circumstances of the transaction, and the overall conduct of the involved parties. There are two main forms of expressing the autonomy of the parties will: tacit and express. Therefore, based on the transaction terms, it can be inferred that the parties intended to place the obligation under a particular legal system, as a manifestation of their autonomy of will. On the other hand, when the autonomy of the parties' will be explicitly implemented, the subordination of obligations between the parties is established through direct indication either in the contract itself or in a separate document that the parties can create (Pokachalova, 2016).

Another crucial principle within private international law is the principle of the closest connection. This principle is significant in applying the law of the state most closely linked to the regulation of private legal relations that involve a "foreign element". The development of this principal stems from the nature of international private legal relations, necessitating appropriate regulation. Initially, the principle of the closest connection emerged in Anglo-American legal doctrine, giving rise to two main theories: the localisation theory and the intention theory. The localisation theory posits that the law most closely related to contractual relations is the one linked to all elements and provisions of the contract. Conversely, the intention theory asserts that the law most closely tied to the contractual relationship is the one intended by the parties involved in the contract (Butchard, 2020).

The principle of the closest connection operates as a subsidiary and exclusive concept, governed by specific rules and criteria. Despite encountering uncertainties and challenges in its application, this aspect of international law is gaining in relevance each year. This trend is driven by the ongoing efforts within private international law to establish highly adaptable criteria for determining the applicable law. The closest connection can be interpreted in different ways. The approaches to determining and choosing the law according to this principle were outlined in the so-called "Savigny doctrine", which can be interpreted as follows: finding for each legal relationship the legal sphere to which this relationship belongs by its nature. In private international law, any conflict-of-laws rule must provide a response to the inquiry of which substantive law is to be employed in governing a specific legal relationship (Pokachalova, 2017).

The principle of closest connection is a broad rule that governs the resolution of international private law disputes involving a "foreign element". It has a wide-ranging impact on all aspects and institutions of private international law. This principle is applicable to determining the governing law for contractual obligations or transactions, aligning with the law most closely tied to the specific transaction or contract. Typically, the law most closely associated with the transaction is that of the location or residence of one of the parties involved. As a fundamental principle of private international law, the principle of the closest connection finds application in numerous countries globally. For instance, the Republic of Poland's "On Private International Law" designates this principle as a foundation for addressing gaps, stipulating that in the absence of specified applicable law, the rules of Poland, international treaties, and European Union (EU) law should defer to the law most closely connected to the relationship under the Act of February 4, 2011, "Private International Law" (2011).

The principle of national jurisdiction over private law relations involving a "foreign element" is a crucial aspect of private international law. The core of this principle is that when private legal relationships involve a "foreign element", they are regulated by the rules of a particular national legal system. Furthermore, it dictates that foreign legal entities and individuals fall under the jurisdiction of the state where they are located. Within the principles of private international law, there exists the principle of equality among participants in private legal relations complicated by a "foreign element" (Edelman & Salinger, 2021). Applying this principle ensures the equality of all parties involved in international private law relations, prohibiting any forms of discrimination. Another principle of private international law is the principle of ensuring adequate legal regulation. The distinct feature of private international law, as a legal branch, is the ability for legal relations subjects to seek recourse to foreign national legislation for effective regulation. The application of this principle mitigates any adverse consequences arising from the choice or application of law in regulating private legal relations complicated by a "foreign element". Additionally, an essential principle in private international law is the principle of the right of retorsion. Thus, the concept of retorsion should be understood as measures taken by a state in response to unfriendly and hostile actions of another state, which in turn involve the application of similar actions to the subjects of the hostile state (Hartley, 2022). The main purpose of retorsions is to cancel discriminatory actions against subjects of private legal relations applied in a foreign state. The principle of granting legal regimes, namely national, special and most favoured nation treatment. National and special treatment (also called preferential treatment) is granted to foreign individuals and the principle of treating a nation as the most favoured to foreign legal entities.

This study also analyses the principles of private international law in European countries. The so-called European private international law is at the stage of development and formation, which is primarily due to the achievement of both the traditional goals of the private international law branch and the desire to develop political, social and economic integration between the Member States of the EU (Davì, 2018). Along with the traditional principles of private international law, there are also special principles of European private law principles on the structure and functioning of the internal market and those related to the creation of the area of freedom, security and justice. Thus, among the principles of private international law in force in the EU, several principles can be distinguished, including the principle of minimum conflict, which aims to preserve the stability and continuity of private legal relations between different states of the world, regardless of the borders between them; the principle of the most favoured nation; the principle of taking into account the purpose and content of substantive law when developing rules for the choice of laws. It is also possible to mention the general principles that are common to all branches of law, namely the principle of equality;

non-discrimination; the principle of proportionality; the principle of respect for human rights. The general principles of EU law have an important role in shaping the principles of private international law applicable in the countries of the EU. The principle of mutual recognition is considered one of the most crucial principles in the European judicial area. It was highlighted as the "cornerstone" in the 1999 Tampere European Council Presidency Conclusions.

Principles of private international law in Ukraine

Ukraine's approach to international private law is firmly based on the principle of the rule of law, which is a fundamental principle that influences its legal system. The adherence to the rule of law guarantees that all principles in the realm of private international law are founded upon equity, uniformity, and foreseeability. In Ukraine, while the legislative framework does not provide a comprehensive list of principles specific to private international law, the principle of autonomy of will is clearly articulated in the Law of Ukraine "On International Private Law" (2005). This principle underscores the importance of respecting parties' choices regarding the applicable law in international contracts and dealings. Beyond this, a deeper understanding of Ukraine's approach to private international law can be gleaned by analysing a variety of legal sources. These sources reveal a multifaceted legal framework that seeks to balance domestic legal norms with international obligations, aiming to create a coherent and effective system for managing cross-border legal issues. This approach reflects Ukraine's endeavour to align its legal practices with global standards while maintaining the integrity and sovereignty of its own legal system.

One significant principle is the application of domestic law when a "foreign element" is present. According to J. Plhakova (2020), in cases involving international elements, the applicable laws are primarily those of Ukraine. This principle also asserts that in instances of legal conflict, Ukrainian law will take precedence. This approach ensures that international transactions and relations involving Ukraine are governed by familiar legal standards, providing clarity and stability for those operating within its jurisdiction.

The study by S.M. Zadorozhna (2013) delves into the intricate relationship between international treaties and domestic laws within the Ukrainian legal framework. The analyse casts light on the nuances of the Law of Ukraine "On International Private Law" (2005), particularly highlighting its inclination towards prioritizing international rules over domestic legislation. This aspect of Ukrainian law is critical in understanding the country's approach to international law. It demonstrates Ukraine's strong commitment to honouring its international treaty obligations and seamlessly incorporating these into its domestic legal system. By placing international treaties above its laws, Ukraine aligns itself with global legal standards, thereby ensuring consistency and reliability in its international legal dealings. The author's work underscores this commitment and provides a valuable perspective on how Ukraine navigates the balance between its international obligations and domestic legal requirements. This approach not only fosters international cooperation but also enhances the predictability and stability of the legal environment for both domestic and international actors engaging with Ukraine.

Ukraine also employs a dual method involving both conflict-of-laws and substantive law to manage international private relations. This method involves determining the applicable law using conflict-of-laws rules as established in the Law of Ukraine "On International Private Law" (2005), followed by the application of the relevant substantive law. This comprehensive approach allows for a more nuanced resolution of legal issues that arise in the international arena. A further principle, as noted by J. Plhakova (2020), is the prohibition against referring to the laws of third countries. This means that the application of conflict-of-laws rules is restricted to direct relations between the involved parties, without allowing for the laws of an unrelated third country to influence the legal process.

In terms of equality and non-discrimination, Ukrainian law treats foreign legal entities and individuals equivalently to Ukrainian nationals, barring specific rights and obligations enshrined in the Constitution of Ukraine and other national laws. This principle ensures that foreign parties are not disadvantaged in Ukrainian legal proceedings and contributes to an equitable legal environment. Finally, an essential aspect of Ukraine's private international law is the principle of public order. This principle mandates the protection of the country's legal order, sovereignty, and security from undue foreign law influences. It acts as a safeguard, ensuring that foreign legal norms do not undermine Ukraine's core values and legal stability (Yuldashev, 2004).

Additionally, principles from Ukrainian civil law significantly influence the realm of private international law. These include the assumption that individuals act in good faith and reasonably in exercising their civil rights, and the prioritization of parties' intentions in civil transactions. These principles are balanced against the need to adhere to the general principles of civil law. Moreover, there is a clear emphasis on prioritizing international treaties over domestic civil law rules, provided these treaties are ratified by the Ukrainian Parliament and integrated into the national legal framework. Despite the richness of these scholarly contributions, Ukraine still faces the challenge of lacking a unified legal act that encapsulates these principles for governing international private legal relations. The creation of a legislative act that explicitly outlines the principles of private international law would not only fill existing gaps but also bring greater clarity and structure to this area of law in Ukraine. This step is essential for enhancing the legal framework's effectiveness and transparency, ensuring a more cohesive approach to international private law.

Conclusions

Private international law is basically a set of rules from international treaties, customs, and local laws. It deals with various legal relations like civil, economic, labour, and family matters that involve a "foreign element". The unique thing about this law branch is that it specifically regulates relationships that get complicated because of this foreign element. The system of principles in private international law is quite extensive, with many principles at different levels. The study looks into three main levels of these principles: those from private law, principles from public international law that significantly affect cross-border private law relations, and the specific principles of private international law itself.

The principles in private international law are explored, highlighting the significant role of the autonomy of will. This principle is crucial because it allows foreign law to govern social relations based on the parties' free will. The study

comprehensively examines various principles in private international law, emphasising the need to improve their regulatory inclusion in Ukraine's national laws. This improvement is necessary to effectively regulate private legal relations complicated by a "foreign element" among private international law subjects.

The principles discussed in the study aren't final and complete. The evolving world brings about new activities and social relations, requiring ongoing clarification and enhancement of private international law principles to address contemporary challenges. Effective statutory and doctrinal consolidation of these principles, as evidenced by research and analysis, will enhance private international law as a legal branch, contribute to better regulation of relations among entities in this field. A clear statutory definition of international law principles will signify the completion of forming the theoretical foundations of private international law, allowing it to adapt to future challenges and new societal spheres.

The study highlights the necessity for further research in several key areas. There's a need to explore the integration of international treaties and customs into local laws, particularly how these diverse sources of law interact and influence each other in the Ukrainian context. Given the prominence of the autonomy of will principle, future studies should investigate how this principle is applied in various international contexts and its impact on the legal certainty and predictability in cross-border relations. Additionally, there's a crucial need for research on the harmonization of Ukraine's private international law with evolving international standards, especially in emerging areas such as digital transactions, international e-commerce, and cross-border data protection. Such studies would contribute to the ongoing refinement and development of private international law, ensuring its relevance and effectiveness of modern international relations.

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Conflict of interest

None.

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Анотація. Актуальність дослідження полягає в його зосередженості на необхідності регулювання приватних правовідносин, ускладнених міжнародним аспектом, який ще більше ускладнюється постійними мінливими аспектами життя. Ефективне застосування та зміцнення принципів міжнародного приватного права має вирішальне значення для зміцнення правових відносин між міжнародними суб'єктами, які стикаються з іноземними елементами. Дослідження спрямоване на вивчення того, як принципи міжнародного права впливають на регулювання цих складних приватних правовідносин. У дослідженні використовувалися різні методи дослідження, зокрема діалектичні, історичні, логічні та інші. Результати статті включають визначення таких ключових понять, як «міжнародне приватне право», «іноземний елемент» і «принципи міжнародного приватного права». Він також визначає міжнародне приватне право як окрему галузь права та аналізує наукову роботу, наголошуючи на необхідності застосування цих принципів. У дослідженні окреслено особливості та цілі принципів міжнародного приватного права, розкрито систему їх дії та детально розглянуто принципи міжнародного права, які використовуються для регулювання транскордонних правовідносин. Крім того, він забезпечує комплексний аналіз фундаментальних принципів, таких як автономія волі та принцип найтіснішого зв'язку. Крім того, дослідження визначає проблеми, пов'язані з ефективним застосуванням принципів міжнародного приватного права в Україні. Висновки та висновки цієї статті є не лише цінними з академічної точки зору, але й мають практичне значення для юридичної спільноти та політиків. Проливаючи світло на складність міжнародного приватного права та пропонуючи дорожню карту для його застосування та розвитку, це дослідження робить значний внесок у розвиток галузі та регулювання міжнародних правовідносин з іноземними елементами

Ключові слова: «іноземний елемент»; автономія волі; принцип тісного зв'язку; правові відносини; ефективне застосування

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Comparative analysis of administrative and criminal punishments in Ukraine and some foreign countries and prospects for changes

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Abstract. The process of European integration necessitates the reform of the system of Ukrainian legislation. In this case, the issue of the ratio of norms that establish administrative and criminal punishments in Ukraine, namely their improvement and unification, is relevant. Thus, the purpose of the study was to determine the prospects for changes in approaches to the legislative consolidation of articles on criminal and administrative liability in Ukraine as well as abroad. The methods of analysis, synthesis, comparison, formal-legal, and deduction were used. The results of the study indicate that there are similarities in the structure of certain provisions of the Code of Ukraine on Administrative Offences with the corpus delicti of crimes provided for in the articles of the Criminal Code of Ukraine. This phenomenon is highlighted as an important aspect of the Ukrainian legal system that requires careful analysis and comparison. The study also identified the main historical preconditions for the codification of the rules governing criminal and administrative liability into separate codes. By analysing the historical contexts, the study examined how the evolution of legal principles contributed to the formation of the modern liability system. In addition, the study focused on the current relationship between the Code of Administrative Offences and the Criminal Code of Ukraine. The analysis of the interaction between these two codes has become an important component for understanding the law and order system in Ukraine and identifying

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possible aspects of improving this system. The researchers were particularly interested in studying foreign experience, in particular the practices of Kazakhstan, Germany, France, Germany, Estonia and the United Kingdom. This comparative approach allowed us to identify similarities and differences in the legal systems of different countries, as well as to take into account effective practices that can be used to improve the legal system of Ukraine. The results obtained in the study should be used in the process of making changes to the provisions of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine, in particular their improvement in the context of the European integration process

Keywords: responsibility; code; composition of the offense; sanction; coercion

Introduction

The concept of the legal system of Ukraine in today's conditions is characterised by significant transformations that affect the development of administrative and criminal punishment institutions. It is worth noting that the provisions of the current legislative framework in the field of administrative responsibility were formed back in Soviet times, which has a negative impact on its quality. This is evidenced by numerous gaps and inconsistencies in the norms aimed at regulating not only administrative but also criminal liability. Although the Criminal Code of Ukraine (2001) was adopted later than the Code of Ukraine on Administrative Offenses (1984), namely in 2001, it also contains contradictory provisions that require updating, with a mandatory taking into account administrative norms. Based on this, the relevance of this study is due to the need to make changes, namely to update the system of administrative and criminal punishments in Ukraine. In this case, the priority is not only the comparison of the provisions providing for criminal and administrative liability in Ukraine but also the study of the positive experience of foreign countries. This approach will make it possible to develop and implement the most qualitative model of differentiation of administrative and criminal punishments as well as contribute to the development of more flexible and democratic tools for regulating social relations.

It should be noted separately about the influence of the European integration process, which in modern conditions are particularly important for the successful future development of Ukraine. That is why the bringing of Ukrainian legislation to the requirements of the European Union (hereinafter referred to as the EU) is an urgent requirement today, aimed at consolidating the legal and democratic principles of the legal development of the state. Thus, taking into account world standards of European countries and national experience in the field of administrative and criminal responsibility is a necessary condition for full entry into the European community (Andrijauskaito, 2021). Accordingly, the identification of current trends in the development of the concept of punishment in administrative and criminal law will contribute to the development of the most effective vectors of its development in Ukraine.

Among scientists, this question is quite common, as it reflects the level of legal development of the state as well as the observance of citizens' rights in it. In particular, O.I. Mykolenko and O.M. Mykolenko (2021) studied the current state of Ukrainian legislation in the field of administrative responsibility and came to the conclusion that it needs complete reform, namely the adoption of a new codified act. At the same time, the authors did not reveal the possibility of making changes to the Code of Administrative Offenses and, accordingly, its improvement on the current basis. H. Krainyk and K. Tsypyshchuk (2020) studied the experience of systematization of criminal norms in Ukraine, and also determined the effectiveness of this process. The researchers established that certain provisions of the current Criminal Code (CC) of Ukraine are not effective, as they contain flaws in their composition, which make it impossible to use them to punish the guilty. A.M. Rubanenko (2022) in his study analysed the approaches of foreign legislators to the formulation of provisions on administrative and criminal penalties. The author managed to reveal the conceptual foundations of the construction and implementation of the normative model of responsibility in European countries. At the same time, the researcher did not propose ideas regarding the use of positive foreign experience in Ukraine in this area. G.S. Polishchuk (2021) paid attention to the historical and legal genesis of various types of punishments in Ukraine. The author established that the institutions of criminal and administrative responsibility developed in a relationship for a long time and therefore contain similar norms. At the same time, the researcher did not consider this issue in the modern context. O. Maksymenko (2022) noted that the Code of Ukraine on Administrative Offences still does not distinguish between the specifics of administrative liability for domestic violence against an adult and against a child.

Based on the above, the purpose of the study was to study the vectors of improving the system of administrative and criminal punishments in modern Ukraine, taking into account foreign experience. For this, several tasks were formed: to reveal the main stages of the historical development of the institute of administrative and criminal responsibility; to compare the composition of individual offenses provided for by the current Code of Administrative Offenses and the Criminal Code of Ukraine; to study the experience of foreign countries; to formulate recommendations for improving the legislative framework that provides for criminal and administrative punishments in Ukraine.

Materials and methods

The analysis method was used in the research. This was necessary to reveal the meaning of punishment, in particular in the field of administrative and criminal law. On the basis of this method, the signs of administrative responsibility were determined, as well as were the principles of its application. The analysis made it possible to investigate the concept of administrative and criminal punishments at different stages of the historical development of Ukraine. Using the method of synthesis, the research revealed the relationship between the norms of the Code of Ukraine on administrative offenses and the Criminal Code of Ukraine. This synthesis was necessary to provide common features in the compositions of various offenses, placed under the established names above regulatory legal acts.

The comparison was used during the study of common and distinctive features in the concept of administrative and criminal punishments in Ukraine. On its basis, the principles were revealed, on the basis of which punishment is assigned

in actions that can have the nature of both administrative and criminal offenses. In addition, this method was necessary to compare the experience of Ukraine regarding the separation of administrative and criminal punishments with that of foreign countries, in particular Great Britain, France, and Estonia.

Since the research lies in the legal plane, the formal-legal method was used in it. It was necessary for the study and characterization of individual provisions of various legal acts, namely: the Code of Ukraine on Administrative Offenses (1984), the Criminal Code of Ukraine (2001), the Administrative Code of the Ukrainian Socialist Soviet Republic (1927), the French Penal Code (1960), Code of the Republic of Kazakhstan on Administrative Offenses (2014). With its help, the composition of offenses established in the listed acts was revealed, as was the effectiveness of the codification of punishments in the codes.

In order to express the specificity of criminal and administrative punishments, the research used the deduction method, in particular, the special features inherent in the means of coercion used during administrative and criminal liability were determined. On the basis of general knowledge about sanctions and punishments, the specifics of the application of influence measures in the administrative and criminal law of Ukraine were revealed.

The generalization method was applied in the research to form recommendations for improving the current system of Ukrainian legislation in the field of administrative and criminal law. This method made it possible to determine the merits of individual approaches to the codification of norms that establish punishments for persons who have committed administratively or criminally illegal acts.

Results

The main step in the process of codification of administrative norms in Ukraine was the adoption of the Code of Ukraine on Administrative Offenses (1984), which defined theft by size. In this way, the sanction for petty theft was fixed and it was determined that it is punished in accordance with the provisions of the Code of Administrative Offenses as well as the Criminal Code of Ukraine (2001) (Article 51 of the Code of Administrative Offenses). At the same time, the latter also divided theft into two types, namely theft under Article 81 of the Criminal Code and petty theft of state or public property under Article 85 of the Criminal Code.

After the declaration of Ukraine's independence, a number of changes were made to the normative legal acts, in which norms on administrative and criminal liability were established. In particular, only Article was left in the CC. 185 – theft, and in the Code of Administrative Offenses Article 51 – petty theft. Another example is Article 173 of the Code of Administrative Offenses, which provides for liability for petty hooliganism and Article 296 of the Criminal Code – hooliganism. At the same time, the act, in the form of petty hooliganism, includes swearing in public places, insulting citizens, as well as other similar actions that, accordingly, violate public order and peace of citizens. At the same time, the study of Article 296 of the Criminal Code defines hooliganism as a gross violation of public order on the grounds of clear disrespect for society, accompanied by particular audacity or exceptional cynicism.

Given this, actions involving profanity in public places cannot be disrespectful to society. Based on this, it should be noted that the objective sides of the considered offenses actually coincide. In this regard, it is advisable to combine them and, accordingly, refer them to one Criminal Code. The analysed norms of these normative legal acts indicate the presence of shortcomings, namely conflicts in the current legislation of Ukraine, which can be solved with the help of the above recommendation.

Investigating the issue of regulation of illegal actions in the field of administrative relations, namely public order and public security, it is advisable to pay special attention to the administrative legislation of the Republic of Kazakhstan (Gladchenko, 2023). Accordingly, Chapter 25 of the Code of the Republic of Kazakhstan on Administrative Offenses (2014) clearly identifies illegal patterns of behaviour that negatively affect public order and morality. The Ukrainian legislator chose a slightly different approach, since in Chapter 14 of the Code of Ukraine on Administrative Offenses, he established not only the norms that establish responsibility for encroachment on public order and public safety, but also other actions, for example, violation of the rules of conduct at sports and mass sports events, spectacular cultural and mass events by individuals; sites (Article 434-1). The difference between administrative norms in Kazakhstan and Ukraine lies in the clear regulation and classification of norms. At the same time, they have in common an approach aimed at strengthening and effective provision of public order, morality and public safety.

Above in the study, it was indicated that administrative law is mostly identified with management law, namely management in society. Based on the fact that there can be no coercion in management, persons who do not obey the rules of behaviour established by law in society should be held criminally liable. At the same time, in each country there are certain types of administrative offenses that are not considered such according to the norms of Ukrainian legislation. As an example, it is appropriate to cite the experience of Great Britain, because their minor offenses mostly belong to minor crimes, and therefore criminal punishment is applied to those who commit them. At that time, in the Criminal Code of France, such actions are classified as a violation (contravention) (in the field of road traffic safety), for which criminal liability arises (Izbash, 2020). At the same time, in some foreign countries (for example, Estonia), there is generally no legally defined concept of an administrative offense (Harris *et al.*, 2022). It should be noted that in Ukraine it is understood as an illegal, criminal act that encroaches on state or public order, property, rights and freedoms of citizens, for which administrative responsibility is provided by law.

In turn, German administrative law is considered public administration law (Hessick & Hessick, 2021). There it develops on the basis of the continental European tradition, and therefore administrative offenses in the context of their systematization belong precisely to the forensic and legal sphere. Provided that a certain act or inaction has the characteristics of both a crime and an administrative offense, the German criminal law must be applied accordingly to qualify this act (Gladchenko, 2023). A common example found both in Germany and Ukraine is a violation of traffic rules, which in its essence is a misdemeanour, but when serious consequences occur, such a violation acquires the characteristics of a crime. Accordingly, both laws stipulate that certain types of administrative and criminal offenses are closely related, and therefore, depending on the consequences and

the nature of the damage caused, can be transformed from the first to the second. In Poland, as well as in Ukraine, administrative responsibility has a managerial, public service and human rights nature (Sarapuu & Saarniit, 2020). This is due to the fact that the state authorities, as well as their officials, are in vertical relationships that involve subordination. Accordingly, the same thing between Ukrainian and Polish administrative legislation is that state bodies in these countries enter into mutual relations with citizens precisely when providing them with public services, as well as bringing individuals and legal entities to administrative responsibility in the event of their violation of norms (Kärner, 2022). At the same time, the distinctive thing is that in Ukraine, administrative responsibility differs from criminal responsibility in its managerial and systemic features.

The absence of a single codified act, which would establish the composition of administrative offenses, is characteristic of the countries of Western Europe, since most of them have a mixed nature of legislation. This indicates significant differences in the approaches of Ukrainian and European legislators. The latter are characterised by a combination of both general material provisions and procedural norms regarding the imposition of administrative fines (Switzerland, Austria, Italy, and Portugal) (Cass *et al.*, 2020). At the same time, the common thing with Ukraine is that despite the absence of a codified administrative act, all these countries have criminal codes. This shows that the issue of criminal responsibility is given more attention there and is more formalised. At the same time, in Spain, where, accordingly, there is no single law with a list of all administrative violations, there are separate industry norms (the Spanish Law "On General Taxes") (Sznycer & Patrick, 2020). Special legal acts are also common in Ukraine, for example in the field of taxation, which is directly related to the mechanisms of administrative law. Based on this, it can be established that the most acceptable approach for the states of Western Europe is the codification of both criminal and administrative offenses, as this is reflected in the effectiveness of the selection of the necessary norms for the qualification of illegal acts. Separately, it is worth paying attention to the experience of Denmark, in which the development of administrative law is significantly influenced by both external and internal reasons (Behrer & Bolotnyy, 2022). The contracting of public administration, as well as the penetration of information technologies into administration, are factors in the reform of administrative law in both Denmark and Ukraine. The Danish mechanism of administrative responsibility as a whole has a number of common features with the Ukrainian one, since the administrators of both countries use not only the doctrine of public law, but also real tools for regulating administrative responsibility.

Based on this, the approaches of the legislators of these countries have in common a combination of both material and procedural norms in the sphere of regulation of administrative legal relations, as well as perfect regulation of decision-making mechanisms and responsibility. It is expedient to distinguish between administrative and criminal liability in Ukraine on the basis of statistical data. In this case, it should be noted that in the Union of Soviet Socialist Republics, crime statistics were closed, because it was important to create an image for foreign countries and the international community of the world that crime in it is decreasing and will eventually disappear. At the same time, after the independence of Ukraine, these data acquired an open nature, which allows to compare the number of crimes committed in different years. Based on this, Figure 1 presented statistical data on the number of committed crimes and administrative offenses in Ukraine for the period 2019-2022.

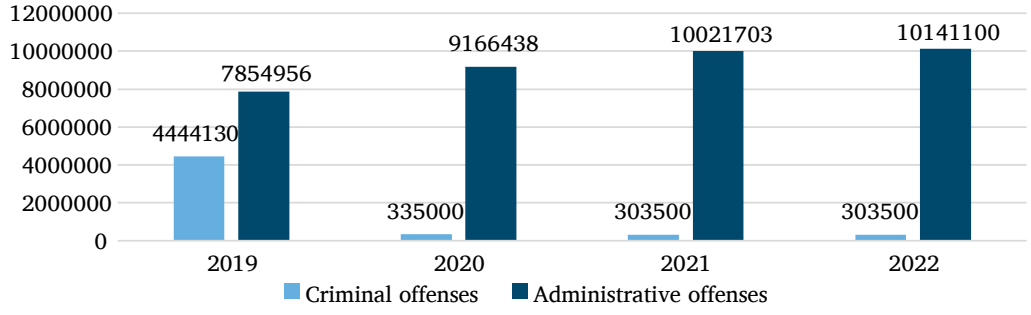

Figure 1. Statistics of committed criminal and administrative offenses in Ukraine during 2019-2022
Source: Statistics of bringing to administrative responsibility for 2018, 2019, 2020, 2021, and 2022 (2023); Report of the National Police of Ukraine on the results of work in 2022 (2023)

The data disclosed above indicate that in today's conditions it is possible to monitor the dynamics of the spread of criminal and administrative offenses in Ukraine. This has a positive effect on the position of Ukraine in the international arena, as foreign partners and the world as a whole can understand the real level of crime in Ukrainian society and participate in measures aimed at reducing it. Special attention should be paid to the study of the concept of criminal misdemeanour, which is defined in the Criminal Code of Ukraine and involves an act established in the Criminal Code of Ukraine, for the commission of which the main punishment is provided, namely the imposition of a fine in the amount of no more than three thousand tax-free minimum incomes of citizens or other punishment, not punishable by imprisonment. In this case, it would be appropriate to classify petty theft as criminal misdemeanours. In accordance with Part 1 of Article 185 of the Criminal Code of Ukraine, secret theft of someone else's property (theft) is a criminal offense, while petty theft of someone else's property through theft, fraud, appropriation or embezzlement (Article 51 of the Code of Administrative Offenses) is not a crime.

The same analogy can be drawn on the example of petty hooliganism. Since in the Code of Administrative Offenses it should be understood as obscene swearing in public places, insulting citizens and other similar actions that violate public order and peace of citizens. At the same time in

Article 296 of the Criminal Code of Ukraine, hooliganism represents a gross violation of public order on the grounds of clear disrespect for society, accompanied by special audacity or exceptional cynicism. In this case, establishing the connection between obscenity and gross violation of public order is a complex and controversial process. Separately, it should be emphasised that the current Labor Code was adopted in 1984, that is, almost 40 years ago and has not been changed to this day. One of the reasons for the formation of such a situation is the efforts of the authorities to hide the real state of crime in Ukraine.

Based on the above, it can be established that the institutions of criminal and administrative punishments in Ukraine developed in a close relationship. This indicates that certain provisions of the Code of Administrative Offenses directly relate to the Criminal Code of Ukraine, which significantly complicates their distinction and determining the degree of punishment for guilty persons. That is why there is an objective need to reform the national legislation in the field of criminal and administrative responsibility, in order to solve the issue of qualitative unification of the acts considered in this study.

Discussion

In the scientific doctrine, considerable attention is paid to the issues of distinguishing and comparing different types of legal responsibility. In particular, researchers study the peculiarities and correlation of administrative and criminal punishments. For example, A. Sarin *et al.* (2021) were engaged in the study of administrative law, which, in their opinion, from the moment of its emergence and, accordingly, in the process of development, should be considered as administrative law as a whole. Based on this, the researchers consider it expedient to distinguish this right from the right to be prosecuted. Until 1917, bringing guilty persons to administrative responsibility was carried out by special subjects, namely justices of the peace or other administrative bodies. Accordingly, the researchers established that administrative offenses were set forth in various legal acts related to the regulation of social relations in the sphere of the national economy. Also, until 1917, the theft of property belonged to the category of crimes and various types of liability could be applied to persons who committed such actions (depending on the value of the stolen property). It is important to note that the concept of petty theft did not exist in the legal system. As a result of the revolution of 1917, dissonance arose in society. The researchers explained this by the fact that a large part of society had only a primitive idea of the existence of someone else's private property, which, accordingly, is forbidden to steal or use. At that time, the main idea of the revolution was the requisition of property, as well as its distribution among citizens who, accordingly, did not have such property. Based on this, it can be noted that the conclusions of both works have in common that a certain part of the population that participated in the revolution was interested in obtaining additional property. That is why both studies emphasised the increase in the number of both open and secret theft of property by the revolutionaries themselves under the auspices of distributing property among citizens.

A. Podgorecki (2023) established that the state should take a number of measures to regulate the situation in society, in particular in the field of property relations. For the most part, they should have an educational character (for example, communist education of citizens). In his opinion, in this way, the authorities tried to counteract theft, namely to encourage citizens to take responsibility for property, which should actually belong to all working people. It is worth noting that this process was not implemented perfectly, since the issue of educating citizens did not always correspond to the real actions of the government. The author noted that the majority of the population believed that the property could be taken away, and its further fate would be determined later. This issue was especially acute in rural areas, as landowners' houses were looted there, and all property was taken away by the peasants. As for the cities, the eviction of the bourgeois from their apartments and the confiscation of property did not belong to the category of crimes. Accordingly, the common conclusion is that despite the active propaganda of the communist way of life, it was quite difficult for the authorities to regulate legal relations in society, namely to solve the problem of predatory distribution of property.

M. Kulik and M. Błotnicki (2021) believe that the most effective way to restore order in society is to create appropriate legislation aimed at preventing theft. They justified this position by the fact that a high-quality legislative framework can serve as a basis for bringing the guilty to justice. At the same time, it should be noted that the inclusion in the criminal code, which was being formed, of articles on bringing to criminal responsibility citizens who have committed thefts (especially small ones), would lead to the deprivation of liberty of a large number of persons. Common between the works is the conclusion that thefts in the last century were actually an everyday phenomenon. Accordingly, the works equally emphasised both theft and expropriation, since the property of the bourgeoisie was stolen, and as a result, it was deprived of the opportunity to own property and have any rights in the new society. The researchers proposed the idea of dividing theft into two types, namely small and large. The researchers claimed that in this way it would be possible to reduce the number of criminals, because people would be brought to administrative responsibility for the first type of actions. The same position was revealed within this article. It is also worth noting that the application of criminal punishment to the participants of the revolutionary events would have a negative impact on the authority of the authorities as a whole. Accordingly, the common conclusion between both studies is that it was the last indicator that played an important role in the context of establishing trade and other relations with the countries of the Western world.

The first codification of administrative norms in Ukrainian society took place in 1927, in connection with the adoption of the Administrative Code of the Ukrainian Socialist Soviet Republic (1927), as indicated in his work by L.H. Andersen (2023). In his opinion, the society of that time had the right conditions to reduce the number of persons to whom criminal punishment should be applied. This approach was determined by the need to create special social consequences, which, accordingly, entail condemnation and restrictions in the public life of guilty persons. The implementation of this idea lasted until the end of the 1930s, but the expected results could not be achieved. Common among the studies is the conclusion that these actions caused a decrease in the number of citizens brought to administrative responsibility, as well as an increase in the number of convicted persons. The authorities justified this situation by the exacerbation of the class struggle in society.

A.P. Behrer and V. Bolotnyy (2022) studied the provisions of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine. The researchers found that the first lacks such definitions as "unfinished administrative offense" or "attempted administrative offense". It is worth noting that within the framework of this study, a comparison of articles providing for the establishment of administrative and criminal liability in Ukraine was also conducted. According to the researchers, this affects the determination of the time of the end of the crime during its qualification. Thus, it becomes a prerequisite for the use of different administrative and legal norms in the context of establishing punishment for the same misdemeanours. The authors noted that there is no punishment for an unfinished misdemeanour in the administrative legislation of Ukraine. Based on this, the common conclusion between the works is that only a person who has proven the commission of an administrative offense can be brought to administrative responsibility. Within the framework of this study, common and distinctive features in the establishment of administrative and criminal punishments in accordance with the current normative legal acts of Ukraine were also considered. According to the researchers, damage to the rights of a person and a citizen or the state can be caused even by an attempt to commit an administrative offense. This shows that an unfinished administrative offense has almost all the features of a misdemeanour. It is a generally accepted position that in the presence of the overwhelming majority of signs of an administrative offense, an administrative sanction should be applied to the person who committed such an attempt.

In turn, D. Richman (2022) in his research also substantiated the opinion that non-prosecution for an attempted administrative offense actually leads to the recognition of such actions as legitimate. The researcher noted that the commission of an illegal act in its essence cannot be lawful, as it contradicts the principle of inevitability of administrative responsibility. Therefore, the approach to the disclosure of the specified principle is widespread, according to which, in the event of a misdemeanour, the offender must be punished. At the same time, this rule must be followed regardless of whether the illegal act has been stopped. The general results are that the implementation of the principle of inevitability depends to a greater extent on the professional competence of both the citizens to whom the administrative penalty is applied and the persons who accordingly impose the penalty. Similar conclusions have been established by research, in particular, that an administrative offense neglected causes significant damage to the law and order and safety of society as a whole.

Based on the above, it should be established that the approaches to defining the concept of administrative and criminal responsibility differ significantly in various countries. This is influenced by several characteristics specific to specific national legislation. Despite this, it should be established that the definition of the relationship between administrative and criminal responsibility is common, which is characteristic not only of the legislation of Ukraine but also of foreign countries.

Conclusions

Based on the conducted research, it was established that the concept of administrative and criminal responsibility in Ukraine was reformed during different periods of its historical development. Accordingly, from the beginning of the 20th century until now, certain legal traditions regarding the application of punishment for criminal and other offenses have existed and are spreading in Ukraine. The study established that the system of criminal and administrative responsibility underwent significant changes, however, at all stages of its reformation, they were closely connected. Based on the articles of the Code of Administrative Offenses and the Criminal Code of Ukraine, in particular regarding hooliganism and theft, the principles were defined, based on which punishment differentiation is carried out for persons who committed such acts. It was established that the composition of these offenses in both administrative and criminal aspects is similar. That is why there is an urgent need to make changes to the Ukrainian legislation, namely the effective unification of individual articles in the Code of Criminal Procedure and their classification by the provisions of the Criminal Code of Ukraine.

The study considered the experiences of foreign countries, namely Kazakhstan, Germany, France, Great Britain, and Estonia. It has been established that the majority of minor offenses in them are provided for by various normative legal acts, in particular by special laws. Based on this, it was determined that the Ukrainian legislator's approach to the codification of norms on administrative responsibility is effective, as it simplifies the application of administrative penalties. This indicates that it is necessary to leave the Code of Criminal Procedure for the regulation of administrative legal relations in Ukraine, but to improve its provisions, in particular by bringing them into line with articles in the Criminal Code of Ukraine. In the following studies, it is advisable to consider the problems of administrative responsibility in Ukraine and the countries of the European Union in modern conditions.

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Conflict of interest

None.

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Порівняльний аналіз адміністративних та кримінальних покарань в Україні та деяких зарубіжних країнах і перспективи змін

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Анотація. Процес європейської інтеграції зумовлює необхідність реформування системи українського законодавства. При цьому актуальним є питання співвідношення норм, які встановлюють адміністративні та кримінальні покарання в Україні, а саме їх удосконалення та уніфікація. Таким чином, метою дослідження стало визначення перспектив зміни підходів до законодавчого закріплення статей про кримінальну та адміністративну відповідальність в Україні та за кордоном. Використано методи аналізу, синтезу, порівняння, формально-юридичний, дедукції. Результати дослідження свідчать про виявлення подібностей у структурі окремих норм Кодексу України про адміністративні правопорушення із складами злочинів, що передбачені статтями Кримінального кодексу України. Це явище виокремлюється як важливий аспект правової системи України, що потребує ретельного аналізу та порівняння. Дослідження також визначило основні історичні передумови кодифікації норм, що регулюють кримінальну та адміністративну відповідальність в окремі кодекси. Аналізуючи історичні контексти, вивчено, як еволюція правових принципів сприяла формуванню сучасної системи відповідальності. Окрім того, дослідження зосередило увагу на сучасному співвідношенні між Кодексом України про адміністративні правопорушення та Кримінальним кодексом України. Аналіз взаємодії цих двох кодексів став важливим компонентом для розуміння системи правопорядку в Україні та виявлення можливих аспектів удосконалення цієї системи. Надзвичайний інтерес дослідників викликало вивчення зарубіжного досвіду, зокрема практик Казахстану, Німеччини, Великої Британії, Франції та Естонії. Цей компаративний підхід дозволив виявити подібні та відмінні риси у правових системах різних країн, а також взяти на увагу ефективні практики, які можуть бути використані для вдосконалення правової системи України. Отримані в дослідженні результати доцільно використовувати в процесі внесення змін до положень Кодексу України про адміністративні правопорушення та Кримінального кодексу України, зокрема їх удосконалення в контексті євроінтеграційних процесів

Ключові слова: відповідальність; кодекс; склад правопорушення; санкція; примус

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Legal regulation of corporate governance in global business: Main problems and current trends

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Abstract. The relevance of the study is determined by the current absence of a clear mechanism for managing transnational companies in global doctrine, leading to various problems. Given this, the purpose of the paper is to identify the main problematic aspects of regulations. To achieve this, methods such as legal hermeneutics, logical analysis, formal-legal, deduction, induction, synthesis, and others were used. The study established that transnational corporations are unique subjects of international economic relations with a complex structure, acting as a unified mechanism, complicating their legal regulation since they are not ordinary legal entities. It is disclosed that one of the key problems is that international legal norms regulating the activities of transnational corporations are recommendatory and not mandatory for implementation. Another issue is the need to strike a balance between the interests of transnational corporations and the countries in which they operate. Accordingly, the conclusion is drawn about the importance of introducing control over the activities of transnational corporations by the countries of origin, aimed at ensuring that transnational corporations adhere to international standards and do not harm the countries that host them. The paper identifies problematic aspects and prospects for the development of transnational corporations in Ukraine and Georgia, providing relevant recommendations. The practical value of the obtained results lies in the development of an international and national mechanism that enables the regulation of problematic aspects and enhances the effectiveness of legal regulation of the activities of transnational corporations

Keywords: perspectives; international law; economic relations; jurisdiction; investment flow; activity control; financial institutions

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Introduction

Corporate governance is an important factor in the economic development of countries. It is closely linked to global economic trends such as the growing role of the private sector and internationalisation. A qualitative mechanism contributes to improving the efficiency of business structures, expanding access to external financing, and improving the interaction of enterprises with government agencies. It is also a necessary condition for sustainable economic growth, being a vital component of board and executive work. It provides long-term value sustainability for shareholders. The variation in the implementation of the mechanism among different companies necessitates the examination of corporate governance components.

The process of transnationalization is characterized by the expansion of business activities beyond the country of origin, as noted by Yu. Solonenko and I. Chkareuli (2020). However, the authors' study doesn't specify that it encompasses all spheres of economic life, and its growth rates are constantly increasing. Transnationalization significantly influences the economic development of countries, according to D. Tkachenko (2019). Nevertheless, the author does not mention that, on one hand, it promotes the spread of advanced technologies, knowledge, and experience, leading to increased labour productivity and enhanced economic competitiveness. On the other hand, transnationalization can lead to social and economic problems, such as uneven income distribution, increased unemployment, and worsening environmental conditions.

As M. Simonova and E. Limonova (2021) write, transnational companies (TNCs) are the main driving forces of transnationalization. The authors don't specify that they have substantial resources and capabilities that enable them to compete successfully in the global market. S. Veshapidze *et al.* (2021) state that transnational corporations conduct their activities through subsidiaries located in different countries worldwide. This allows them to access cheap labour, raw materials, and markets. The authors, however, don't mention that the activities of transnational corporations through subsidiaries in different countries can have negative consequences. For instance, the use of cheap labour in developing countries is often associated with human rights violations. In addition, access to resources and markets does not always occur on mutually beneficial terms for host countries.

The processes of economic transnationalization have both supporters and opponents. R. Manvelidze *et al.* (2023) see opportunities in them for enhancing the competitiveness of companies on the global stage and increasing the country's export potential. However, attention should be paid to threats associated with the activities of transnational corporations. These include the outflow of capital abroad in the form of profit repatriation, the weakening of national control over strategic sectors of the economy, and the exacerbation of social inequality through income redistribution in favour of foreign capital. Therefore, the discussion on the impact of transnationalization continues and requires a careful evaluation of all arguments, both in favour and against this process. Moreover, TNCs may contribute to the spread of unfair competition and monopolization. Therefore, Ukraine needs to develop effective mechanisms for regulating the activities of TNCs. These mechanisms should aim to strike a balance between the positive and negative effects of transnationalization.

TNCs are important participants in international relations. They conduct their activities in various spheres of the economy and have various structures and forms of ownership. This complicates their legal typology and legal regulation. There are no uniform approaches to the interpretation and legal nature of TNCs in the theory of international law. This is because TNCs have the characteristics of both state and private enterprises. The question of the international legal status of transnational corporations remains open in legal science. As noted by S. Kurdadze (2020), this is due to the relative novelty of the TNC phenomenon in global economic processes. The author notes that the lack of consensus regarding the legal nature of TNCs complicates the development of a universal approach to defining their rights and obligations on the international stage. Thus, comprehensive research on this issue is a relevant area of international law.

Based on the above, the purpose of the study is to determine how corporate governance functions and is regulated in the legal field of global business. To achieve this, certain tasks need to be performed, including providing characteristics of key issues and highlighting their features, defining the role of TNCs in international relations and corporate governance, and developing recommendations for overcoming problematic aspects.

Materials and methods

The study was conducted using various types of analysis. The functional analysis method was applied to characterize the concept of "transnational corporation," and identify inherent features, functions, and roles in the context of globalization. The logical analysis method allowed for assessing the effectiveness of the existing international mechanism for the legal regulation of transnational corporations and determining ways to modernize and enhance its efficiency. The statistical analysis method was used to examine the world's largest transnational corporations, considering asset evaluation and market value as of 2023.

The formal legal method was applied to examine the provisions regulated by current legal acts. The article considered norms outlined in international doctrine, namely in the International Code on Fair Treatment for Foreign Investments (1949), the Charter of Economic Rights and Duties of States (1974), OECD Declaration and Decisions on International Investment and Multinational Enterprises (1976). This method involved a systematic analysis of their text, defining structure, terminology, sequence of presentation, internal relationships, and other formal aspects. This method helped identify how specific norms regulate certain areas of activity, particularly transnational companies.

The formal-legal method was used to determine the activities of transnational corporations by international law requirements, allowing the identification of their structure, and characteristic features, and establishing the compliance of the activities of transnational corporations with legal norms. The dogmatic method was used to interpret the current legislation based on the text of the law, examine its content to determine which norms and principles of law are included in it and distinguish the structure and logic. The application of the dogmatic method to the consideration of the activities of transnational companies provided the opportunity to determine their characteristics in the context of established provisions, rights, and obligations of transnational compa-

nies and countries. The method of legal hermeneutics helped interpret legal texts and norms, understand the logical structure of the text and relationships between its different parts, identify context and connections with other norms and rules, and determine the legislator's purpose based on established norms. The method of comparative legal analysis involved comparing legislation and legal acts to identify similar or different approaches to regulating transnational corporations. It provided the opportunity to determine similarities and differences in legal regulation, particularly in the aspect of the activities of non-governmental organizations and transnational corporations. The method of abstraction was used to focus on the aspect of research such as transnationalization and determine its characteristic features in the context of the development of the activities of respective companies in Ukraine, highlighting problematic aspects and prospects.

The deduction method provided an opportunity to characterize the mechanism of transnational corporations' activities based on their inherent features, principles, and implementation specifics in modern conditions. The induction method was applied to define the characteristics of transnational corporations based on the analysis of current international legal doctrine. The synthesis method helped integrate the obtained results for the development of specific recommendations.

Results

The globalization of the economy and international relations entails an increased role of TNCs. This poses a challenge for countries worldwide in regulating the activities of TNCs operating in different states. TNCs have a complex structure, making their activities challenging to subject to legal regulation. In addition, TNCs significantly influence the economy, politics, and society of the host country, leading to potential negative consequences. Currently, there is no unified international legal system for regulating the activities of TNCs. Each country develops its system of legal norms regulating the activities of foreign companies. As the importance of foreign capital grows, there is a need to improve the legal regulation system of TNC activities. It is crucial to strike a balance between the interests of TNCs and the interests of host countries. Statistical data on the world's largest TNCs are worth considering (Table 1).

Table 1. The world's largest public companies

Company name	Asset valuation, US dollars	Market value, US dollars
JPMorgan Chase	3.744 billion	399.59 billion
Saudi Arabian Oil Company (Saudi Aramco)	660.99 billion	2055.52 billion
ICBC	6166.82 billion	203.01 billion
China Construction Bank	4977.48 billion	172.99 billion
Agricultural Bank of China	5356.86 billion	141.82 billion
Bank of America	3194.66 billion	220.82 billion
Alphabet	369.49 billion	1340.3 billion
ExxonMobil	369.37 billion	439.39 billion
Microsoft	380.09 billion	2309.84 billion
Apple	332.16 billion	2746.21 billion

Source: compiled by the authors based on J. Virdin *et al.* (2021)

These data show the rating of the most influential companies in the world. It is worth noting that the assessment of assets significantly exceeds the state budgets of countries such as Italy, Canada, France, and the United Kingdom, all of which are part of the G7.

Contemporary international legal regulation of TNC activities is insufficient, but there are certain documents regulating their activities. The key regulations include the International Code on Fair Treatment for Foreign Investments (1949), the Charter of Economic Rights and Duties of States (1974), OECD Declaration and Decisions on International Investment and Multinational Enterprises (1976), and others. At the regional level, the countries of the Andean group play an important role in regulating the activities of TNCs. These countries are in favour of the development of trade and economic cooperation and against the influx of foreign capital (Michoud, 2019). They apply their antitrust laws to combat unfair business practices by TNCs. In addition, in the countries of the Andean group, some regulations contribute to the distribution of technological potential between the countries on whose territory TNCs conduct their activities (Virdin *et al.*, 2021).

The revolutions of 2003 and 2004 in Georgia and Ukraine radically changed the political course of these countries, as the course of integration with the EU was announced, which is the priority area of Georgia's foreign policy. It is worth noting the trade between Georgia and the EU, and the presence of European TNCs and value chains. Statistics show that although the EU is an important trading partner of Georgia, it is not as important as it is for the countries of Central and Eastern Europe (CEE). It is worth noting that the CEE countries exported more than half of their products to the EU, while Georgian exports to the EU make up about 21.5%, and to the Commonwealth of Independent States (CIS) – more than 53.7%; in turn, Georgia is also not a significant trade partner for EU countries; for example, in 2018 it accounted for only 0.1% of the total EU trade with a turnover of 2.6 billion euros (Veshapidze *et al.*, 2021). Unlike the CEE, Western TNCs did not show much interest in creating production facilities in Georgia and turning it into an export hub. The presence of European companies in the Georgian market is very small and focused on the production of clothing and building materials. Transnational retailers, such as Adidas or H&M, partially manufacture products in Georgia through local suppliers, but do not own the factories themselves (Manvelidze *et al.*, 2023). These corporations are unlikely to lobby for further market liberalization because the Georgian market is not strategic for them. Georgia, like

many post-Soviet countries, is trying to attract foreign investment from multinational corporations. The state offers investors a preferential tax regime, liberal labour laws, and other advantages. The main industries that attract foreign companies in Georgia are mining, infrastructure, telecommunications, and financial services. Sometimes TNCs use weak regulations in Georgia to lobby their interests, evade taxes, damage the environment. Due to this, Georgia actively implements a policy of economic liberalism and attracts foreign direct investments, which involves simplifying administrative procedures, preferential taxation, and limited government intervention in the economy. Georgia ranks 7th in ease of doing business, indicating liberal conditions for companies (Kurdadze, 2020). Environmental regulation and protection are relatively weak in Georgia, posing risks to sustainable development in the country. Therefore, in the current conditions, the development of TNCs in Georgia is relatively weak. Existing problematic aspects require resolution, and accordingly, their analysis needs to be conducted.

TNCs are unique subjects of international economic relations with a complex structure, operating within a single mechanism. This creates certain problems for their legal regulation since they are not ordinary legal entities. One of the main problems is the insufficient effectiveness of international legal regulation of TNC activities. This is because existing regulatory documents have a recommendatory nature and are not mandatory for compliance. Another problem is the need to balance the interests of TNCs and the countries in which they operate. TNCs can harm the economies of host countries, for example, through environmental violations or human rights abuses (Virdin *et al.*, 2021). Thus, countries of origin of TNCs must exercise control over their activities. This control should be aimed at ensuring compliance of TNCs with international standards and preventing harm to host countries.

The current stage of economic development is characterized by increased control over the activities of TNCs by countries of origin. This is due to the growing influence of TNCs on the economies of countries worldwide. Specific problems that need to be considered in more detail include the development of effective mechanisms for controlling the activities of TNCs that ensure compliance with international standards, balancing the interests of TNCs and host countries, and regulating relations between these entities. It is worth considering these problems in more detail.

The first problematic issue is that TNCs are an important source of investment for developing countries; however, control over the flow of these investments is insufficient. This view was also supported at the international level. The Doha Declaration (2001) of the World Trade Organization (WTO) called for considering the development aspect of economies of developing countries in the development of investment instruments. Despite this, in developing countries, no instrument has been implemented that would effectively influence investment activities and compel countries of origin to exercise strict control over the functioning of their multinational corporations. This creates some problems. Firstly, it may lead to uneven distribution of investments among developing countries, negatively impacting the development of their economies, as TNCs can use their economic power to manipulate these countries. To address this problem, effective mechanisms for controlling the flow of investments into developing countries should be developed. These mechanisms should be mandatory for implementation by all countries receiving investments from TNCs.

The second issue is that TNCs and non-governmental organizations (NGOs) have different interests and goals, creating a conflict between these two entities. TNCs seek to protect their interests, such as profit and economic growth, while NGOs advocate for human rights and environmental standards (Kim & Milner, 2021). These two entities have not reached a consensus on the legal regulation of TNC activities. To resolve the conflict between TNCs and NGOs, effective legal regulation that considers the interests of all stakeholders is necessary.

Discussions on creating a Multilateral Agreement on Investment (MAI) (1995) have shifted from investment protection issues to establishing responsibility for inadequate control of investment flows. This has led countries of origin to affirm the jurisdiction of national courts over the activities of their TNCs operating abroad. One problem in regulating TNC activities is determining the level of regulation. Traditionally, there are three levels: the internal legislation of host countries allowing the operation of TNC subsidiaries on their territory, bilateral agreements between the home and host countries, and multilateral agreements, including the MAI project. Implementing the MFIC is a complex task requiring consideration of the interests of all stakeholders. However, its successful resolution can contribute to creating a more just and favourable investment environment.

Another issue related to TNC activities is the lack of an effective mechanism for their accountability. Some national legislation contains rules governing the responsibility of TNCs. Nevertheless, in practice, the application of these rules to foreign legal entities is very difficult. The host country can only deny the protection of TNC investments as stipulated in investment agreements. However, this is insufficient to compel TNCs to adhere to legal norms and prevent harm to the host country. International law lacks general norms regulating TNC responsibility. One possible solution to the absence of TNC accountability is implementing a mechanism that impacts the country of origin. That is, it is necessary to realize the responsibility of the country of origin for the unacceptable behaviour of its residents. In this case, the country itself will be interested so that its TNCs do not use actions that could be a threat to another state. Several works highlight the right to protect their residents (legal entities) in international law; however, they did not raise the issue of protecting foreign nationals from TNCs abusing their activities (Ahmed, 2022). This discrepancy remains today, although the need for such protection is crucial.

In contemporary realities, transnationalization can be an effective mechanism for both Ukraine and Georgia to implement renewed priorities for societal reproduction, foreign policy tasks, and participation in the international division of labour. The need to improve institutional support for transnationalization in Ukraine arises from the need to economize transaction costs during the interaction of Ukrainian economic entities with service TNCs. Transaction costs can be caused by factors such as information asymmetry in the receiving market, the monopolistic position of certain service providers, legislative barriers for TNC entry into the Ukrainian market, incompatibility of standards and certification systems for goods and services, and underdeveloped market infrastructure.

In practice, when a state adopts regulatory acts aimed at eliminating these factors, transaction costs decrease, fostering interaction between counterparties, and promoting external trade and economic growth. Considering this, it is necessary to focus on the directions for the development of TNC activities in Ukraine and Georgia, which will subsequently impact the economic prosperity of the country. These areas can be divided into two groups – current and promising. The first can be attributed:

- to the regulatory support of TNCs activities in the state, primarily to expand the scope of state regulation of the investment direction;
- the use of TNCs experience in implementing internal and external corporate relations to actively involve entities of various forms of business in the implementation of investment activities;
- the effective organization of accounting and reporting of TNCs at enterprises, as well as the implementation of a methodology that will conduct economic analysis of TNCs;
- consolidation at the legislative level of the practice of indicative planning of TNCs activities.

Prospective development areas for TNC activities in Ukraine and Georgia include phased integration into international economic relations, the effectiveness of economic reforms, and overall economic renewal in the countries; implementing robust national structures that can compete with TNCs, ideally combining the development of such structures with a TNC strategy based on a more global approach; implementing a government program at the national level to support the development of Ukrainian TNCs, defining the purpose and tasks of enterprises and determining the areas of their priority, enabling the realization of a working management system for enterprises integrating into the world economy; creating innovative methods that consider and study foreign experience, allowing the reformatting of companies on an international scale and strengthening their influence globally. To do this, it is necessary to provide an incentive to Ukrainian producers in the form of soft loans and to change the concept of activities of trade and financial institutions in the field of material production.

For a favourable development perspective of Ukrainian and Georgian TNCs and the protection of the economy from foreign TNCs, it is advisable to take the following measures:

- introduce taxes on the outflow of national capital abroad to retain capital in the countries that can be used for the development of national TNCs;
- implement preferential taxation to increase the income of national TNCs, stimulating them to expand activities and create new jobs;
- determine a list of sectors of the national economy where Ukrainian TNCs can succeed and restrict access to capital for foreign TNCs in these sectors to enable Ukrainian TNCs to compete on equal terms;
- engage foreign partners based on specialization and cooperation, allowing Ukrainian TNCs to access advanced technologies and the experience of foreign companies.

The challenges of further development of TNC activities in Ukraine and Georgia are closely related to the development of the national economy of the country and the ability of the state to implement effective macroeconomic reforms. Moreover, the perception of the country in the world depends on its ability to conduct macroeconomic reforms, which is also an important argument for stimulating the activity of foreign capital in states. To prevent the transformation of the Ukrainian market into an area exclusively dominated by foreign TNCs, a government program to stimulate the formation of national TNCs is necessary. The prospects for creating such entities are quite realistic, and their formation can become one of the strategic priorities of state policy. Given the creation of a suitable external environment, this will significantly increase the competitiveness of the economy and ensure the survival of national enterprises in conditions where a "purely" national producer inevitably loses the competitive battle. The establishment of corporate structures for TNCs could be an alternative and effective counterbalance to the expansion of foreign ones for Ukraine and Georgia. Such companies would serve as flagships of the national economy. National capital can withstand competition with TNCs only if it is structured into powerful financial-industrial formations comparable to international analogues and capable of conducting active foreign economic policy. Measures to promote the development of TNCs and protect the national economy from foreign TNCs are necessary to ensure economic growth and increase the competitiveness of Ukraine and Georgia.

Discussion

Modern trends in the development of international markets and technologies and processes of international division of labour create prerequisites for any competitive enterprise to find its place in the global economy. However, to do this, certain conditions must be met. One of them is the understanding and ability to implement the principles of international corporate governance used by leading international companies, according to M. Ahmed (2022). In addition to the author's position, it should be added that another condition is the understanding by national businesses of the need to use a management system compatible with the management practices of leading TNCs.

The theory and practice of international corporate governance of leading world companies are constantly evolving and changing. Therefore, for any company aiming to be competitive on the global stage, it is necessary to carefully examine international experience, adapting it to existing socio-economic conditions, under the position of D. Bertram (2022). This determines the need to analyse the features of international corporate governance in the context of global cooperation in practically all countries, including Ukraine.

One of the strategically important tasks of international corporate governance is the formation of an optimal territorial organization of TNC activities. As R.V. Aguilera *et al.* (2019) noted, TNCs should be understood as the formation of global value chains (GVC), which are a phenomenon of modern global value chains (GVC), which are a phenomenon of the modern international division of labor (IDL). Regarding the author's position, it is worth considering that GVCs are characterized by fragmented specialization, which constantly changes under the influence of production and population needs. Therefore, TNCs must constantly monitor the effectiveness of GVCs and make certain adjustments to their spatial format. There are several approaches in scientific literature to define TNCs. The first approach focuses on the economic aspect of TNCs. In this context, D.S. Lund and E. Pollman (2021) considered TNCs as economic units that operate in two or more countries. They have a single strategy, management, and control. It is reasonable to agree with this, as TNCs have a significant impact on the economic

development of the countries in which they operate. J. Lu and J. Wang (2021) defined TNCs as companies capable of implementing a unified overall strategy through coordinated policies in two or more countries. It should be added to the authors' position that TNCs can also influence the economic policies of host and home countries, as they are an economic phenomenon, and therefore, their definition should be based on economic criteria.

The second approach focuses on the organizational-legal aspect of TNCs, considering them as legal entities with structural units in different countries falling under the jurisdiction of different states. B. Eberlein (2019) defines TNCs as enterprises that operate through their structural units – subjects of national law of different states. It should be noted regarding this position that they are an economically unified entity outside the jurisdiction of a specific state. M. Kluzek and K. Schmidt-Jessa (2022) distinguished TNCs as enterprises that unite legal entities in two or more countries. It is relevant to note that they pursue a coordinated policy and strategy through one or more decision-making centres. The third approach emphasizes the combination of the economic and organizational-legal aspects of TNCs, considering them as economic units with structural units in different countries. F.R. Chen and J. Xu (2023) defined TNCs as a group of companies operating in different (host) countries but controlled by a headquarters located in a specific country – the home country. It is worth adding that the main characteristic of TNCs is the implementation of direct foreign investments from the home country to host countries.

TNCs are characterized by such features as an economically unified system and a group of independent enterprises. TNC consists of individual enterprises that are legal entities, operate in multiple countries, and have structural units participating in national law. Management and control are conducted from a single centre – the TNC's central office, which oversees all structural units. The company operates outside the jurisdiction of a specific state, group of states, or international organization (Atal, 2022). TNCs can be classified according to various criteria. One of the main criteria is the degree of integration. According to this criterion, TNCs are categorized as horizontally integrated, vertically integrated, and networked. Horizontally integrated TNCs have a single management, but their structural units are located in different countries and produce identical or similar goods or services, as mentioned by M. Cooper and Q.T.K. Nguyen (2020). It is noteworthy that they often leverage their scale advantages in production and distribution to reduce costs and enhance efficiency. Vertically integrated TNCs have a single management, but their structural units are located in different countries and are positioned at different stages of the production process. These TNCs can control the entire production process, from raw materials to finished products, according to J. Butler (2020). It should be added to the author's position that this allows them to generate additional income and increase production efficiency. Networked TNCs consist of independent partner companies that collaborate within a single network. These TNCs often leverage their advantages in innovation and technology to enhance competitiveness.

In the process of selecting a country for investment and establishing effective TNC operations, cultural and institutional factors should be considered, in addition to traditional factors. These factors influence the level of transaction costs for the company, including costs related to management, marketing, overcoming cross-cultural issues, dealing with different institutions in the chosen country, and more. These costs can significantly exceed "traditional" costs such as production, transportation, sales (Abralava *et al.*, 2023). Therefore, TNCs must carefully evaluate cultural and institutional factors before investing in a country. Processes of internationalization, international economic integration, and globalization lead to changes in the paradigm of international management. The contemporary international business environment is characterized by high dynamics, turbulence, and uncertainty. Thus, organizations must be prepared for and even provoke changes rather than merely reacting to them. Companies must be leaders in creating their future rather than just adapting to external conditions. The processes of globalization have shown that successful business projects are often based not only on calculations but also on intuition. The role of classical analytical research and forecasts is diminishing as it is often impossible to accurately predict the economic situation. This creates a contradiction between the increasing number and complexity of problems and people's limited ability to solve them. The rising pace of change demands new approaches to international management, especially in planning and decision-making. Stereotypes of "classical" management are outdated, giving way to new models based on probability and variability, on consensus among all stakeholders.

Horizontal partnerships are expanding in the activities of TNCs, contributing to their flexibility. Corporations are divesting themselves of accumulated massive capital assets, shifting their management focus to intangible assets such as brands, patents, know-how. TNCs are restructuring their internal organization to have their units compete with each other. This promotes more efficient resource utilization and stimulates innovative activities. Organizational structures based on small groups are becoming more prevalent, where companies encourage intra-firm competition and entrepreneurship. Thus, a new context arises for the operations of international corporations, involving cooperation and competition among stable groups of economic agents. This affects the approaches used by TNCs in entering new global markets and the characteristics of their corporate governance. In the new conditions of TNC management, there is a shift in emphasis towards interaction with external partners. This becomes as (and sometimes more) significant than coordinating work between departments within the corporation. Economic phenomena and processes are not deterministic in time and space. A corporation is a complex open system, and its reaction to changes in the operating environment is not unambiguous and often unpredictable.

Conclusions

The study analysed the legislative doctrine regarding corporate regulation in global business. Accordingly, the concept of TNCs was characterized, and inherent features were highlighted. It was identified that TNCs play a crucial role in the global economy, but their activities also pose a range of problems. One problem is that TNCs significantly influence the economies of host countries. This can lead to an uneven distribution of investment and a negative impact on the development of these countries. Another problem arises from the divergent interests of TNCs and host countries. TNCs aim to maximize profit, while host countries seek to uphold human rights and environmental standards.

Another issue is the lack of an effective mechanism for holding TNCs accountable for their actions. This may result in TNCs abusing their position and harming host countries. To address these problems, the development of effective legal regulation of TNC activities is necessary, considering the interests of all stakeholders, including TNCs, host countries, and the international community. Specific measures were outlined to resolve issues related to TNC activities: establishing international norms regulating TNC responsibility, implementing a mechanism to control the flow of investments into developing countries, and fostering dialogue between TNCs and NGOs to achieve consensus on legal regulation of TNC activities. This would create a more effective and favourable environment for TNC operations while protecting the interests of host countries. The prospects for TNC development in Ukraine and Georgia were identified. To promote the development of national TNCs and protect the national economy from foreign TNCs, measures such as introducing taxes on the outflow of national capital abroad, providing favourable taxation for national TNCs, restricting foreign TNC access to sectors where Ukrainian and Georgian TNCs have competitive advantages, and attracting foreign partners based on specialization and cooperation are necessary. Future research will focus on examining international legal practices involving the world's largest TNCs.

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Conflict of interest

None.

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Правове регулювання корпоративного управління в глобальному бізнесі: основні проблеми та сучасні тенденції

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Анотація. Актуальність дослідження зумовлено тим, що наразі у світовій доктрині відсутній чіткий механізм щодо управління транснаціональними компаніями, що зумовлює низку проблем. З огляду на це мета роботи полягає в тому, щоб виявити основні проблемні аспекти нормативно-правових актів. Для цього використано такі методи, як юридична герменевтика, логічний аналіз, формально-юридичний, дедукція, індукція, синтез та інші. У процесі дослідження встановлено, що транснаціональні корпорації – особливі суб'єкти міжнародних економічних відносин, які мають складну структуру й діють як єдиний механізм, що ускладнює їхнє правове регулювання, оскільки вони не є звичайними юридичними особами. Виявлено, що одна з ключових проблем полягає в тому, що міжнародно-правові норми, які регулюють діяльність транснаціональних корпорацій, мають рекомендаційний характер і не обов'язкові для виконання. Також встановлено, що інша проблема полягає в необхідності досягти балансу інтересів транснаціональних корпорацій та країн, у яких вони працюють. Відповідно до цього зроблено висновок про важливість запровадження контролю за діяльністю транснаціональних корпорацій з боку країн походження, який повинен спрямовуватися на те, щоб транснаціональні корпорації дотримувалися міжнародних стандартів і не завдавали шкоди країнам, які їх приймають. Визначено проблемні аспекти та перспективи розвитку транснаціональних корпорацій в Україні та Грузії, а також запропоновано відповідні рекомендації. Практична цінність отриманих результатів полягає в розробці механізму міжнародного та національного характеру, який надає можливість урегулювати проблемні аспекти та підвищити ефективність правового регулювання діяльності транснаціональних корпорацій

Ключові слова: перспективи; міжнародне право; економічні відносини; юрисдикція; потік інвестицій; контроль за діяльністю; фінансові установи

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Law and technology: The impact of innovations on the legal system and its regulation

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Abstract. The relevance of this study is due to the introduction of technologies into the legal sphere, as well as their rapid development, which causes the inconsistency of conventional legislation with the emerging social relations. Thus, the purpose of this study was to research the impact of digital technologies on the modern legal society and their legislative regulation to formulate ways to improve and further develop this area. The methods used in this study were the following: historical, comparative legal, statistical, forecasting. The main results of this study are as follows: the concepts of technology, innovation, digitalisation, and artificial intelligence were investigated; the legal regulation of these concepts in both Ukrainian and foreign legislation was examined. The study also identified the main problems and risks associated with the use of digital technologies, including problems related to user security, personal data protection, copyright. Solutions and legislative changes regulating the field of technology were also covered using evidence from the United States of America, Switzerland, Japan, the United Kingdom, Canada. The study analysed the impact of artificial intelligence on the ethical aspects of the work of a lawyer. The study also highlighted the future vision and consequences of the use of technology in various spheres of public life. It was found that digitalisation and the introduction of technology into public spheres of life require flexibility and readiness for change from the legal sphere, as well as the need to strike a balance between innovative changes and the guarantee of fundamental human rights. Considering

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the international standards that were investigated, it was found that the key area that requires additional protection in the digital age is data privacy and confidentiality. The findings of this study can be used as a basis for improving the legislative framework that governs relations in the field of technology use by lawyers, sociologists, and legislators

Keywords: digitalisation; personal data; artificial intelligence; privacy; informatisation; legal framework

Introduction

Technology and innovation have a significant impact on social life and legal relations by changing the way people produce, provide services, access them, and interact socially. The study of technology and innovation in law is an important part of legal science and provides insight into new legal issues and challenges arising from the development of technology and helps to develop effective legal mechanisms to address them.

The problem of legal regulation of face recognition technology is analysed in the study by V.O. Goncharenko (2021), who points out that the EU countries have clear regulations and conditions for the use of biometric identification, which guarantees the protection of users' personal data. Thus, the author notes that given the European integration processes and the need to harmonise Ukrainian legislation with European standards, legislators need to introduce such conditions for the use of methods of personal identification that would be in balance with human rights, privacy, and inviolability. Such conditions, according to the researcher, must necessarily include user consent, a system of control over the implementation of such technologies.

The study by T.M. Lozynska and O.P. Yakubenko (2020) investigated the shortcomings of legal regulation of information technology. The authors pointed out that a considerable impetus for the development of the "state in a smartphone" was given by the need to introduce distance work, education, due to the pandemic. However, the researchers also note that further regulation of the sphere and consolidation of effective norms is impossible without reforming the law-making system and relying on European standards to protect the rights and freedoms of individuals in the information sphere. Such standards are constantly being updated, and therefore legislation should contain the maximum variety of social relations that may arise, be flexible, and meet the challenges of digitalisation and globalisation.

E.O. Kharitonov (2020) described the concept of information law and the relations associated with this term. The author noted that such law is defined as a certain set of rules designed to govern relations arising from and related to technology. Thus, information legal relations may arise in various traditional branches of law, including civil, commercial, criminal. In other words, almost every sphere of public life has an element of information relations, which is why there is a need to create norms that would take this fact into account.

Thus, an example of regulating the use of technology in the economic sphere is available in O.M. Goncharenko and H.B. Babadzhanian (2020). Researchers point out that the use of information technology has become a new tool for providing services, concluding contracts, supplying, and controlling the market. It is also noted that the digital economy, which is currently being actively implemented and developed in Ukraine, requires more detailed regulation to introduce an effective socially oriented economy that will enable all types of businesses to conduct business without the risks of personal data leakage, threats to privacy in the digital environment.

O. Velichko and V. Rekun (2022) analysed changes in the legal system during the active development of digital technologies. The authors point out that in practice, such changes can be observed through the streamlining of regulations at the state level in electronic access, specifically through the creation of some search services, including the official website of the Verkhovna Rada of Ukraine, the Liga resource. The article also points out that the digital era places a range of requirements on legal practice and law-making, and therefore even the rulemaking process, according to the scholars, must also undergo changes and meet the requirements of digital reality.

Considering the above, the subject matter of this study is relevant and discussed by scholars and authors. In general, the topic of technology in the legal sphere is quite extensive, which creates the need to investigate all relevant events and processes that currently have the greatest impact on the legal system and social relations. However, some problematic aspects related to the development of the legal system in the context of digitalisation, the impact of this process on the rights and freedoms of individuals, and which group of rights is at the greatest risk of infringement are still unexplored. Therefore, the purpose of this study was to analyse the role of information technology in the legal sphere, as well as to investigate the regulatory framework for innovation and digitalisation in Ukraine, and to highlight foreign practices in regulating the main current technological areas of legal development suing evidence from some countries.

Materials and methods

The study was conducted using several scientific methods. The systemic-structural method helped to cover and analyse the main concepts related to the subject matter of this study, namely, "technology", "innovation", "digitalisation", "digital law", "artificial intelligence". Along with the systemic and structural method, the study employed the formal logical method and the method of legal hermeneutics, which were used to investigate the legal acts of national and international importance, as well as theoretical developments in the respective field. The objects of this study, based on these methods, were as follows: Law of Ukraine "On Copyright and Related Rights" (2022), the Law of Ukraine "On Personal Data Protection" (2010), the Law of Ukraine "On Information" (1992), regulations, programmes, and national concepts, specifically the Recommendation of the Council on Artificial Intelligence (OECD, 2019), the Law of Ukraine "On the National Informatisation Programme" (2022).

The historical method helped to identify the key aspects of the emergence and development of digitalisation, technological, and information changes in various spheres of public life, their legal nature and specific features of regulation; to investigate the current technological advances in the legal sector and their ethical and cultural component.

The comparative legal method was useful in investigating the positive and negative aspects of digitalisation and technological development of the legal sphere, as well as in finding out foreign practices in regulating and introducing innovations into public life using evidence from the United States of America, Canada, Japan, and other countries. Highlighting measures that promote harmonisation between the observance and guarantee of security, privacy, integrity, and other human rights and between innovative processes that use biometric technologies, personal data. The comparative method was also useful in identifying the most effective solutions to the legal regulation of advanced technologies and considering them when formulating recommendations for reforming Ukrainian legislation in the area under study. Based on the data obtained using the comparative legal method and the statistical method, the study examined the state of innovation development and digitalisation in Ukraine, as well as in European countries, the United States of America. The data from World Intellectual Property Organisation (2023) was used to highlight the current state of technological development of countries.

The study identified the problems relating to the legal system under the influence of information and technological changes using the method of analysis; the study also suggested ways of solving them and further development of the sphere. Along with the method of analysis, the study also employed the method of synthesis, which was useful in investigating the effectiveness of existing instruments for regulating digital technologies and their impact on the social life of the subjects of relations arising in this area. The forecasting method was also important, as it helped to outline the future state of the sector, considering the proposed solutions to the existing problems of regulating the digitalisation process; the method also helped to propose changes to national legislation to enhance its role and effectiveness in the information sector and in the field of personal data protection, user privacy.

Results

Legal technology encompasses the use of various technological tools and innovations to improve legal practice, enhance legal processes, and facilitate better access to justice. These technologies aim to improve efficiency, accuracy, and accessibility in the legal field (de Sio & Mecacci, 2021). Legal technologies are manifested through the systematisation of documents, the conclusion of contracts remotely and according to standard algorithms, the use of artificial intelligence for legal research, drafting legal documents, providing legal advice, resolving legal disputes. The history of technology and innovation in law dates to the very origins of legal systems (Zhao, 2022). Early legal systems relied on written records, which were already a technological advance in themselves, and the advent of writing and the ability to record laws and agreements on stone tablets or papyrus scrolls marked a significant step forward in the codification of legal principles (Dunyo & Odei, 2023).

The greatest progress in the technological development of legal processes was made in the 20th and 21st centuries, with the introduction of typewriters, telegraphs, the Internet, software. The digital revolution, which began in the late 20th century and continues today, has had a profound impact on legal practice. Legal databases and online research tools have made it easier to access a large amount of legal information, court decisions, which makes legal aid activities easier, faster, and more efficient (Usman *et al.*, 2021). Electronic filing and digital signatures have simplified administrative, commercial, and civil processes, as have the use of artificial intelligence (AI) and machine learning, which have been integrated into legal activities to analyse, verify, draft documents, resolve typical disputes, predict court outcomes. The development of technology not only simplifies some processes, but also poses a range of challenges, including personal data protection issues, the need for legislative regulation and response to innovations, the development of rules that will effectively govern the relations arising from the object under study, cybersecurity, intellectual property, and copyright protection, regulation of digital identification processes, the use of AI. There is a need to analyse Ukrainian legislation in terms of its effectiveness and relevance in regulating technologies in the field of law and the readiness of the authorities to respond to global challenges associated with a considerable expansion of the ways in which innovations are used in public life.

As for the definition of information and communication technologies (ICT), it is worth referring to the Law of Ukraine "On the National Informatisation Programme" (2022), which defines the principles of national informatisation, where it is stated that ICT is the result of mental activity, a certain set of systematic knowledge, technical, and organisational decisions on the procedure for performing operations aimed at processing, accumulating, collecting and using information, providing information services. The concept of digital technologies in this regulation is presented as a set of systematic legal, organisational, and scientific solutions aimed at using various types of computing equipment to reduce the role and involvement of the user in collecting, processing, and using information. Furthermore, according to the Law of Ukraine "On the National Informatisation Programme" (2022), digitalisation is defined as the process of introducing technology into public life and all its spheres. This programme not only defines certain important terms that directly or indirectly relate to informatisation, but also makes provision for the solution of certain tasks, which include ensuring the development of the information society in Ukraine, the introduction of technologies in all sectors of the economy, social relations, public administration processes, the fight against digital inequality, digital illiteracy, the integration of the Ukrainian state into the global digital space, and ensuring the security of users and their personal data.

The logical question is how to regulate the concept of personal data and how to protect it under Ukrainian legislation. Personal data and their security are becoming a key aspect to consider when introducing certain technologies into the social, economic, political, and other spaces. For instance, the Law of Ukraine "On Information" (1992) defines personal data as a set of information about a person that can be used to identify that person. The same definition is contained in the special Law of Ukraine "On Personal Data Protection" (2010), which regulates relations related to the use of personal data. Notably, this regulation indicates the grounds, conditions, and rules for data processing, which are the foundation for guaranteeing and preserving the security of users, as the law makes provision that the processing of personal data requires the consent of the relevant subject to such a process, protection of the subject's interests, which are highly necessary. Thus, Ukraine has both general and

special legislation that lays the foundations for the protection of personal data, the definition of information technology, and the process of digitalisation. However, it is worth paying attention to which technologies and areas of information development are currently most relevant for the Ukrainian state. It is appropriate to present some statistics on the progress of global economies, including Ukraine, in terms of innovation development (Fig. 1).

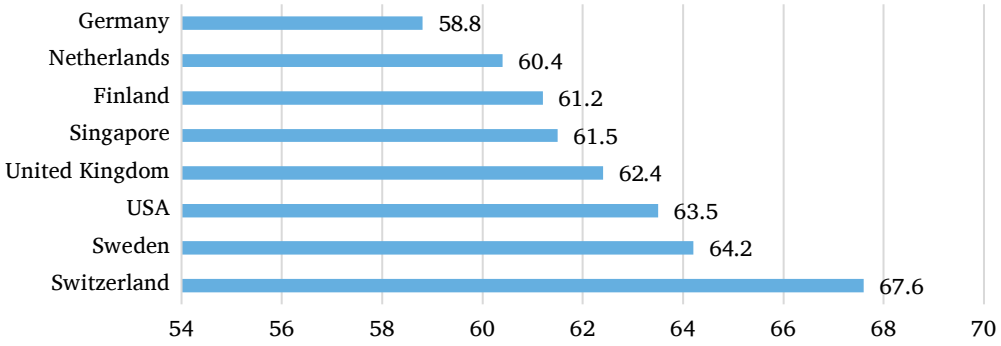

Figure 1. Global Innovation Index 2023
Source: compiled by the authors of this study based on World Intellectual Property Organisation (2023)

Thus, according to the World Intellectual Property Organisation (2023), Ukraine ranks 55th in innovation development among 132 countries, some of which are presented in the table above. Several indicators are used to generate the scores that determine a country's ranking, including, e.g., technology adoption, knowledge use, human capital, research efficiency, business organisation, digital education. It also indicates that Ukraine has improved its indicators of innovative outputs and innovative investments. These indicators mean that the number of patent applications, publications in scientific journals, production, and sales of innovative goods and services, exports, and the overall impact of innovations on the country's economic development, investment in research, development of high-quality innovation infrastructure, have increased.

In general, Ukrainian innovation in the field of law is represented by legal tech tools and the use of artificial intelligence in both the legal and general social spheres. At the state level, innovations are embodied in the Diia electronic service delivery system, the use of which is clearly regulated by special laws. However, the use of artificial intelligence and the data generated by it, specifically in legal activities, is hardly regulated, which leads to a range of problematic aspects that may affect the development of social and legal relations in general, as well as some ethical foundations for the use of AI-generated results. This issue is indirectly mentioned in the Law of Ukraine "On Copyright and Related Rights" (2022) and defines a special kind of right to non-original objects generated by a computer program. Furthermore, considering the above-mentioned law, it is allowed to use non-original objects freely, i.e., without the permission of copyright holders, free of charge, without indicating the borrowed source or the name of the author. Thus, the issue of using, e.g., OpenAI is not fully regulated by legislation, the latter does not regulate the risks that may be associated with its use and may relate to copyright infringement and does not oblige persons to indicate the source of borrowing certain data.

However, both globally and in Ukraine, the use of artificial intelligence is not limited to the above tools. Thus, there is the "Court on the Palm", "Liga. Verdictum", the Unified State Register of Court Decisions. These tools are aimed at automating routine processes, which reduces the time for the subject of the request to search and structure information, as well as increases the efficiency of its analysis and collection process (Buhmann & Fieseler, 2021). The existence of such systems would not have been possible without government support and legislative changes, and therefore it is advisable to look at some national programmes and concepts to identify advantages and disadvantages (Loureiro *et al.*, 2021). Thus, the Law of Ukraine "On the National Informatisation Programme" defines the creation of a Unified Information System of Accounting among its main tasks, the purpose of which is to form, monitor, process, and store projects and works related to the implementation of the programme and contribute to the information development of the state. The goals of the National Informatisation Programme are to ensure the information development of society, the introduction of digital technologies in all spheres of public life, as well as in public administration to simplify procedures for obtaining public services, the development and expansion of citizens' access to digital opportunities, and the integration of the Ukrainian state into the global digital space.

An important document in the legal regulation of technologies is the Concept of Artificial Intelligence Development in Ukraine, the implementation of which aims to solve a range of systemic problems related to the low level of digital awareness of the population, the lack of effective tools for regulating artificial intelligence, small amounts of investment in the development, research on artificial intelligence and its use, and the low level of involvement of the state apparatus in the use of digital technologies, specifically in the field of justice (Decree of the Cabinet of Ministers..., 2020). To achieve these objectives, it is necessary to implement international norms in the field of innovation and technology regulation into Ukrainian legislation. One of the key regulations in this area is the Recommendation of the Council on Artificial Intelligence (OECD, 2019). The guidelines are based on five core principles, including inclusive development and well-being, human-centred values and human rights, transparency in technology deployment, reliability and safety, and accountability. It is recommended that national policy and relevant decisions be made based on priority areas, including the establishment of sufficient investment in technological development, human capital development, and the creation of appropriate conditions for

this process, as well as the adoption of foreign practices and the promotion of international cooperation.

In the context of these recommendations, it is important to pay attention to the aspect of borrowing foreign practices. According to Japanese legislation, Article 2, paragraph 2 of the Basic Act No. 103 "On the Advancement of Public and Private Sector Data Utilisation" (2016), where the term "technology" is related to the concept of AI and may mean a technology for the implementation of certain intellectual functions, namely, learning, judgement, inference, which are manifested through appropriate functions and artificial means. There are opportunities to use AI in the field of forensic examinations, organisation of court activities through electronic document management, and when obtaining electronic evidence. This opens new opportunities for electronic court proceedings, specifically. Canada, for instance, adopted the Montreal Declaration for a Responsible Development of Artificial Intelligence (2018), which provides ethical guidelines for the development of artificial intelligence and focuses on consultations with experts, the public, and politicians. The use of artificial intelligence systems should contribute to the development of a democratic society, rather than reduce the responsibility of people for making certain decisions, affect the authorship and security of personal data (Schmitz & Zeleznikow, 2022).

Regarding ethical principles, it is also worth paying attention to Recommendation CM/Rec (2020) 1 of the Committee of Ministers to member states on the impact of algorithmic systems on human rights (2020). It is pointed out that states should adhere to certain principles to reduce the impact of AI and other algorithmic systems on public life and human rights. Such principles include the introduction of legislative initiatives that comply with the principles of transparency and accountability, regular assessment and monitoring of the impact of technology on human rights and freedoms to identify potential or real threats in their infancy, the implementation of a policy of education and awareness of digital development, its benefits and risks, and the approval of legislative boundaries that would guarantee the observance of human rights in the interaction with AI. It is also important to guarantee individuals the right to manage and control their personal data used by algorithmic systems.

It is also worth outlining a few more legislative decisions of foreign countries regarding the balance between technological development and reducing its impact on the legal system as a whole and on the rights and freedoms of individuals who may be involved in this process. There are separate laws at the state level, such as the California law that defines the right of individuals to refuse the use of personal data for artificial intelligence training (Senate Judiciary Committee, 2021). New York state law prohibits employers from using artificial intelligence systems to make hiring decisions to avoid bias or discrimination (Local Law of the…, 2021). At the federal level, the role in regulating artificial intelligence belongs to the Federal Trade Commission (FTC), which has published a list of powers to control and verify marketing strategies in promoting artificial intelligence, e.g., the FTC's activities include identifying misleading statements about AI capabilities, products, and services based on it.

As for Switzerland, the country's main regulation is the Digital Switzerland Strategy 2023 (Swiss Confederation, 2023). Notably, the development of the strategy involved various branches of government, as well as business, academia, and the public, which allowed for comprehensive research of the problem and consideration of all aspects of the impact of technology on various groups of society (Enholm *et al.*, 2022). The Digital Switzerland Strategy 2023 is based on five main principles, which include (Swiss Confederation, 2023):

- educational component, i.e., individuals, business and government representatives should have sufficient skills to use digital technologies safely and understand their advantages and disadvantages; security component, i.e., individuals using digital technologies and entering into relations with a digital element should be confident in the protection of their personal data;
- the legal component is the development of effective legislation that promotes the development of technology;
- the digital infrastructure component means that state representatives should use digital decision-making tools along with physical ones, so that law-making, executive, and judicial processes also move into the digital realm;
- digitalisation – the provision of public services, i.e., the transition from standard methods of resolving legal issues, processing documents, performing registration actions.

These principles are being implemented in four main areas, including access to digital services through quality Internet coverage, development of the digital economy through investment in start-ups, innovative research, strengthening digital independence and security of the country's digital environment, and creation of a digital society based on unity, inclusiveness, information literacy (dos Santos *et al.*, 2023).

It is also worth mentioning the UK, specifically, the White Papers on AI regulation, which defines a new, pro-innovation approach to AI regulation and the creation of a regulatory framework that will allow the UK to remain a world leader in innovative developments (A pro-innovation approach…, 2023). The development of the regulatory framework under the White Papers should be innovative, proportionate, robust, adaptive, and clear. These criteria are reflected in the promotion of innovative changes, avoidance of unnecessary legislative burdens and frameworks for technology businesses, strengthening public trust, addressing pressing AI-related risks, flexibility to change, new opportunities to expand the use of technology, and encouraging cooperation between different social groups. The White Papers also outline key elements that will help create an effective legislative framework for digitalisation and technology development:

- regulatory interpretation of AI should be based on its unique characteristics;
- use of a context-specific approach;
- identifying general principles of AI regulation at all levels of application;
- ensuring that there are regulatory bodies in place to oversee compliance with the law.

The White Papers also recommend defining AI based on two components: adaptability and autonomy, where the former is related to the ability of an AI system to learn, and the latter outlines the ability of AI to make decisions without human control (A pro-innovation approach…, 2023).

Thus, based on the analysis of the above-mentioned foreign solutions and strategies, it is possible to indicate some recommendations for improving the legal sphere of technology regulation to reduce the impact on social and ethical aspects of social relations in the digital era. The current national strategy in Ukraine is quite effective in terms

of the theoretical foundations and fundamental principles that guide the country's technological development. However, it is also important to envisage not only the creation of a system for collecting and evaluating projects that take place during the implementation of its provisions, but also a specialised regulatory body that would be responsible for monitoring all stages of implementation of the provisions envisaged by the strategy, as well as providing international support, consultations with foreign partners, exchange of experience. The burden on the legal system can be reduced through a preventive risk-oriented approach, which includes the identification of AI-based systems that pose the greatest risk to the rights and freedoms of individuals, the ethical foundations of social relations, specifically in the areas of healthcare, legal services. Considering the US practices, states have introduced the possibility for individuals to refuse the use of their personal data that can be used for AI training, and the US has an effective initiative at the federal level to monitor the marketing aspects of AI promotion and misleading influences on the understanding of the specifics of this system. Using evidence from the UK, it is advisable to develop a detailed definition of AI and technologies in general, which will help, firstly, narrow the range of speculations and misinterpretations around these concepts, and secondly, ensure effective legislative regulation of the sector. The UK's practices should also be used to gradually introduce fundamental principles for regulating the use of technology at all levels, including at the level of small and medium-sized businesses, enterprises, whose managers must adhere to such fundamental principles when interacting with and using technology in their activities to prevent and eliminate discrimination, prejudice, misinformation.

It should be added that Ukraine is currently a leader in the digitalisation of public service delivery thanks to the creation of the Diia service, which is regulated by special legislation and covers a range of areas of public life. However, the use of AI and its correlation with authorship issues, as well as digital literacy of citizens, which, albeit a part of the Diia functionality, has not been widely covered and promoted, require similar detailed regulation and elaboration. It is also necessary to increase investment and incentives in the development of innovative solutions at the level of private entities and initiators, the introduction of grant programmes, as well as the availability of effective and reliable legislative guarantees to ensure the protection of the rights and freedoms of persons whose relations are concluded in relation to the technological element.

Discussion

To form a general vision of the information technology sector and how its impact on the legal system has been investigated by other authors, it is worth analysing some of the studies on the relevant topics. For instance, B. Verheij (2020) explored the impact of AI on lifestyles, work performance, and the transformation of the law. In the author's opinion, this impact is manifested in the following positive aspects: automation of legal tasks, such as drafting documents, analysing them, providing legal advice, as well as drafting legislation or analysing court decisions. However, there are also potential risks of using AI, such as privacy violations, discrimination, and bias on the part of algorithmic systems. The researcher emphasises that for the successful introduction of technologies into public life and the legal sphere, it is necessary to develop ethical and social principles and safeguards to ensure that the use of AI is responsible. The author's findings coincide with those of this paper, specifically, in terms of the impact of digital development on the legal system and changes in approaches to technology regulation. Admittedly, along with the simplification of certain legal processes and their automation, the problem of the ethical use of such algorithmic systems arises, and the safety of their involvement in this area is also questionable, specifically due to the risks of personal data leakage and biased results from AI.

The issue of threats from technologies, including artificial intelligence, is well covered by G. Buchholtz (2020), who points to a range of problematic aspects associated with its use, including the lack of transparency in decision-making by such systems, possible discriminatory decisions by AI, and the lack of effective tools and legislation to regulate such systems. The author proposes to take a fresh look at the need to develop technologies and their implementation, i.e., to approach this process with caution, gradually informing the public about the feasibility of their use in the public and private spheres, as well as about the possible consequences of such use. The author's results partially coincide with the results of the present paper, but it is worth expanding on the issue of possible bias on the part of AI, as this risk is really high, specifically because the data on which AI will learn, such as court decisions, precedents, may be drafted in a standard form, contain the same approaches to resolving legal disputes, contain racial, ethnic, sexual, gender bias. Therefore, it is indeed necessary to take a careful and responsible approach to the process of involving AI or other technologies in the area of high importance, specifically, the judiciary.

P. Henman (2020) discussed ways to improve public service delivery. The author argued that AI has considerable potential in this sector, as it can automate typical routine tasks currently performed by employees, while giving them the opportunity to work on more complex and challenging issues. AI can also be used to adapt public services to the individual needs of citizens by providing recommendations, a plan for submitting or collecting documents. The author's results partially coincide with the findings of this paper but are important to consider. Notably, the digitalisation of public services is not a new issue for Ukraine, but the need to create an even wider range of e-services is still important, which is extremely relevant in the context of martial law and the displacement of many citizens outside the country.

C. Brooks *et al.* (2020) investigated the use of technology in the provision of legal services. It is pointed out that AI can meet the demand for cost-effective legal services, including free consultations that help resolve typical simple legal disputes. The authors note that the issue of introducing technology in legal enterprises or institutions is quite complex and problematic due to the cost of such a process, resistance from employees who may not perceive the innovative impact on society well and consider the possibility of replacing their profession with AI, and insufficient regulation of the use of AI by legal acts. Although the authors' results do not coincide with the results of the present paper, it is impossible to disagree with the need to implement and be open to innovative changes and trends that are currently prevailing in the world. To make such a transition comfortable and responsible, businesses need to invest in training their employees on the specific features of AI and other types of technologies, their advantages, disadvantages, consequences

of use, and how algorithmic systems can improve the service delivery process and simplify routine tasks.

The relationship between the right to personal data protection and the development of AI is discussed by N. Marsch (2020), who points out that artificial intelligence systems can be used to collect, analyse, and use personal data on a large scale, raising concerns about the possibility of AI being used for unauthorised tracking and monitoring. However, the author also points out the potential benefits of the system for data protection through the development of secure and sophisticated data encryption algorithms by AI, new tools for detecting prerequisites for data leakage. Although the findings of the researcher do not coincide with the findings of the present study, it is worth agreeing with this opinion and adding that for a safe balance between the categories under study, the fundamental principles of transparency, accountability, and fairness should be followed to ensure effective protection mechanisms, the possibility of a subject's lawful refusal to use their data.

O.B. Ayoko (2021) performed a general overview of the digital transformation process. According to the author, this process is driven by a range of factors, including the need to process large amounts of data, quick results. According to the researcher, the development of robotics and AI is an important achievement in digital transformation, as their role in the automation of industry, manufacturing, and logistics services cannot be overestimated. Although the author's results only partially coincide with the results of this paper, they are important to consider, because with the development of technology, most processes have acquired new meaning, efficiency, and usefulness precisely because of their automation using innovative approaches. The benefits brought by the digitalisation era need to be preserved and developed, while at the same time creating legislation that will reduce the risks of technology in production or service delivery.

With regard to the issue of technological development, specifically the development of AI, as a challenge for the legal system, it is worth paying attention to the study by W. Hoffmann-Riem (2020), who identified a range of problematic aspects that should be considered when creating legislation in the field of technology regulation: the issue of liability for damage that may be caused by AI systems and the subject of such liability in the person of the developer, manufacturer or user, how the confidentiality and privacy of persons interacting with algorithmic systems can be protected, how to prevent discrimination and ensure reliability. The findings of the researcher partially coincide with the results of the present study, but are important to consider, specifically because the author identifies concrete issues that are not answered in most legislative acts of the world. The solution may be to create unified international standards in this area, which will serve as a guide for the development of national regulations to regulate the use of technology effectively and comprehensively. The development of norms of an international nature has significant advantages due to the consultative approach to their creation, which leads to a greater number of approaches, opinions, and solutions of a comprehensive nature.

Conclusions

The study conducted allowed for a deeper analysis and highlighting of important aspects of the impact of technology on law and the legal system in general. It was found how the historical development of technology took place and what major events it was associated with. The study examined the terms and concepts of technology and information through the analysis of Ukrainian legislation, specifically, the Law of Ukraine "On Information", the Law of Ukraine "On Personal Data Protection". It was found that the issues of data protection and the use of artificial intelligence are only partially regulated, specifically, the Law of Ukraine "On Copyright and Related Rights" does not contain a precise definition of such algorithmic systems, does not regulate the issue of their ethical use, mandatory citation, or user security guarantees.

The study also investigated aspects related to the digitalisation and informatisation of Ukrainian society. With this in mind, two main programmes were outlined that are aimed at spreading technology in all spheres of public life and regulating the use of artificial intelligence in Ukraine. Along with Ukrainian initiatives for the country's innovative development, some international norms and recommendations were presented that should be considered during such a process; such recommendations are based on the principles of transparency, accountability, as well as fairness and responsibility, and striking a balance between innovative development and respect for fundamental human rights and freedoms. The study also clarified the issue of foreign practices that should be considered. Thus, the examples of the United States, the United Kingdom, Switzerland, Canada, and Japan show some legislative and national initiatives to regulate the technology sector and its legislative consolidation. It is proposed to pay attention to the way the US ensures user security, where state-level regulations are being introduced that make provision for the legal refusal to provide access to personal data that can be used by AI systems for training or analysis.

For further research on related topics, it is proposed to clarify the following issues: intellectual property law in the context of innovation, personal data protection in the world of the Internet of Things, legal challenges, ethical issues in the field of biotechnology and legal regulation, patenting AI, and machine learning.

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None.

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Право й технології: вплив інновацій на правову систему та її регулювання

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Анотація. Актуальність цього дослідження зумовлено впровадженням технологій у правову сферу, а також їхнім стрімким розвитком, що спричиняє невідповідність традиційного законодавства суспільним відносинам, які виникають. Метою цього дослідження – вивчити вплив цифрових технологій на сучасне правове суспільство та їх законодавче регулювання для формулювання шляхів удосконалення і подальшого розвитку цієї сфери. У дослідженні використано такі методи: історичний, порівняльно-правовий, статистичний, прогнозування. Досліджено поняття технологій, інновацій, діджиталізації та штучного інтелекту, проаналізовано правове регулювання цих понять в українському та зарубіжному законодавстві. Також було визначено основні проблеми та ризики, пов'язані з використанням цифрових технологій, зокрема проблеми, які стосуються безпеки користувачів, захисту персональних даних, авторського права. Рішення та законодавчі зміни, що регулюють сферу технологій, також були висвітлені на прикладі Сполучених Штатів Америки, Швейцарії, Японії, Великої Британії, Канади. У дослідженні проаналізовано вплив штучного інтелекту на етичні аспекти роботи юриста. Викладено погляд на майбутнє та наслідки використання технологій у різних сферах суспільного життя. Виявлено, що діджиталізація та впровадження технологій у суспільні сфери життя вимагають від правової сфери гнучкості та готовності до змін, а також необхідності дотримуватися балансу між інноваційними змінами та гарантуванням основоположних прав людини. З огляду на міжнародні стандарти, які були досліджені, з'ясовано, що ключова сфера, яка потребує додаткового захисту в цифрову епоху, – це приватність та конфіденційність даних. Результати дослідження можуть використати законодавці як основу для вдосконалення правової бази, що регулює відносини у сфері використання технологій, а також юристи й соціологи

Ключові слова: диджиталізація; персональні дані; штучний інтелект; конфіденційність; інформатизація; правова база

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